CIVIL RIGHTS PROPOSALS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

EIGHTY-FOURTH CONGRESS

SECOND SESSION

ON

S. 900 (Antilynching); S. 902 (Civil Rights Division); S. 903 (Political Participation); H. R. 5205 (Armed Forces); S. J. Res. 29 (Qualification of Electors); S. Con. Res. 8 (Joint Congressional Committee); S. 904 (Labor-Peonage); S. 905 (Supplement Existing Statutes); S. 906 (Civil Rights Commission); S. 907 (Omnibus Bill); S. 1089 (Armed Forces); S. 3604 (Additional Assistant Attorney General); S. 3605 (Bipartisan Commission); S. 3415 (Federal Commission); S. 3717 (Strengthen Statutes); S. 3718 (Right To Vote)

APRIL 24, MAY 16, 25, JUNE 1, 12, 25, 26, 27, AND JULY 6 AND 13, 1956

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CIVIL RIGHTS PROPOSALS

TUESDAY, APRIL 24, 1956

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

The committee met at 2:15 p. m., pursuant to notice, in room 424, Senate Office Building, Hon. James O. Eastland (chairman) presiding.

Present: Senators Eastland (presiding), Hennings, Johnston of South Carolina, Jenner, Dirksen, Welker, and Butler.

Also present: Senator Humphrey, Robert B. Young, professional staff member, and Richard F. Wambach, assistant to counsel.

The CHAIRMAN. The committee will come to order.

The Chairman thought that at this first meeting Mr. Young should be assigned to these bills, for the reason that he has always handled bills of this nature in the Judiciary Committee for the full committee.

He will take each bill—and give the meaning, stating what is in each bill. And then after that we will discuss proceedings.

Senator HENNINGS. Mr. Chairman, may I inquire, are there now bills pending?

Mr. YOUNG. Twelve.

Senator HENNINGS. There have been four reported by the Subcommittee on Constitutional Rights.

Mr. YOUNG. Right.

The CHAIRMAN. Sixteen bills all together, as I understand it.

Mr. YOUNG. One of the bills is before the Subcommittee on Constitutional Amendments. Four have been reported by the Subcommittee on Constitutional Rights. That leaves 12 bills pending, but all of them are going to be introduced into the record today.

The CHAIRMAN. Proceed, Mr. Young.

Mr. YOUNG. First, Mr. Chairman, I would like to introduce in the record the notice of this hearing on page 6008, Congressional Record of April 23, 1956.

(The notice referred to was marked "Exhibit 1" and is as follows:)

NOTICE OF HEARINGS ON PROPOSED CIVIL-RIGHTS LEGISLATION BY COMMITTEE ON THE JUDICIARY

Mr. EASTLAND. Mr. President, on behalf of the Committee on the Judiciary, I desire to announce that beginning at 2 p. m. Tuesday, April 24, 1956, there will be a hearing on proposed civil-rights legislation in the committee room, 424 Senate Office Building.

Mr. YOUNG. Secondly, I would like to introduce in the record the excerpt from the committee minutes of a week ago, Monday, April 16,

1956, in which these hearings were set up by action of the full committee.

Rather than read these I will paraphrase them. The full committee in these minutes agreed to hold hearings on all civil rights and constitutional-rights bills before the Judiciary Committee whether in subcommittee or not——

The CHAIRMAN. We can't take up a bill that is before Senator Kefauver's committee.

Mr. YOUNG. The right of Senator Kefauver is reserved to inform the committee whether he would release the poll-tax amendment which is presently pending before his committee.

The CHAIRMAN. That is right.

Senator HENNINGS. Mr. Chairman, I believe that the discussion in the minutes of April 16, 1956, is of sufficient interest—the minutes are very brief, and I would like to request that Mr. Young read the entire proceedings into the record, if there are no objections, so we will know how we arrived at this point.

The CHAIRMAN. That may be done.

Mr. YOUNG (reading):

Résumé of the action taken by the full Judiciary Committee at a regular meeting held on Monday, April 16, 1956, in room 424, Senate Office Building.

The committee convened at 10:40 a. m., Senator Eastland (chairman) presiding.

Present: Senator Eastland, chairman; Senator Johnston; Senator Hennings; Senator McClellan; Senator Daniel; Senator O'Mahoney; Senator Neely; Senator Wiley: Senator Langer; Senator Watkins; Senator Dirksen; Senator Welker; Senator Butler.

Senator Hennings then requested permission to discuss four civil-rights bills pending on the agenda, namely, S. 900, to declare certain rights of all persons and for the protection of such persons from lynching; H. R. 5205, to extend to the members of the Armed Forces the same protection against bodily attack as is now granted to personnel of the Coast Guard; S. 903, to protect the right to political participation; and S. 902, to reorganize the Department of Justice for the protection of civil rights.

Senator Hennings stated that there are a number of bills pending before the committee coming under the general classification of civil-rights legislation. The Senator from Missouri stated that the Attorney General had announced his program before the House Judiciary Committee. Senator Hennings also mentioned that the four bills above referred to have been favorably reported by the Constitutional Rights Subcommittee.

Senator HENNINGS. On what date?

Mr. YOUNG. It wasn't said in the meeting at that time, but I have the date, and it may come in later.

Senator HENNINGS. Would you give us the date?

Mr. YOUNG. Yes, sir.

Senator HENNINGS. I think that you will find that it was February 9. I may be mistaken.

The CHAIRMAN. March 9, wasn't it?

Mr. YOUNG. Here it is.

March 9, 1956. S. 902 was reported on March 9, 1956, reported by the subcommittee to the full committee.

Senator HENNINGS. Mr. Chairman, I think we will find that the bills were voted and reported out of the committee and thereafter the reports were reported out.

Mr. Smithey had charge of the matter at that time.

What were those dates?

Mr. WEST. As I remember, it was February 9. But I think at that time the subcommittee met and made the decision on it. But they are reported later. I think that is where the confusion came from.

Mr. YOUNG. Are you talking about the action date of the subcommittee or the date the full committtee brought them in?

Senator HENNINGS. I am asking for the date the subcommittee reported the bill.

Mr. YOUNG. I don't have that date, sir. I have just the date of reporting them in.

Senator HENNINGS. Mr. Smithey was at that time in charge.

Mr. WEST. I just have them in my mind.

Mr. YOUNG. Ask Mr. Smithey to come in.

Senator HENNINGS. If Mr. Smithey will come and supply the date of the previous proceedings, I would appreciate it. I would like to have the record reflect those dates.

What are those dates?

Mr. DAVIS. I have a notation from Mr. Smithey dated February 23, 1956. It is stated:

By direction of the Subcommittee on Constitutional Rights, Senator Hennings, chairman, the following bills have been ordered reported to the full committee: S. 900, S. 903, H. R. 5205.

And under date of March 3, 1956, I have a further notation from Mr. Smithey stating:

At its meeting in Senator Hennings' office yesterday the Constitutional Rights Subcommittee ordered reported favorably S. 902, to reorganize the Department of Justice for the protection of civil rights.

Senator HENNINGS. Then the first bills were reported on the 23d of February?

Mr. DAVIS. Yes, sir.

Senator HENNINGS. And the one relating to reorganization of the Department of Justice and providing that there be substituted for the Constitutional Rights Section a Division on Civil Rights?

Mr. YOUNG. Yes, sir.

The CHAIRMAN. Proceed, Mr. Young.

Mr. YOUNG (reading):

Senator Watkins asked whether hearings have been held on any of these bills. Senator Hennings stated that no hearings have been held; that back in the 83d Congress there were discussions on various phases of legislation of this character, although no bills were reported at that time. However, in connection with the bills now pending before the Judiciary Committee, no hearings have been held.

The chairman then stated that he has received numerous requests from many sources who are anxious to be heard on these various bills.

Senator Watkins then stated that inasmuch as the subject of civil rights is of such tremendous importance—and it seemed to him that all members of the committeee should be given an opportunity to attend the hearings—that he would move that all civil rights legislation be combined and that the full committee have an opportunity to attend the hearings on the general subject of civil rights. Senator Hennings stated that he would have no objection to such action.

Senator Dirksen then stated that the old Civil Rights Subcommittee held hearings on a number of legislative proposals; that now there are various constitutional proposals before the Constitutional Rights Subcommittee; also, the other day Senator Kefauver held a hearing on a resolution submitted by Senator Holland, Senate Joint Resolution 29, the poll tax amendment. Senator Dirksen was wondering whether all these proposals couldn't be lumped together and have one general hearing on the whole question of civil rights.

Senator Watkins then stated that he would accept Senator Dirksen's suggestion as an amendment to his original motion.

It was agreed, however, that the chairman be authorized to contact Senator Kefauver to see if the Senator was agreeable to having the full committee consider Senate Joint Resolution 29 with these other bills.

Senator Watkins then renewed his motion that all bills dealing with the general subject of civil rights be lumped together into one hearing—including Senate Joint Resolution 29 if agreeable to Senator Kefauver—and that such hearing shall be held by the full committee.

Senator Watkins' motion was seconded and carried. No date was set of such hearing.

I offer that in evidence, Mr. Chairman.

The CHAIRMAN. Proceed.

Mr. YOUNG. Next I have a list of the civil rights bills before the Judiciary Committee at the present time, including all subcommittees. I will read this list.

Senate Joint Resolution 29, an amendment to the Constitution relative to qualification of electors.

That is mentioned here reserving Senator Kefauver's right to object.

Senate Concurrent Resolution 8, establishing a Joint Committee on Civil Rights.

S. 900, to declare certain rights of all persons within the jurisdiction of the United States, and for the protection of such persons from lynching, and for other purposes.

S. 902, to reorganize the Department of Justice for the protection of civil rights.

S. 903, protection of the right of political participation.

S. 904, to strengthen the laws relating to convict labor, peonage, slavery, and involuntary servitude.

S. 905, to amend and supplement existing civil rights statutes.

S. 906, to establish a Commission on Civil Rights in the executive branch of the Government.

S. 907, to protect the civil rights of individuals by establishing a Commission on Civil Rights in the executive branch of the Government, a Civil Rights Division of the Department of Justice, and a Joint Congressional Committee on Civil Rights, to strengthen the criminal laws protecting the civil rights of individuals, and for other purposes.

S. 1089, to extend to uniform members of the Armed Forces the same protection against bodily attack as is now granted to personnel in the Coast Guard.

S. 3415, to establish a Federal Commission on Civil Rights and Privileges; to promote observance of the civil rights of all individuals; and to aid in eliminating discrimination in employment because of race, creed, or color.

S. 3604, to provide for an additional Assistant Attorney General.

S. 3605, to establish a Bipartisan Commission on Civil Rights in the executive branch of the Government.

H. R. 5205, to extend to members of the Armed Forces the same protection against bodily attack as is now granted to personnel of the Coast Guard.

I offer that in evidence, Mr. Chairman, as the bills now pending before the committee.

Mr. YOUNG. Next I offer in evidence before the committee copies of all the civil rights bills before the committee, with departmental reports, where available, and other substantiating data.

Senate Joint Resolution 29, proposing an amendment to the Constitution of the United States, relating to the qualification of the electors, the poll tax bill, introduced January 26, 1955, by Mr. Holland, Mr. Smathers, et al.

Referred February 7, 1955, to Constitutional Amendments Subcommittee. Report requested from the Attorney General on February 22, 1955, but not as yet received.

Public hearing held April 11, 13, 1956. Public hearing conducted May 11, 1954, on Senate Joint Resolution 25 of the 83d Congress.

Senator DIRKSEN. I think, Mr. Young, there were additional cosponsors on the constitutional proposal.

Mr. YOUNG. I can read them all.

Senator DIRKSEN. I think since you are making a record it might be well to include the sponsors and cosponsors.

The CHAIRMAN. That is all right, but the bill itself shows it.

Senator DIRKSEN. Just so it finds its way into the record.

The CHAIRMAN. Read them.

Mr. YOUNG. Mr. Holland (for himself, Mr. Smathers, Mr. George, Mr. Ellender, Mr. Long, Mr. McClellan, Mr. Fulbright, Mr. Ervin, Mr. Scott, and Mr. Thurmond).

I offer that bill for the record.

Senator DIRKSEN. I believe that is the only constitutional proposal.

Mr. YOUNG. Yes; that is the only one.

(S. J. Res. 29 is as follows:)

[S. J. Res. 29, 84th Cong., 1st sess.]

JOINT RESOLUTION Proposing an amendment to the Constitution of the United States, relating to the qualifications of electors

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is hereby proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

"ARTICLE—

"SECTION 1. The right of citizens of the United States to vote in any primary or other election for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax or to meet any property qualification.

"SEC. 2. Nothing in this article shall be construed to invalidate any provision of law denying the right to vote to paupers or persons supported at public expense or by charitable institutions.

"SEC. 3. The Congress shall have power to enforce this article by appropriate legislation."

Mr. YOUNG. I have here the hearings before a subcommittee of the Committee on the Judiciary of the United States Senate, 83d Congress, 2d session, on Senate Joint Resolution 25, May 11, 1954.

I offer that as an exhibit.

(The document referred to was received for the files of the committee.)

Mr. YOUNG. Senate Concurrent Resolution 8, establishing a joint congressional committee on civil rights. Introduced February 1, 1955, by Mr. Humphrey (for himself, Mr. Douglas, Mr. Lehman, Mr. McNamara, Mr. Langer, Mr. Magnuson, Mr. Morse, Mr. Murray, Mr. Neely, and Mr. Neuberger).

Referred February 7, 1955, to Constitutional Rights Subcommittee. Bill is still pending in subcommittee. Senate Concurrent Resolution 8 would establish a joint committee on civil rights composed of seven members from each House of Congress. The duties of the joint committee would be to study matters relating to civil rights, to study means of improving respect for and enforcement of civil rights, and to advise the committees of Congress with legislative ju-

risdiction over civil rights (probably the Labor, Rules, and Judiciary Committees.)

Senate Concurrent Resolution 3, 83d Congress, a predecessor resolution of the same import, was considered by the subcommittee on January 11, 1954, at which time the subcommittee decided action should be delayed indefinitely.

I offer Senate Concurrent Resolution 8 for the record.

(S. Con. Res. 8 is as follows:)

[S. Con. Res. 8, 84th Cong., 1st sess.]

CONCURRENT RESOLUTION

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

SEC. 2. It shall be the function of the joint committee to make a continuing study of matters relating to civil rights, including the rights, privileges, and immunities secured and protected by the Constitution and laws of the United States; to study means of improving respect for and enforcement of civil rights; and to advise with the several committees of the Congress dealing with legislation relating to civil rights.

SEC. 3. Vacancies in the membership of the joint committee shall not affect the power of the remaining members to execute the functions of the joint committee and shall be filled in the same manner as in the case of the original selection. The joint committee shall select a chairman and a vice chairman from among its members.

SEC. 4. The 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. 5. Funds appropriated to the joint committee shall be disbursed by the Secretary of the Senate on vouchers signed by the chairman and vice chairman.

SEC. 6. The joint committee may constitute such advisory committees and may consult with such representatives of State and local governments and private organizations as it deems advisable.

Senator JOHNSTON. Are you going to discuss these later?

Mr. YOUNG. Yes, sir.

S. 900, antilynching: A bill to declare certain rights of all persons within the jurisdiction of the United States, and for the protection of such persons from lynching, and for other purposes. Introduced February 1, 1955, by Mr. Humphrey (for himself, Mr. Douglas, Mr. Lehman, Mr. McNamara, Mr. Langer, Mr. Magnuson, Mr. Morse, Mr. Murray, Mr. Neely, and Mr. Neuberger).

Referred February 7, 1955, to Constitutional Rights Subcommittee. Reported by subcommittee to full committee February 23, 1956. The bill is pending in full committee. No departmental reports requested.

I offer that bill, Mr. Chairman, for introduction in the record. (S. 900 is as follows:)

[S. 900, 84th Cong., 1st sess.]

A BILL To declare certain rights of all persons within the jurisdiction of the United States, and for the protection of such persons

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Antilynching Act"..

FINDINGS AND POLICY

SEC. 2. The Congress hereby makes the following findings:

(a) Lynching is mob violence. It is violence which injures or kills its immediate victims. It is also violence which may be used to terrorize the racial, national, or religious groups of which its victims are members, thereby hindering all members of those groups in the free exercise of the rights guaranteed them by the Constitution and laws of the United States.

(b) The duty required of each State, by the Constitution and laws of the United States, to refrain from depriving any person of life, liberty, or property without due process of law and from denying to any person within its jurisdiction the equal protection of the laws, imposes on all States the obligations to exercise their power in a manner which will—

(1) protect all persons from mob violence without discrimination because of race, creeed, color, national origin, ancestry, language, or religion; and

(2) prevent the usurpation by mobs of the powers of correction or punishment which must be exercised exclusively by government and in accordance with the orderly processes of law.

When the United States by the malfeasance or nonfeasance of governmental officemployees permits or condones lynching, the State fails to fulfill one or both of the above obligations, and thus effectively deprives the victim of life, liberty, or property without due process of law, denies him the equal protection of the laws, and prevents his full enjoyment of other rights guaranteed him by the Constitution and laws of the United States. By permitting or condoning lynching, the State makes the lynching its own act and gives the color of State law to the acts of those guilty of the lynching.

(c) The duty required of the United States by the Constitution and laws of the United States to refrain from depriving any person of life, liberty, or property without due process of law, imposes upon it the obligations to exercise its power in all areas within its exclusive criminal jurisdiction in a manner which will—

(1) protect all persons from mob violence without discrimination because of race, creed, color, national origin, ancestry, language, or religion; and

(2) prevent the usurpation by mobs of the powers of correction or punishment which must be exercised exclusively by government and in accordance with the orderly processes of law.

When the United States by the malfeasance or nonfeasance of government officers or employees permits or condones lynching, the United States fails to fulfill one or both of the above obligations and thus effectively deprives the victim of life, liberty, or property without due process of law, and prevents his full enjoyment of other rights guaranteed him by the Constitution and laws of the United States.

(d) Every lynching that occurs within the United States discredits this country among the nations of the world, and the resultant damage to the prestige of the United States has serious adverse effects upon good relations between the United States and other nations. The increasing importance of maintaining friendly relations among all nations renders it imperative that Congress permit on such acts within the United States which interfere with American foreign policy and weaken American leadership in the democratic cause.

(e) The United Nations Charter and the law of nations require that every person be secure against injury to himself or his property which is (1) inflicted by reason of his race, creed, color, national origin, ancestry, language, or religion, or (2) imposed in disregard of the orderly processes of law.

PURPOSES

SEC. 3. The Congress finds that the succeeding provisions of this Act are necessary in order to accomplish the following purposes:

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

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

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

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

RIGHT TO BE FREE OF LYNCHING

SEC. 4. It is hereby declared that the right to be free from lynching is a right of all persons, whether or not citizens of the United States, who are within the jurisdiction of the United States. As to all such persons, such right accrues by virtue of the provisions of the Constitution of the United States, the United Nations Charter, and the law of nations. As to citizens of the United States, such right additionally accrues by virtue of such citizenship. Such right is in addition to the same or any similar right or rights they may have as persons within the jurisdiction of, or as citizens of, the several States, the District of Columbia, the Territories, possessions, or other areas within the exclusive jurisdiction of the United States.

DEFINITIONS

SEC. 5. (a) Whenever two or more persons shall knowingly in concert (a) commit or attempt to commit violence upon any person or persons or on his or their property because of his or their race, creed, color, national origin, ancestry, language, or religion, or (b) exercise or attempt to exercise, by violence against person or property, any power of correction or punishment over any person or persons in the custody of any governmental officer or employee or suspected of, charged with, or convicted of the commission of any criminal offense, with the purpose or consequence of preventing the apprehension or trial or punishment by law of such person or persons, or of imposing a punishment not authorized by law, such persons shall constitute a lynch mob within the meaning of this Act. Any such action, or attempt at such action, by a lynch mob shall constitute lynching within the meaning of this Act.

(b) The term "governmental officer or employee," as used in this Act, shall mean any officer or employee of a State or any governmental subdivision thereof, or any officer or employee of the United States, the District of Columbia, or any Territory, possession or other area within the exclusive jurisdiction of the United States.

PUNISHMENT FOR LYNCHING

SEC. 6. Any person, whether or not a governmental officer or employee, (a) who is a member of a lynch mob or (b) who knowingly instigates, incites, organizes, aids, abets, or commits a lynching by any means whatsoever, shall, upon conviction, be fined not more than $1,000, or imprisoned not more than one year, or both: *Provided, however,* That where such lynching results in death or maiming or other serious physical or mental injury, or in damage to property, constituting a felony under applicable State, District of Columbia, Territorial, or similar law, any such person shall, upon conviction, be fined not more than $10,000, or imprisoned not more than twenty years, or both. A felony, for purposes of this section, shall be deemed an offense which, under applicable State, District of Columbia, Territorial, or similar law, is punishable by imprisonment for more than one year.

PUNISHMENT FOR KNOWING FAILURE TO PREVENT OR PUNISH LYNCHING

SEC. 7. Whenever a lynching shall occur, (a) any governmental officer or employee who shall have been charged with the duty or shall have possessed the authority as such officer or employee to prevent the lynching, but shall

have neglected, refused, or knowingly failed to make all diligent efforts to prevent the lynching, and (b) any governmental officer or employee who shall have had custody of a person or persons lynched and shall have neglected, refused, or knowingly failed to make all diligent efforts to protect such person or persons from lynching, and (c) any governmental officer or employee who, in violation of his duty as such officer or employee, shall neglect, refuse, or knowingly fail to make all diligent efforts to apprehend, keep in custody, or prosecute any person who is a member of the lynch mob or who knowingly instigates, incites, organizes, aids, abets, or commits a lynching by any means whatsoever, shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding $5,000 or by imprisonment not exceeding five years, or by both.

DUTY OF ATTORNEY GENERAL OF THE UNITED STATES

SEC. 8. The Attorney General of the United States shall cause an investigation to be made to determine whether there has been any violation of this Act, whenever information on oath is submitted to him that a lynching has occurred, and (a) that any governmental officer or employee who shall have been charged with the duty or shall have possessed the authority as such officer or employee to prevent such lynching, has neglected, refused, or knowingly failed to make all diligent efforts to prevent such lynching, or (b) that any governmental officer or employee who shall have had custody of a person or persons lynched and has neglected, refused, or knowingly failed to make all diligent efforts to protect such person or persons from lynching, or (c) that any governmental officer or employee, in violation of his duty as such officer or employee, has neglected, refused, or knowingly failed to make all diligent efforts to apprehend, keep in custody, or prosecute any person who is a member of the lynch mob or who knowingly instigates, incites, organizes, aids, abets, or commits a lynching by any means whatsoever.

AMENDMENT TO ANTIKIDNAPING ACT

SEC. 9. The crime defined in and punishable under the Act of June 22, 1932, as amended (18 U. S. C. 1201, 1202) shall include knowingly transporting in interstate or foreign commerce, any person unlawfully abducted and held because of his race, color, religion, national origin, ancestry, language, religion, or for purposes of punishment, conviction, or intimidation.

CIVIL ACTIONS FOR DAMAGES

SEC. 10. (a) Any person, or in the event of his death the next of kin of any person, who as the result of a lynching suffers death, physical or mental injury, or property damage shall be entitled to maintain a civil action for damages for such death, injury, or damage against—

(1) any person who violates sections 6, 7, or 9 of this Act in connection with such lynching;

(2) (A) the United States, or the District of Columbia, or any Territory, possession, or other governmental subdivision of the United States to which local police functions have been delegated and in which the lynching takes place; or

(B) the State or governmental subdivision thereof to which local police functions have been delegated and in which the lynching takes place.

In any action brought against the United States, the District of Columbia, or any Territory or possession or other governmental subdivision of the United States, or against any State or governmental subdivision thereof, proof by a preponderance of evidence that any officers charged with preventing the lynching used all diligence and all powers vested in them for the protection of the property damaged, or of the person or persons killed or injured shall be an adequate affirmative defense. In any action brought pursuant to this section, the satisfaction of a judgment against any individual or governmental defendant shall bar further proceedings against any other individual or governmental defendant. Where recovery in any action brought pursuant to this section is based in whole or in part on death or on physical or mental injury, the judgment shall be not less than $2.000.

(b) Where any action under this section is brought against the United States, the District of Columbia, or any Territory or possession or other governmental subdivision of the United States the action shall be brought and prosecuted by the claimant or claimants and any judgment recovered shall include reasonable attorney's fees.

(c) Any judge of the United States district court for the district in which any action under this section is instituted, or in which such action may have been transferred under the provisions of section 1404 of title 28 of the United States Code, may direct that such action be tried in any place in such district as he may designate.

(d) Any action brought pursuant to this section must be initiated within three years of the accrual of the cause of action.

SEVERABILITY CLAUSE

SEC. 11. 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.

The CHAIRMAN. Now, there are exhibits to the record.

Mr. YOUNG. Yes, sir.

I have before me a subcommittee print, 84th Congress, 2d section, entitled "Antilynching, a report to accompany S. 900." It is the subcommittee report on the bill S. 900.

I offer that as an exhibit to the record.

(The committee print is as follows:)

[Senate subcommittee print]

ANTILYNCHING

The Committee on the Judiciary, to which was referred the bill (S. 900) to declare certain rights of all persons within the jurisdiction of the United States, and for the protection of such persons from lynching, and for other purposes, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to declare certain rights of all persons within the jurisdiction of the United States and for the protection of such persons from lynching.

STATEMENT

A. SECTION-BY-SECTION ANALYSIS

Section 1 of the proposed legislation merely provides the title by which the act may be cited.

By section 2 the Congress makes certain findings and declares certain policies. The findings which the Congress makes are that lynching is mob violence which injures or kills its immediate victims and which may be used to terrorize racial, national, or religious groups of which its victims are members, thereby denying members of those groups free exercise of the rights protected by the Constitution and laws of the United States. The Congress also finds that it is the duty of each State under the Constitution and laws of the United States to refrain from depriving any person of life, liberty, or property without due process of law and to afford persons within its jurisdiction equal protection of the law and that such duties impose additional obligations; namely, that the State will protect all persons from mob violence without discrimination and that it will prevent usurpation by mobs of the power of correction and punishment which must be exercised exclusively by Government in accordance with orderly processes of law. The Congress also finds that when a State fails by malfeasance or nonfeasance of its governmental officers or employees and permits or condones lynching, the State fails to fulfill its functions under the Constitution and laws of the United States of America, in addition, the Congress finds that by permitting or condoning lynching the State makes the lynching its own act and gives color of State law to the acts of those guilty of lynching. The Congress also finds that there lies with the Federal Government a similar obligation to protect persons from mob violence without discrimination and from the usurpation by mobs of the powers of correction or punishment which must be exercised exclusively by Government in accordance with the orderly processes of law, and that when the

United States fails through its officers to fulfill these obligations, it deprives the victim of life, liberty, or property, without due process of law and prevents his full enjoyment of other rights protected by the Constitution and laws of the United States. In addition, the Congress finds that each lynching that occurs in the United States brings discredit on this Nation in the eyes of the world with resultant damage to the international prestige of this Nation. The Congress also finds that the law of nations requires that every person be secure against injury to himself or his property which is inflicted by reason of race, color, creed, national origin, ancestry, language, or religion, or imposed in disregard of the orderly processes of law.

By section 3 the Congress declares the purposes of this legislation to be the insurance of complete and full enjoyment of the rights, privileges, and immunities secured and protected by the Constitution, the safeguarding of the republican form of government of the several States from the lawless conduct of persons threatening to destroy systems of public criminal justice therein and threatening to frustrate the functioning thereof through duly constituted officials, the promotion of universal respect for and observance of human rights and fundamental freedoms without distinction as to race, language, or religion and the definition and punishment of offenses against the law of nations.

Section 4 declares that the right to be free from lynching is a right of all persons within the jurisdiction of the United States and that such right accrues by virtue of the provisions of the Constituttion of the United States, the United Nations Charter, and the law of nations. With respect to citizens of the United States such right additionally accrues by virtue of such citizenship and is in addition to any similar right which such persons may have within the jurisdictions of the several States, the District of Columbia, or the Territories and possessions within the exclusive control and jurisdiction of the United States.

Section 5 defines the crime of lynching. Whenever two or more persons knowingly in concert commit or attempt to commit violence on any person or his property because of his race, creed, color, national origin, ancestry, or religion or attempt by violence against such person or property any power of correction or punishment over any person in the custody of any governmental officer or employee or persons suspected of, charged with, or convicted of the commission of any criminal offense with the purpose or consequence of preventing apprehension, trial or punishment by law of such persons or officers imposing punishment not authorized by law, such persons shall constitute a lynch mob within the meaning of this bill. Any such action or attempt by a lynch mob shall constitute lynching. The term "governmental officer or employee," as defined, shall mean any officer or employee of a State or any governmental subdivision thereof, or any officer or employee of the United States, the District of Columbia, or any Territory, possession or other area within the exclusive jurisdiction of the United States.

Section 6 provides the punishment for persons convicted of being a member of a lynch mob or knowingly committing or abetting the commission of a lynching. Punishment is to be a fine of not more than $1,000 and imprisonment not more than 1 year, or both, unless such lynching results in death, maiming or other serious physical or mental injury, or in damage to property constituting a felony under applicable State and local laws, in which case punishment may be a fine of not more than $10,000 or imprisonment for not more than 20 years, or both. A felony for the purposes of this bill is deemed to be an offense punishable by imprisonment for more than 1 year.

In addition to imposing punishment on those who participate in a lynching, section 7 of the bill also provides punishment for those governmental officers or employees who, charged with the duty, or possessing the authority, to prevent lynching, knowingly fail to make all diligent efforts to prevent the same. It also makes it a crime for any such officer or employee who, having had custody of a person lynched, knowingly failed to make all diligent efforts to protect such person from lynching. Any governmental officer or employee who knowingly fails to make all diligent efforts to apprehend, keep in custody, or prosecute any person who is a member of a lynch mob or who participates in a lynching also commits the offense. Punishment in the event of conviction of such offenses shall be by fine not exceeding $5,000 or imprisonment not exceeding 5 years, or both.

Section 8 of the proposed legislation requires that the Attorney General of the United States cause an investigation to be made to determine whether there has been any violation of this proposed legislation whenever information on oath is submitted to him that a lynching has occurred and that any governmental

officer or employee has been guilty of a violation of section 7 of the proposed legislation.

Section 9 extends the provisions of the entire bill to include knowingly transporting in interstate or foreign commerce any person abducted or held by reason of his race or for purposes of punishment, conviction or intimidation.

Section 10 creates the right of civil action in any person, or the next of kin of any person, who suffers injury as the result of lynching. Such person given a right of action against any person who violates section 6, 7, or 9, of the proposed legislation or the governmental subdivision to which police functions have been delegated and in which the lynching takes place. This section provides that proof by preponderance of evidence that any officers charged with preventing lynching used all diligence and powers vested in them for the protection of persons and property, shall be an adequate affirmative defense. In the event such civil action is brought against one of the violators of sections 6, 7, or 9, judgment against any individual or governmental defendant bars further proceedings against other individuals or Government defendants. In addition, this section establishes a judgment floor of $2,000 in any civil action succeessfully prosecuted under this section. When a civil action is brought against any Federal Government instrumentality, judgment is to include reasonable attorneys fees. The statute of limitations in such cases is 3 years from the accrual of the cause of action and Federal judges are permitted to direct that such action be tried in such place in the judicial district as the judge may designate.

Section 11 contains the customary severability clause providing that if any provision of the act or its application is held invalid, the remainder of the act and its applications shall not be affected thereby.

B. DISCUSSION

The issue here presented has engaged the committee's attention on previous occasions. Hearings on similar legislation were conducted in the 74th, 76th, 80th, and 81st Congresses. The legislation was reported to the Senate in the 74th, 75th, 76th, 80th, and 81st Congresses.

While it is true that in recent years lynchings have become comparatively rare, nevertheless, the action is so repugnant that it is well to establish as part of the law of the land that such actions of mob violence are unlawful and will be punished to the full extent of the Federal power. When this legislation has been considered on previous occasions, its constitutionality has been questioned. Most of these assertions are based upon the suspicion that lynching is nothing but murder and the Federal Government has no constitutional right to punish lynching any more than it has to punish murder. This analogy, however, between murder and lynching is dispelled upon closer examination. In murder, one or more individuals take life generally motivated by some personal reason. In lynching, a mob sets itself up in place of the State, in disregard of the processes of law, and attempts to mete out punishment to persons accused or suspected of crimes. The mob in such cases sets itself up as the judge, the jury, and the executioner. In murder, the accused merely violates the laws of the State. In lynching, the mob arrogates to itself the powers of the State and the functions of the Government. It is, therefore, not only an act of killing but a usurpation of the functions of the Government, and it is this combination of acts which this legislation seeks to prevent. If there is no usurpation of governmental authority and a homicide has been committed, the homicide, if punishable, is punishable under State laws. But where a homicide occurs, having as its basis the denial of justice to a person because of his race, color, or religion, or any associated reason, the crime committed is against the sovereign and should be punishable accordingly.

Where does the Congress derive authority for the punishment of such actions? First of all, from its authority to punish attempts to usurp Federal authority; secondly, from its constitutional power to guarantee to each State of the Union a republican form of government; thirdly, from the constitutional power to enforce the provisions of the 14th amendment, prohibiting States from depriving any person of due process and equal protection of the laws. Also from the constitutionally delegated authority to define and punish offenses against the law of nations and from the authority conferred upon Congress to carry into effect all of the foregoing powers.

It should be clear that those who participate in mob violence and lynching know no boundaries or sections. The evil which is to be corrected is not confined

to any geographical area or political subdivision nor does this legislation treat the offense as if it were a local or sectional problem.

The committee anticipates that enactment of the pending bill will result in substantial improvement in the protection of persons accused or suspected of criminal activity. Federal and local officials faced with surer punishment if they fail to exercise their authority and do their duty, will take more adequate steps to prevent lynchings and mob violence. Government subdivisions faced with the prospect of suits for civil damages will be impelled to see to it that lynchings are not permitted within their jurisdiction.

This Government which is looked upon as a model form of government by many peoples of the world, cannot afford to see its authority flouted by the lawless mob. The prestige of this Nation, its form of government and its advocacy of "equal justice under law" is at issue. The establishment of criminal and civil procedures against mob violence directed at individuals and groups by reason of race, creed or color, would serve to restore and enhance the prestige of this Nation in the eyes of those at home and abroad who look to our Government for hope and inspiration.

In view of all the foregoing, the committee after due deliberation and consideration of the previous history of this legislation and desirability of enactment, recommends favorable consideration of the legislation.

It is the opinion of the committee that it is necessary to dispense with the requirements of subsection (4) of rule XXIX of the Standing Rules of the Senate in order to expedite the business of the Senate.

THOMAS C. HENNINGS, JR.
WILLIAM LANGER.

Mr. YOUNG. S. 902, Civil Rights Division in the Department of Justice, a bill to reorganize the Department of Justice for the protection of civil rights, introduced February 1, 1955, by Mr. Humphrey (for himself, Mr. Douglas, Mr. Lehman, Mr. McNamara, Mr. Langer, Mr. Magnuson, Mr. Morse, Mr. Murray, Mr. Neely, and Mr. Neuberger).

The CHAIRMAN. Gentlemen, I want to transact some business. It is an open session while we have got a quorum.

The committee is behind on claims. You authorized the chairman to go over minor claims with the subcommittee, and to make recommendations to the full committee.

Now, I couldn't get two members. But yesterday I went over 18 claims with the staff. With the exception of 2 of these, they run under $1,000. There is no question about any of them. The 2 that are over $1,000 were $2,500 apiece.

Senator WELKER. I move they be reported favorably.

Senator DIRKSEN. Second it.

The CHAIRMAN. Is there objection?

The Chair hears none, and the bills will be reported.

Proceed now.

Mr. YOUNG. I was reading the sponsors on S. 902. The bill was referred February 7, 1955, to the Constitutional Rights Subcommittee. It was reported by the subcommittee to the full committee March 9, 1956. And those dates have been committed as to your committee action previously in the record, Senator Hennings. The bill is pending in full committee. Report requested from the Attorney General, but not received as yet.

S. 902 would create a Civil Rights Division in the Department of Justice to be headed by an Assistant Attorney General and would increase FBI personnel to investigate civil-rights cases.

The Department of Justice now handles civil-rights matters in a section within the Criminal Division.

79992—56——2

I offer the bill as an exhibit to the record, Mr. Chairman.
(S. 902 is as follows:)

[S. 902, 84th Cong., 1st sess.]

A BILL To reorganize the Department of Justice for the protection of civil rights

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be in the Department of Justice an additional Assistant Attorney General, learned in the law, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall, under the direction of the Attorney General, be in charge of a Civil Rights Division of the Department of Justice concerned with all matters pertaining to the preservation and enforcement of civil rights secured by the Constitution and laws of the United States.

SEC. 102. The personnel of the Federal Bureau of Investigation of the Department of Justice shall be increased to the extent necessary to carry out effectively the duties of such Bureau with respect to the investigation of civil-rights cases under applicable Federal law. Such Bureau shall include in the training of its agents appropriate training and instructions, to be approved by the Attorney General, in the investigation of civil-rights cases.

Mr. YOUNG. I have a subcommittee print, Senator, 84th Congress, 2d session, entitled "Civil Rights Division in Department of Justice, a report to accompany S. 902."

I offer that as an exhibit in the record.

(The subcommittee print is as follows:)

[Senate subcommittee print]

CIVIL RIGHTS DIVISION IN DEPARTMENT OF JUSTICE

The Committee on the Judiciary, to which was referred the bill (S. 902) to reorganize the Department of Justice for the protection of civil rights, having considered the same reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to elevate the Civil Rights Section of the Department of Justice to the status of a Civil Rights Division in that Department, to be headed by an Assistant Attorney General. The bill would also increase the Federal Bureau of Investigation personnel to the extent necessary to investigate civil rights cases.

STATEMENT

The Civil Rights Section of the Department of Justice was organized in 1939 by Attorney General Frank Murphy. When the President's Commission on Civil Rights, established pursuant to Executive Order 9808, December 5, 1946, concluded its study, one of its recommendations was that the Civil Rights Section be elevated to a Division within the Department of Justice to be headed by an Assistant Attorney General. It also recommended the establishment within the FBI of a special unit of investigators trained in civil rights work. In its report the President's Commission pointed out that the Civil Rights Section employs but seven attorneys who must depend upon the FBI for the development of evidence concerning possible violations of civil rights statutes. The report also pointed out that while the FBI has done valuable work in this connection, its assistance could be increased by the establishment within the Bureau of persons specialized by training and experience in the investigation of civil rights violations.

Since these recommendations of the President's Commission on Civil Rights, no action has been taken to effect these proposals.

On March 22, 1955, the committee attempted to ascertain from the Attorney General his views with respect to the need for this legislation. To date, no reply has been received. However, information before the subcommittee is to the effect that the number of attorneys now employed in the Civil Rights Section is the same as it was 10 years ago when the President's Commission made its report and recommended increased personnel. (In addition to the 7 attorneys,

5 clerical assistants are employed in this Section). Insofar as the budget requests for fiscal 1957 are concerned, information before the subcommittee is to the effect that no increase in personnel has been requested. The most recent information which the subcommittee has with respect to the workload of this Section appears in the report of the activities of the Department of Justice for the fiscal year ended June 30, 1954. At page 183 of that report the Attorney General states:

"The Civil Rights Section supervises and assists in the enforcement of various statutes employed to protect the federally secured civil rights and liberties of persons. The Section is also charged with the responsibility of administering other statutes which relate to the conduct of elections and to labor practices having some relationship to the broad problems of civil rights of individuals.

"Six hundred and thirty-eight cases of all types were pending at the beginning of the year and 2,826 new cases were received, making a total of 3,464 cases handled during the year. Of this number 2,799 cases were terminated and 665 cases were pending at the end of the year. Approximately 10,300 complaints, letters, and documents in the nature of complaints, investigative reports, memoranda, and other items of correspondence were received and analyzed."

In addition this report at page 377 states that between July 1, 1953, and June 30, 1954, the FBI instituted 1,458 preliminary investigations in civil-rights cases. Of the cases prosecuted during the fiscal year, 18 convictions resulted, an increase of 8 over the previous 12-month period.

In the absence of a report from the Attorney General bearing on the proposed legislation, there is appended to this report, other portions of the comments relating to the activities of the Department of Justice concerning investigation and enforcement of civil rights.

The subcommittee after consideration of the magnitude of the task facing the Civil Rights Section in its enforcement and preventive work believes that the action proposed in this legislation should be approved. Elevation of the Civil Rights Section to full divisional status in the Department of Justice under the supervision of an Assistant Attorney General would give the Federal civil rights enforcement program additional prestige, power, and efficiency which it now lacks. Moreover, if other measures approved by the subcommittee receive the approval of the Congress, the change proposed in this legislation would take on added meaning and necessity

That part of the proposal which provides for additional funds and personnel for research and preventive work would remove the Civil Rights Section from its current status as primarily a prosecutive agency. The work of this group should be expanded to the prevention of violations before they arise and if personnel were available, the activities of organizations and individuals fomenting racial tensions could be kept under constant scrutiny. In addition, the creation of investigators within the FBI skilled in the civil rights field would enable the FBI to render more effective service in that field than is presently possible. In view of the desirable effect which it is contemplated adoption of this legislation would have on the observance of and respect for the civil rights of all, the subcommittee recommends favorable consideration of this legislation.

Appended to this report are further pertinent statements appearing in the report of the Attorney General to the Vice President for the fiscal year ended June 30, 1954.

THOMAS C. HENNINGS, Jr.
JOSEPH C. O'MAHONEY.
WILLIAM LANGER.

CIVIL RIGHTS SECTION

* * * * * * *

In addition to discharging its primary responsibility of supervising and directing prosecutions of violations of the civil rights statutes, the Section answered much of the correspondence directed to the Department concerning the Supreme Court's decision in the segregation cases as well as correspondence directed to the White House in this and other related fields involving discrimination and segregation. As in the past, it was necessary to conduct numerous interviews and conferences with individuals who complained about real or imaginary violations of their civil rights.

To further expedite the handling of civil rights complaints and to eliminate the many frivolous or misguided complaints made to the FBI offices throughout the

country, a direct liaison was established with the FBI whereby the more important or urgent matters as well as doubtful complaints are quickly disposed of by means of teletype communications from the field to the FBI, which in turn confers personally with the Civil Rights Section thus eliminating much of the usual delay and expense involved in the preparation of formal correspondence.

Another innovation which has served to assist the United States attorneys and thus bring about a more effective and careful application of the civil rights statutes, was the preparation by staff members of a 42-page pamphlet describing the work of the Civil Rights Section, its functions and its statutes. This document is a concise and thorough description of the functions of the Civil Rights Section, the policies followed by the Department in enforcing the statutes, and a discussion of all the leading cases in the field of civil rights as well as the election laws and labor statutes. Each new United States attorney was thus given the benefit of the research and study done in this field (pp. 188–189, Attorney General's Report for Fiscal Year Ended June 30, 1954).

CIVIL RIGHTS

Instructions issued by the Attorney General make the FBI responsible for investigating allegations that individuals have been deprived of rights or privileges guaranteed them under the Constitution and laws of the United States. In cases of this nature, the FBI is charged with conducting a preliminary investigation immediately upon the receipt of information alleging a civil rights violation. The information gathered in the preliminary investigation is thoroughly and impartially reported to the Department of Justice for its review, prosecutive opinion, and instructions as to further investigation. Full investigations of civil rights allegations are not conducted by the FBI unless the Department or a United States attorney so directs.

In its investigations of civil rights complaints against law-enforcement officers or personnel of other public agencies, the FBI scrupulously avoids interfering with the orderly operation of the agency concerned. At the outset of any such investigation, the FBI contacts the head of the agency—and the governor if a State institution is involved—and apprises him of the allegations against the employee. So that there may be no misunderstanding of the purpose of the investigation or the FBI's responsibility, a clear explanation of the Attorney General's instructions also is provided.

Between July 1, 1953, and June 30, 1954, the FBI instituted 1,458 preliminary investigations in civil rights cases. Of the cases which were prosecuted during the fiscal year, 18 convictions resulted, an increase of 8 over the previous 12-month period.

Through the cooperative services which the FBI makes available without charge to other law-enforcement agencies, a strong impetus is given to the full protection of civil rights. At police training schools, special-agent instructors emphasize the officer's obligations to the public, and they promote high standards of professional conduct at all levels of law enforcement. Additionally, examinations of evidence by the FBI Laboratory and Identification Division provide irrefutable facts which even the most hostile witnesses and suspects cannot deny under oath without openly perjuring themselves (p. 377, Attorney General's Report for Fiscal Year Ended June 30, 1954).

Senator HENNINGS. What date have you got on that?

Mr. YOUNG. A date on the calendar, as reported by the subcommittee to the full committee on March 2, 1956, that is our calendar date, not your committee action date. It postdates that.

Senator HENNINGS. I should like, Mr. Chairman, to have the committee action date also stated at the same place as the committee calendar date, so that we will have those dates as the record of the subcommittee reflects the bills to have been reported.

Senator JOHNSON (presiding). Very well.

Senator HENNINGS. They are really additions.

Mr. YOUNG. S. 903, protection of the right to political participation, introduced February 1, 1955, by Mr. Humphrey (for himself, Mr. Douglas, Mr. Lehman, Mr. McNamara, Mr. Langer, Mr. Magnuson, Mr. Morse, Mr. Murray, Mr. Neely, and Mr. Neuberger).

Referred February 7, 1955, to Constitutional Rights Subcommittee. Reported favorably by subcommittee to full committee March 2, 1956, as of our calendar date.

The bill is pending in the full committee. Reports requested and received by the Attorney General and the Secretary of Labor.

I offer that bill, Mr. Chairman, as part of the record.

(S. 903 is as follows:)

[S. 903, 84th Cong., 1st sess.]

A BILL To protect the right to political participation

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 18, United States Code, section 594, is amended to read as follows:

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

SEC. 2. Section 2004 of the Revised Statutes [(8 U. S. C. 31)] (*42 U. S. C. 1971*) is amended to read as follows:

"All citizens of the United States who are otherwise eligible by law shall be entitled to and allowed the same and equal opportunity to qualify to vote and to vote at any general, special, or primary election by the people conducted in or by any State, Territory, district, county, city, parish, township, school district, municipality, or other Territorial subdivision, without distinction, direct or indirect, based on race, color, religion, or national origin; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding. The right to qualify to vote and to vote, as set forth herein, shall be deemed a right within the meaning of, and protected by, the provisions of title 18, United States Code, section 242, as amended, section 1979 of the Revised Statutes [(8 U. S. C. 43)] (*42 U. S. C. 1983*), and other applicable provisions of law."

SEC. 3. In addition to the criminal penalties provided, any person or persons violating the provisions of the first section of this Act shall be subject to suit by the party injured, or by his estate, in an action at law, suit in equity, or other proper proceeding for damages or preventive or declaratory or other relief. The provisions of this Act shall also be enforceable by the Attorney General in suits in the district courts for preventive or declaratory or other relief. The district courts concurrently with State and Territorial courts, shall have jurisdiction of all other proceedings under this section without regard to the sum or value of the matter in controversy. The term "district courts" includes and district court of the United States as constituted by chapter 5 of title 28, United States Code (28 U. S. C. 81 et seq.), and the United States court of any Territory or other place subject to the jurisdiction of the United States.

SEC. 4. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

Senator HENNINGS. Mr. Chairman, at this point may I inquire of Mr. Young, on some of the bills to which counsel has referred and placed in the record, the reports were asked of the Attorney General and the Department of Justice.

In some instances the Attorney General either did not reply or said that he had no recommendation to make. Does counsel have a record of that correspondence?

Mr. YOUNG. I have the calendar entries——

Senator HENNINGS. Counsel has read in some instances that a report was either requested or not requested. Does counsel have information

as to instances in which reports were requested as long as the year and some months past this date?

Mr. YOUNG. I don't have a record of it, but I know it is true.

Senator HENNINGS. I would like to have the record supported, Mr. Chairman, by such correspondence as may have been had between the Subcommittee on Constitutional Rights, either the presently constituted subcommittee or the subcommittee that preceded it.

I would like to have all the correspondence to the Attorney General and his reply, if any, or his failure to reply, if any, so reflected in the record at this point.

Mr. YOUNG. I will gather it, sir.

Senator HENNINGS. Thank you.

(The bills referred to with attached correspondence are as follows:)

SENATE JOINT RESOLUTION 29: PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES RELATING TO THE QUALIFICATIONS OF ELECTORS

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
February 22, 1955.

HON. HERBERT BROWNELL, JR.
The Attorney General, Washington, D. C.

DEAR MR. ATTORNEY GENERAL: The Judiciary Committee is herewith transmitting Senate Joint Resolution 29 for your study and report thereon in triplicate.

To facilitate the work of the committee, it is urgently requested that your report be submitted within 20 days. The committee should be formally advised in writing if any delay beyond this time period is necessary.

Most sincerely yours,

——— ———, *Chairman.*

SENATE CONCURRENT RESOLUTION 8: ESTABLISHING A JOINT CONGRESSIONAL COMMITTEE ON CIVIL RIGHTS

(No correspondence.)

S. 900: TO DECLARE CERTAIN RIGHTS OF ALL PERSONS WITHIN THE JURISDICTION OF THE UNITED STATES, AND FOR THE PROTECTION OF SUCH PERSONS FROM LYNCHING, AND FOR OTHER PURPOSES

(No correspondence.)

S. 902: TO REORGANIZE THE DEPARTMENT OF JUSTICE FOR THE PROTECTION OF CIVIL RIGHTS

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
March 22, 1955.

HON. HERBERT BROWNELL, JR.,
The Attorney General,
Washington, D. C.

DEAR MR. ATTORNEY GENERAL: The Judiciary Committee is herewith transmitting S. 902 for your study and report thereon in triplicate.

To facilitate the work of the committee, it is urgently requested that your report be submitted within 20 days. The committee should be formally advised in writing if any delay beyond this time period is necessary.

Most sincerely yours,

——— ———, *Chairman.*

S. 903: To Protect the Right to Political Participation

United States Senate,
Committee on the Judiciary,
July 27, 1955.

Hon. James Paul Mitchell,
Secretary, Department of Labor,
Washington, D. C.

Dear Mr. Secretary: The Judiciary Committee is herewith transmitting S. 903 for your study and report thereon in triplicate.

To facilitate the work of the committee, it is urgently requested that your report be submitted within 20 days. The committee should be formally advised in writing if any delay beyond this time period is necessary.

Most sincerley yours,

——— ———, *Chairman.*

December 5, 1955.

Hon. H. M. Kilgore,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

Dear Senator Kilgore: This is in further response to your request for a report on S. 903, a bill to protect the right to political participation.

The bill would amend several existing provisions of law relating to the right to vote in elections by, among other things, extending their applicability to primary elections and providing additional judicial remedies against infringements of this right.

The objectives of S. 903 are praiseworthy and I am in full accord with them. I am not in a position, however, to provide any information that will assist the committee in its consideration of the specific provisions of the bill or the need for its enactment at this time.

The Bureau of the Budget advises that it has no objection to the submission of this report.

Sincerely yours,

Arthur Larson,
Acting Secretary of Labor.

United States Senate,
Committee on the Judiciary,
July 27, 1955.

Hon. Herbert Brownell, Jr.,
Attorney General of the United States,
Department of Justice,
Washington, D. C.

Dear Mr. Attorney General: The Judiciary Committee is herewith transmitting S. 903 for your study and report thereon in triplicate.

To facilitate the work of the committee, it is urgently requested that your report be submitted within 20 days. The committee should be formally advised in writing if any delay beyond this time period is necessary.

Most sincerely yours,

——— ———, *Chairman.*

September 8, 1955.

Hon. Harley M. Kilgore,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

Dear Senator Kilgore: This is in response to your request for the views of the Department of Justice concerning the bill (S. 903) to protect the right to political participation.

Section 594 of title 18 of the United States Code subjects to criminal penalties persons who interfere with the right of other persons to vote in any election

held solely or in part for the purpose of electing a candidate for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, Delegate or Commissioner from a Territory or possession. As defined in section 591 of the same title, the term "election" does not include a primary election. Section 1 of the bill would amend section 594 so as to make the section hereafter applicable to primary elections.

Section 2004 of the revised statutes, formerly set forth in section 31 of title 8 of the United States Code but now contained in section 1971 of title 42, provides that all citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, etc., shall be entitled and allowed to vote without distinction of race, color, or previous condition of servitude. Section 2 of the bill would amend this section in a number of respects. First, it would extend its scope to primary elections. Second, the phrase "previous condition of servitude" would be omitted from the enumeration of factors which are not to form the basis of discrimination and in its place the words "religion or national origin" would be substituted. Third, a new sentence would be added to the section as follows: "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."

Section 242 of title 18 imposes criminal penalties upon anyone who, under color of law, willfully subjects any inhabitant of any State, Territory, or district to the deprivations of any rights protected by the Constitution or laws of the United States. Section 1979 of the Revised Statutes (now 42 U. S. C. 1983) provides for civil liability under similar circumstances.

Section 3 of the bill would provide that any persons violating the provisions of the first 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 section further would provide that the Attorney General may enforce the provisions of the act in the United States district courts, as defined therein. It would also provide that the district courts will have jurisdiction concurrently with State and Territorial courts.

Section 4 of the bill is a customary severability clause.

The purpose of this bill, as stated in its title, is to protect the right to political participation. This purpose is a laudable one with which the Department of Justice is in full accord. Whether this particular measure should be enacted constitutes a question of policy concerning which the Department of Justice prefers to make no recommendation.

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

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

Mr. YOUNG. The next bill is S. 904, a bill to strengthen the laws relating to convict labor, peonage, slavery, and involuntary servitude, introduced February 1, 1955, by Mr. Humphrey (for himself, Mr. Douglas, Mr. Lehman, Mr. McNamara, Mr. Langer, Mr. Magnuson, Mr. Morse, Mr. Murray, Mr. Neely, and Mr. Neuberger). Referred February 7, 1955, to the Constitutional Rights Subcommittee. The bill is still pending in subcommittee; report requested and received from the Attorney General.

S. 904 would amend sections 1581, 1583 and 1584 of title 18, United States Code, relating to peonage and slavery. Section 1581 makes it a crime to hold or return any person to a condition of peonage. The amendment would make an attempt to do so a crime.

Section 1583 makes it a crime (*a*) to kidnap a person with intent that such person be sold into slavery, and (*b*) to entice a person to go on board a vessel with the intent that he be made a slave or transported outside the country for that purpose.

The amendment would make an attempt to accomplish either of these offenses a crime. It would also make it a crime to hold a person with intent that such person be sold into slavery.

Section 1584 makes it a crime to hold a person in involuntary servitude or sell him to such a condition. The amendment would make the attempt a crime.

Maximum penalties under these sections remain 5 years imprisonment and $5,000 fine.

I offer the bill, S. 904, as part of the record at this point, Mr. Chairman.

Senator JOHNSTON. It may be made part of the record.

[S. 904, 84th Cong., 1st sess.]

A BILL To strengthen the laws relating to convict labor, peonage, slavery, and involuntary servitude

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (a) of section 1581 of title 18, United States Code, is amended to read as follows:

"(a) Whoever holds or returns any person to a condition of peonage, or arrests any person with the intent of placing him in or returning him to a condition of peonage, or attempts to hold, return, or arrest any person with such intent, shall be fined not more than $5,000 or imprisoned not more than five years, or both."

SEC. 2. Section 1583 of such title is amended to read as follows:

"SEC. 1583. Whoever holds or kidnaps or carries away any other person, or attempts to hold, kidnap, or carry away any other person, with the intent that such other person be held in or sold into involuntary servitude, or held as a slave; or

"Whoever entices, persuades, or induces, or attempts to entice, persuade, or induce, any other person to go on board any vessel or other means of transportation or to any other place within or beyond the United States with the intent that he be made a slave or held in involuntary servitude, shall be fined not more than $5,000 or imprisoned not more than five years, or both."

SEC. 3. Section 1584 of such title is amended to read as follows:

"Whoever knowingly and willfully holds to involuntary servitude, or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held, or attempts to commit any of the foregoing acts, shall be fined not more than $5,000 or imprisoned not more than five years, or both."

Mr. YOUNG. I have before me a letter of April 19, 1955, addressed to Harley M. Kilgore, chairman, Committee on the Judiciary, United States Senate, and signed by William P. Rogers, Deputy Attorney General. The letter is a departmental report on S. 904, which is the present bill, and I offer that as part of the record.

(The request for report and report is as follows:)

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
February 8, 1955.

Hon. HERBERT BROWNELL, JR.,
The Attorney General,
Washington, D. C.

DEAR MR. ATTORNEY GENERAL: The Judiciary Committee is herewith transmitting S. 904 for your study and report thereon in triplicate.

To facilitate the work of the committee, it is urgently requested that your report be submitted within 20 days. The committee should be formally advised in writing if any delay beyond this time period is necessary.

Most sincerely yours,

——— ———, *Chairman.*

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D. C., April 19, 1955.

HON. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning the bill (S. 904) to strengthen the laws relating to convict labor, peonage, slavery, and involuntary servitude.

The bill would amend sections 1581, 1583, and 1584 of title 18 of the United States Code, the provisions of law which relate to peonage and involuntary servitude, so as to make criminal all attempts to commit the acts proscribed by such sections.

The proposal to amend section 1583 would also make the section applicable not only to the enticement of persons to go on board a "vessel" with the intent that such persons be made slaves but to similar enticement to go on board any other means of transportation.

The Department of Justice would have no objection to the enactment of this legislation.

The committee, however, may wish to consider amending the title of the bill to delete the reference to "convict labor" since such is not within the scope of the sections to be amended. The 13th amendment to the Constitution expressly exempts involuntary servitude "as punishment for crime whereof the party shall have been duly convicted" from the constitutional prohibitions against slavery and involuntary servitude.

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

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

Senator HENNINGS. May I inquire whether counsel has other correspondence relating to the preceding bills from the Attorney General? You seem to have correspondence here, and in another instance you say that no opinion was asked of the Attorney General. Has counsel any other correspondence with the Attorney General?

Mr. YOUNG. No, sir.

The only correspondence I have is departmental correspondence where the calendar shows that a request has been made to the Department for report, and whether report has come back or not. I have none of the correspondence that would have been made to the Subcommittee on Constitutional Rights.

Senator HENNINGS. You have none of that?

Mr. YOUNG. I do not have that, sir.

Senator HENNINGS. Mr. Chairman, may I request that counsel obtain that correspondence and make it a part of the record at this time? It would seem to me that if we are going to put certain letters in, that all the correspondence should be put in the record. Counsel is here offering correspondence relating to S. 904. But counsel says he does not have correspondence, although we know it exists, relating to the preceding legislation, and I ask, Mr. Chairman, that without objection that correspondence be obtained as quickly as possible.

I assume Mr. Smithey has it, and I ask that it be made a part of this record at this time.

Senator JOHNSTON. If you have it, produce it.

Senator HENNINGS. I don't know why some correspondence seems to be germane and relevant, and other correspondence not. I would like to have it all put in.

Mr. YOUNG. I can explain why this is in, and not the other, if you wish.

Senator JOHNSTON. Go ahead and do that.

Mr. YOUNG. I am a staff member on the full committee. The only files I have available are the files of the full committee. When the full committee receives a bill, it, of course, refers it to a subcommittee, and if a request is made to a department, it is calendared or listed in the calendar, and when the reply comes back from the department it is calendared or listed in the calendar.

The only correspondence available to me is that departmental correspondence. I do not have the records, nor have I seen them, of the other correspondence.

Senator HENNINGS. May I assure counsel that the correspondence to which I refer is the departmental correspondence.

Mr. YOUNG. Thank you, sir.

Senator HENNINGS. I am sure Mr. Smithey has it.

Mr. YOUNG. I have no intention of performing a disservice to your position, Senator, by putting some letters in and not others. I believe we could leave them all out.

Senator HENNINGS. I don't mean to suggest that for a moment, and I don't mean to question counsel's seriousness of purpose, or his integrity of purpose. But I do think that all correspondence should be in the record.

I don't want to get into an argument about this. I think that if some correspondence is relevant, other correspondence is relevant also.

Mr. YOUNG. That is correct.

Senator HENNINGS. And may we have the other letters?

Mr. YOUNG. Yes.

(NOTE: All available correspondence relative to mentioned bills has been introduced into and made a part of this record.)

Senator WELKER. Mr. Hennings, may we purge the record of any inference that our able staff member has for some reason withheld any correspondence?

Senator HENNING. I have already made the statement that I don't for a moment impugn the integrity of Mr. Young or his purposes; I simply say that all correspondence, if any, departmental correspondence, should be in. I say to my distinguished friend from Idaho that I believe it should all be in.

Senator WELKER. I believe it should all be in, but, at the same time, I don't want to see any inference left that Mr. Young has done something for which he should be criticized.

Senator HENNINGS. If there is any inference, I certainly want to state again I wish to make no such inference. But I do believe that all such correspondence should be in the record, and I have respectfully requested that Mr. Young get the correspondence.

Mr. YOUNG. I will, sir. The subcommittee has it; I can procure it with the greatest of ease and make it all a part of the record.

And, I won't introduce any more of these, just a few at a time, so that it all goes in at the same time. And in that way, there will be no question of selectivity of correspondence involved.

Senator HENNINGS. I am sure Mr. Smithey has that available. He has been the counsel for the Committee on Constitutional Rights.

Mr. YOUNG. I will procure it.

The next bill is S. 905, a bill to amend and supplement existing civil-rights statutes, introduced February 1, 1955, by Mr. Humphrey

(for himself, Mr. Douglas, Mr. Lehman, Mr. McNamara, Mr. Langer, Mr. Magnuson, Mr. Morse, Mr. Murray, Mr. Neely, and Mr. Neuberger). Referred February 7, 1955, to Constitutional Rights Subcommittee. Bill is still pending in subcommittee.

S. 905: This bill amends and supplements existing civil-rights legislation. More precisely, it does five things:

1. It makes existing civil-rights legislation applicable to "inhabitants" of the United States instead of "citizens," as the law now provides.

2. While present civil-rights law relates to conspiracies by two or more persons, the proposed change in this bill would make the same action by an individual a crime.

3. In case of conspiracy or any individual action to deny civil-rights, this bill creates a right of civil action against the perpetrator.

4. This bill increases the penalty in cases where individuals, acting under color of law, subject any inhabitant to different punishment because of his race or citizenship, which punishment results in death or maiming of the inhabitant. The penalty in such cases could be a fine of $10,000, imprisonment for a period of 20 years, or both.

5. This bill enumerates some of the rights, privileges, and immunities, the deprivation of which violates section 242 of title 18, and perhaps subjects the perpetrator to the penalty just mentioned.

I offer the bill at this time for the record and request for report from the Attorney General.

Senator JOHNSTON. It may be placed in the record.

[S. 905, 84th Cong., 1st sess.]

A BILL To amend and supplement existing civil-rights statutes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 18, United States Code, section 241, is amended to read as follows:

"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) or (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. 2. 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. 3. Title 18, United States Code, is amended by adding after section 242 thereof the following new section:

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

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

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

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

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

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

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

SEC. 5. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
March 22, 1955.

Hon. HERBERT BROWNELL, Jr.,
The Attorney General,
Washington, D. C.

DEAR MR. ATTORNEY GENERAL: The Judiciary Committee is herewith transmitting S. 905 for your study and report thereon in triplicate.

To facilitate the work of the committee, it is urgently requested that your report be submitted within 20 days. The committee should be formally advised in writing if any delay beyond this time period is necessary.

Most sincerely yours,

——— ———, *Chairman.*

Mr. YOUNG. S. 906, a bill to establish a Commission on Civil Rights in the executive branch of the Government, introduced February 1, 1955, by Mr. Humphrey (for himself, Mr. Douglas, Mr. Lehman, Mr. McNamara, Mr. Langer, Mr. Magnuson, Mr. Morse, Mr. Murray, Mr. Neeley, and Mr. Neuberger). Referred February 7, 1955, to Constitutional Rights Subcommittee. The bill is still pending in the subcommittee.

S. 906 creates a Commission on Civil Rights in the executive branch of the Government whose duties it would be to gather information on developments affecting civil rights, to appraise the activities of the Federal, State, or local governments with respect to civil rights, as well as the activities of private groups and individuals.

The Commission is given subpena powers and may seek court aid in enforcing the subpena.

At this time, Mr. Chairman, I offer S. 906 to be appended to the record. Also, request for report from the Attorney General and the Justice Department's report thereon.

Senator JOHNSTON. It may be placed in the record.

[S. 906, 84th Cong., 1st sess.]

A BILL To establish a Commission on Civil Rights in the Executive Branch of the Government

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Commission on Civil Rights Act of 1955".

SEC. 2. The Congress finds that the freedoms guaranteed by the Constitution of the United States have contributed, in large measure, to the rapid growth, productivity, and ingenuity, which characterizes our Nation; that, despite the continuing progress of our Nation with respect to the protection of the rights of individuals, the civil rights of some persons within the jurisdiction of the United States are being denied, abridged, or threatened. The Congress recognizes that the national security and general welfare of the United States call for more adequate protection of the civil rights of individuals; and that the Executive and Legislative Branches of our Government must be accurately and continuously informed concerning the extent to which fundamental constitutional rights are abridged or denied.

SEC. 3. There is created in the executive branch of the Government a Commission on Civil Rights (hereinafter called the "Commission"). The Commission shall be composed of five members who shall be appointed by the President, by and with the advice and consent of the Senate. The President shall designate one of the members of the Commission as Chairman and one as Vice Chairman. The Vice Chairman shall act as Chairman in the absence or disability of the Chairman, or in the event of a vacancy in the office. Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner in which the original appointment was made. Three members of the Commission shall constitute a quorum. Each member of the Commission shall receive the sum of $50 per day for each day spent in the work of the Commission, together with actual and necessary traveling and subsistence expenses incurred while engaged in the work of the Commission (or, in lieu of subsistence, a per diem allowance at a rate not in excess of $10).

SEC. 4. It shall be the duty and function of the Commission to gather timely and authoritative information concerning economic, social, legal, and other developments affecting the civil rights of individuals under the Constitution and laws of the United States; to appraise the policies, practices, and enforcement program of the Federal Government with respect to civil right; to appraise the activities of the Federal, State, and local governments, and the activities of private individuals and groups, with a view to determining what activities adversely affect civil rights; to assist States, counties, municipalities, and private agencies in conducting studies to protect civil rights of all Americans without regard to race, color, creed, or national origin; and to recommend to the Congress, legislation necessary to safeguard and protect the civil rights of all Americans.

The Commission shall make an annual report to the President and to the Congress on its findings and recommendations, and it may in addition from time to time, as it deems appropriate or at the request of the President, advise the President of its findings and recommendations with respect to any civil-rights matter.

SEC. 5. (a) The Commission may constitute such advisory committees and may consult with such representatives of State and local governments, and private organizations, as it deems advisable. The Commission shall, to the fullest extent possible, utilize the services, facilities, and information of other Government agencies, as well as private research agencies, in the performance of its functions. All Federal agencies are directed to cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.

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

SEC. 104. (a) The Commission shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence

that relates to any matter under study or investigation. Any member of the Commission may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

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

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
March 22, 1955.

Hon. HERBERT BROWNELL, Jr.,
The Attorney General,
Washington, D. C.

DEAR MR. ATTORNEY GENERAL: The Judiciary Committee is herewith transmitting S. 906 for your study and report thereon in triplicate.

To facilitate the work of the committee, it is urgently requested that your report be submitted within 20 days. The committee should be formally advised in writing if any delay beyond this time period is necessary.

Most sincerely yours,

——— ———, *Chairman.*

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, September 8, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning the bill (S. 906) to establish a Commission on Civil Rights in the executive branch of the Government.

As indicated in its title, the bill would establish a Commission on Civil Rights in the executive branch of the Government. The Commission would consist of five members appointed by the President, by and with the advice and consent of the Senate. Its duties would be "to gather timely and authoritative information concerning economic, social, legal, and other developments affecting the civil rights of individuals under the Constitution and laws of the United States; to appraise the policies, practices, and enforcement program of the Federal Government with respect to civil rights; to appraise the activities of the Federal, State, and local governments, and the activities of private individuals and groups, with a view to determining what activities adversely affect civil rights; to assist States, counties, municipalities, and private agencies in conducting studies to protect civil rights of all Americans without regard to race, color, creed, or national origin; and to recommend to the Congress legislation necessary to safeguard and protect the civil rights of all Americans."

The measure would require the Commission to make an annual report to the President and to the Congress as to its findings and recommendations with respect to civil-rights matters. Section 5 would authorize the Commission to establish advisory committees to assist it in its work, and would direct it to utilize the services, facilities, and information of Government agencies and private research agencies in the performance of its functions.

The sixth section of the bill (erroneously designated as sec. 104) would empower the Commission to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter being studied or investigated by it. Members of the Commission would be empowered by the section to administer oaths and affirmations, and to examine witnesses and receive evidence. The attendance of witnesses and the production of evi-

dence may be required from any place in the continental United States or any of its Territories or possessions. Subsection (b) would provide for applications by the Commission to the district courts of the United States to effect compliance with Commission subpenas.

Whether or not this measure should be enacted constitutes a question of policy concerning which the Department of Justice prefers to make no recommendation.

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

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

Mr. YOUNG. I have before me a hearing entitled, "Commission on Civil Rights, hearings before a subcommittee of the Committee on the Judiciary, United States Senate, 83d Congress, 2d session, on S. 1 and S. 535," and related matters to the bill.

I offer this as part of the file.

Senator JOHNSTON. It may become a part of the file.

Mr. YOUNG. S. 907, a bill to protect the civil rights of individuals by establishing a Commission on Civil Rights in the executive branch of the Government, a Civil Rights Division in the Department of Justice, and a Joint Congressional Committee on Civil Rights, to strengthen the criminal laws protecting the civil rights of individuals, and for other purposes.

Introduced February 1, 1955, by Mr. Humphrey (for himself, Mr. Douglas, Mr. Lehman, Mr. McNamara, Mr. Langer, Mr. Magnuson, Mr. Morse, Mr. Murray, Mr. Neely, and Mr. Neuberger).

Referred February 7, 1956, to Constitutional Rights Subcommittee.

S. 907: This bill is actually an omnibus bill which embodies the provisions of several civil-rights bills, S. 902, S. 903, S. 904, S. 905, S. 906, and Senate Concurrent Resolution 8.

It omits the bill creating the Federal crime of lynching, but adds the provisions of another bill prohibiting discrimination in the interstate transportation.

These provisions make it a crime, one, for anyone acting in a private, public, or official capacity to deny or attempt to deny equal facilities on a public conveyance: two, for anyone to incite or otherwise participate in such a denial or attempted denial; three, for any common carrier, or any officer, agent or employee to segregate, to attempt to segregate or otherwise discriminate against passengers using a public conveyance or facilities.

The crime in each instance is a disdemeanor punishable by a fine not to exceed $1,000 for each offense.

I offer S. 907 for the record, and a copy of the request for a report thereon.

[S. 907, 84th Cong., 1st sess.]

A BILL To protect the civil rights of individuals by establishing a Commission on Civil Rights in the executive branch of the Government, a Civil Rights Division in the Department of Justice, and a Joint Congressional Committee on Civil Rights, to strengthen the criminal laws protecting the civil rights of individuals, and for other purposes

Be it enacted by the Sneate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Omnibus Human Rights Act of 1955".

TITLE I—COMMISSION ON CIVIL RIGHTS

SEC. 101. The Congress finds that the freedoms guaranteed by the Constitution of the United States have contributed, in large measure, to the rapid growth, productivity, and ingenuity which characterizes our Nation; that, despite the continuing progress of our Nation with respect to the protection of the rights of

individuals, the civil rights of some persons within the jursdiction of the United States are being denied, abridged, or threatened. The Congress recognizes that the national security and general welfare of the United States calls for more adequate protection of the civil rights of individuals; and that the executive and legislative branches of our Government must be accurately and continuously informed concerning the extent to which fundamental consitutional rights are abridged or denied.

SEC. 102. There is created in the executive branch of the Government a Commission on Civil Rights (hereinafter called the "Commission"). The Commission shall be composed of five members who shall be appointed by the President, by and with the advice and consent of the Senate. The President shall designate one of the members of the Commission as Chairman and one as Vice Chairman. The Vice Chairman shall act as Chairman in the absence or disability of the Chairman, or in the event of a vacancy in the office. Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner in which the original appointment was made. Three members of the Commission shall constitute a quorum. Each member of the Commission shall receive the sum of $50 per day for each day spent in the work of the Commission, together with actual and necessary traveling and subsistence expenses incurred while engaged in the work of the Commission (or, in lieu of subsistence, a per diem allowance at a rate not in excess of $10).

SEC. 103. (a) It shall be the duty and function of the Commission to gather timely and authoritative information concerning economic, social, legal, and other developments affecting the civil rights of individuals under the Constitution and laws of the United States; to appraise the policies, practices, and enforcement program of the Federal Government with respect to civil rights; to appraise the activities of the Federal, State, and local governments, and the activities of private individuals and groups, with a view to determining what activities adversely affect civil rights; to assist States, counties, municipalities, and private agencies in conducting studies to protect civil rights of all Americans without regard to race, color, creed, or natonal origin; and to recommend to the Congress legislation necessary to safeguard and protect the civil rights of all Americans.

(b) The Commission shall make an annual report to the President and to the Congress on its findings and recommendations, and it may in addition from time to time, as it deems appropriate or at the request of the President, advise the President of its findings and recommendations with respect to any civil-rights matter.

SEC. 104. (a) The Commission may constitute such advisory committees and may consult with such representatives of State and local governments, and private organizations, as it deems advisable. The Commission shall, to the fullest extent possible, utilize the services, facilities, and information of other Government agencies, as well as private research agencies, in the performance of its functions. All Federal agencies are directed to cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.

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

SEC. 105. (a) The Commission shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under study or investigation. Any member of the Commission may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

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

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TITLE II—CIVIL RIGHTS DIVISION OF THE DEPARTMENT OF JUSTICE

SEC. 201. There shall be in the Department of Justice an additional Assistant Attorney General, learned in the law, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall, under the direction of the Attorney General, be in charge of a Civil Rights Division of the Department of Justice concerned with all matters pertaining to the preservation and enforcement of civil rights secured by the Constitution and laws of the United States.

SEC. 202. The personnel of the Federal Bureau of Investigation of the Department of Justice shall be increased to the extent necessary to carry out effectively the duties of such Bureau with respect to the investigation of civil-rights cases under applicable Federal law. Such Bureau shall include in the training of its agents appropriate training and instructions, to be approved by the Attorney General, in the investigation of civil-rights cases.

TITLE III—JOINT COMMITTEE ON CIVIL RIGHTS

SEC. 301. There is established a Joint Committee on Civil Rights (hereinafter called the "joint committee"), to be composed of seven Members of the Senate, to be appointed by the President of the Senate, and seven Members of the House of Representatives, to be appointed by the Speaker of the House of Representatives. The party representation on the joint committee shall as nearly as may be feasible reflect the relative membership of the majority and minority parties in the Senate and House of Representatives.

SEC. 302. It shall be the function of the joint committee to make a continuing study of matters relating to civil rights, including the rights, 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. 303. Vacancies in the membership of the joint committee shall not affect the power of the remaining members to execute the functions of the joint committee and shall be filled in the same manner as in the case of the original selection. The joint committee shall select a chairman and a vice chairman from among its members.

SEC. 304. The joint committee, or any duly authorized subcommittee thereof, is authorized to hold such hearings, to sit and act at such places and times, to require, by subpena or otherwise, the attendance of such witnesses and the production of such books, papers, and documents, to administer such oaths, and to take such testimony, as it deems advisable. The provisions of sections 102 to 104, inclusive, of the Revised Statutes, as amended (2 U. S. C. 192, 193, 194), shall apply in case of any failure of any witness to comply with a subpena or to testify when summoned under authority of this section. Within the limitations of its appropriations, the joint committee is empowered to appoint and fix the compensation of such experts, consultants, technicians, and clerical and stenographic assistance, to procure such printing and binding, and to make such expenditures as, in its discretion, it deems necessary and advisable. The cost of stenographic services to report hearings of the joint committee, or any subcommittee thereof, shall not exceed 40 cents per hundred words.

SEC. 305. Funds appropriated to the joint committee shall be disbursed by the Secretary of the Senate on vouchers signed by the chairman and vice chairman.

SEC. 306. The joint committee may constitute such advisory committees and may consult with such representatives of State and local governments and private organizations as it deems advisable.

TITLE IV—CRIMINAL LAWS PROTECTING CONSTITUTIONAL RIGHTS, PRIVILEGES, AND IMMUNITIES

SEC. 401. Title 18, United States Code, section 241, is amended to read as follows:

"§ 241. Conspiracy against rights of citizens

"(a) If two or more persons conspire to injure, oppress, threaten, or intimidate any inhabitant of any State, Territory, or District in the free exercise or enjoy-

ment 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 subsection (a) or (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 he United States."

SEC. 402. Title 18, United States Code, section 242, is amended to read as follows:

"§ 242. Deprivation of rights under color of law

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

SEC. 403. Title 18, United States Code, is amended by adding after section 242 thereof the following new section:

"§ 242A. Enumeration of rights, privileges, and immunities

"The rights, privileges, and immunities referred to in 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 fair trial and upon conviction and sentence pursuant to due process of law.

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

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

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

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

SEC. 404. If any provision of this title or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the title and of the application of such provision to other persons and circumstances shall not be affected thereby.

TITLE V—LAWS PROTECTING RIGHT TO POLITICAL PARTICIPATION

SEC. 501. Title 18, United States Code, section 594, is amended to read as follows:

"§ 594. Intimidation of voters

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

SEC. 502. Section 2004 of the Revised Statutes (42 U. S. C. 1971) is amended to read as follows:

"SEC. 2004. All citizens of the United States who are otherwise eligible by law shall be entitled to and allowed the same and equal opportunity to qualify to vote and to vote at any general, special, or primary election by the people conducted in or by any State, Territory, district, county, city, parish, township, school district, municipality, or other Territorial subdivision, without distinction, direct or indirect, based on race, color, religion, or national origin; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding. The right to qualify to vote and to vote, as set forth herein, shall be deemed a right within the meaning of, and protected by, the provisions of title 18, United States Code, section 242, as amended, section 1979 of the Revised Statutes (42 U. S. C. 1983), and other applicable provisions of law."

SEC. 503. In addition to the criminal penalties provided, any person or persons violating the provisions of section 594 of title 18, United States Code, 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 such section and of section 2004 of the Revised Statutes shall also be enforceable by the Attorney General in suits in the district courts for preventive or declaratory or other relief. The district courts, concurrently with State and Territorial courts, shall have jurisdiction of all other proceedings under this section without regard to the sum or value of the matter in controversy. The term "district courts" includes any district court of the United States as constituted by chapter 5 of title 28, United States Code (28 U. S. C. 81 et seq.), and the United States court of any Territory or other place subject to the jurisdiction of the United States.

SEC. 504. If any provision of this title or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the title and of the application of such provision to other persons and circumstances shall not be affected thereby.

TITLE VI—CRIMINAL LAWS RELATING TO CONVICT LABOR, PEONAGE, SLAVERY, AND INVOLUNTARY SERVITUDE

SEC. 601. Subsection (a) of section 1581 of title 18, United States Code, is amended to read as follows:

"(a) Whoever holds or returns any person to a condition of peonage, or arrests any person with the intent of placing him in or returning him to a condition of peonage, or attempts to hold, return, or arrest any person with such intent, shall be fined not more than $5,000 or imprisoned not more than five years, or both."

SEC. 602. Section 1583 of such title is amended to read as follows:

"§ 1583. Enticement into slavery

"Whoever holds or kidnaps or carries away any other person, or attempts to hold, kidnap, or carry away any other person, with the intent that such other person be held in or sold into involuntary servitude, or held as a slave; or

"Whoever entices, persuades, or induces, or attempts to entice, persuade, or induce, any other person to go on board any vessel or other means of transportation or to any other place within or beyond the United States with the intent that he be made a slave or held in involuntary servitude, shall be fined not more than $5,000 or imprisoned not more than five years, or both."

SEC. 603. Section 1584 of such title is amended to read as follows:

"§ 1584. Sale into involuntary servitude

"Whoever knowingly and willfully holds to involnuntary servitude, or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held, or attempts to commit any of the foregoing acts, shall be fined not more than $5,000 or imprisoned not more than five years, or both."

TITLE VII—PROHIBITION AGAINST DISCRIMINATION IN INTERSTATE TRANSPORTATION

SEC. 701. (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 proceedings 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. 702. 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 of 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.

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
March 22, 1955.

Hon. HERBERT BROWNELL, JR.,
The Attorney General,
Washington, D. C.

DEAR MR. ATTORNEY GENERAL: The Judiciary Committee is herewith transmitting S. 907 for your study and report thereon in triplicate.

To facilitate the work of the committee, it is urgently requested that your report be submitted within 20 days. The committee should be formally advised in writing if any delay beyond this time period is necessary.

Most sincerely yours,

——— ———, *Chairman.*

Mr. YOUNG. S. 1089, a bill to extend to uniformed members of the Armed Forces the same protection against bodily attack as is now granted to personnel of the Coast Guard.

I offer that bill, Mr. Chairman, to be made part of the record, and also the request for report on S. 1089 and the report thereon.

Senator JOHNSON. They may be made part of the record.

[S. 1089, 84th Cong., 1st sess.]

A BILL To extend to uniformed members of the Armed Forces the same protection against bodily attack as is now granted to personnel of the Coast Guard

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1114 of title 18, United States Code, is amended by striking out the words "man of the Coast Guard," and inserting in lieu thereof the words "uniformed members of the Army, Navy, Air Force, Marine Corps, or Coast Guard,".

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
March 8, 1955.

HON. CHARLES E. WILSON,
Secretary, Department of Defense,
The Pentagon, Washington, D. C.

DEAR MR. SECRETARY: The Judiciary Committee is herewith transmitting S. 1089 for your study and report thereon in triplicate.

To facilitate the work of the committee, it is urgently requested that your report be submitted within 20 days. The committee should be formally advised in writing if any delay beyond this time period is necessary.

Most sincerely yours,

——— ———, *Chairman.*

DEPARTMENT OF THE AIR FORCE,
Washington, March 16, 1955.

HON. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Defense on S. 1089, 84th Congress, a bill to extend to uniformed members of the Armed Forces the same protection against bodily attack as is now granted to personnel of the Coast Guard. The Secretary of Defense has delegated to this Department the responsibility for expressing the views of the Department of Defense on this matter.

The purpose of the proposed legislation is to extend to all members of the Armed Forces the same protection afforded to certain civilian officers and employees of the United States, and personnel of the Coast Guard, as enumerated in title 18, United States Code, section 1114. To accomplish this the bill would amend title 18, United States Code, section 1114, by substituting the words "uniformed members of the Army, Navy, Air Force, Marine Corps, or Coast Guard", in lieu of the words "man of the Coast Guard" as they now appear in the statute.

It is the view of the Department of Defense that the protection afforded other Government personnel by sections 111 and 1114 of title 18, United Saes Code, should be extended to members of the Armed Forces. However, the use of the words "uniformed members" in this bill invites the interpretation that the amended section would not be applicable to enlisted members of the Armed Forces who are performing official duties, but who are not in uniform. There is no such limitation on the protection given enlisted members of the Coast Guard under existing law, nor does it appear that the wearing of the unform should be a necessary requisite for the protection which would be afforded under the proposed legislation. The courts have held that, to be amenable to punishment under such a statute, a killer need not know that he is killing an officer, agent or employee of the United States (*McNabb* v. *U. S.*, C. C. A. Tenn. 1941, 123 F. (2) 848; cert. den. 316 U. S. 658). It is therefore recommended that the word

"uniformed" be stricken from the title of the proposed legislation, and that the word "member" be inserted in lieu of the words "uniformed members" in the penultimate line of the bill.

Subject to amendment in the foregoing manner, the Department of Defense would favor enactment of S. 1089.

The Department of Defense is unable to estimate the fiscal effects of such legislation.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

DAVID S. SMITH,
Assistant Secretary of the Air Force.

Mr. YOUNG. S. 3415, a bill to establish a Federal Commission on Civil Rights and Privileges; to promote observance of the civil rights of all individuals; and to aid in eliminating discrimination in employment because of race, creed or color.

Introduced March 12, by Mr. Dirksen.

I offer that bill, S. 3415, for inclusion in the record, and a request for report on the bill.

[S. 3415, 84th Cong., 2d sess.]

A BILL To establish a Federal Commission on Civil Rights and Privileges; to promote observance of the civil rights of all individuals; and to aid in eliminating discrimination in employment because of race, creed, or color

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Rights and Privileges Act of 1956".

FINDINGS AND DECLARATION OF POLICY

SEC. 2. The Congress hereby finds and declares—

(a) that it is the policy of the United States to encourage and promote observance of, and respect for, the civil rights and privileges of all individuals under the Constitution and laws of the United States;

(b) that the denying of employment opportunities to, and discrimination in employment against, properly qualified persons by reason of race, creed, or color is contrary to the principles of freedom and equality of opportunity upon which this Nation is built, deprives the United States of the fullest utilization of its capacities for production and defense, and burdens, hinders, and obstruct commerce; and

(c) that it is the policy of the United States to bring about the elimination of discrimination because of race, creed, or color in employment relations.

FEDERAL COMMISSION ON CIVIL RIGHTS AND PRIVILEGES

SEC. 3. (a) There is hereby created a commission to be known as the Federal Commission on Civil Rights and Privileges (hereinafter referred to as the "Commission"), which shall be composed of five members who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Commission. Any member of the Commission may be removed by the President upon notice and hearing for neglect of duty or malfeasance in office, but for no other cause.

(b) A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members of the Commission shall at all times constitute a quorum.

(c) The Commission shall have an official seal which shall be judicially noticed.

(d) Each member of the Commission shall receive a salary at the rate of $12,000 a year, and shall not engage in any other business, vocation, or employment.

(e) The principal office of the Commission shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place and may establish such regional offices as it deems necessary. The Commission may, by one or more of its members or by such agents or agencies as it may designate, conduct any investigation, proceeding, or hearing necessary to its functions in any part of the United States.

(f) The Commission shall have power—

(1) to appoint such officers and employees as it deems necessary to assist it in the performance of its functions;

(2) to cooperate with or utilize regional, State, local, and other agencies and to utilize voluntary and uncompensated services;

(3) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents or agencies the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(4) from time to time to make, amend, and rescind, in such manner prescribed by the Administrative Procedure Act, such rules and regulations as may be necessary to carry out the provisions of this Act;

(5) to serve process or other papers of the Commission, either personally, by registered mail, or by leaving a copy at the principal office or place of business of the person to be served; and

(6) to make such technical studies as are appropriate to effectuate the purposes and policies of this Act and to make the results of such studies available to interested Government and nongovernmental agencies.

DUTIES OF THE COMMISSION

SEC. 4. (a) It shall be the duty of the Commission to promote and encourage observance of, and respect for, the civil rights and privileges of all individuals under the Constitution and laws of the United States—

(1) by making comprehensive studies of the extent of observance of, and respect for, such civil rights and privileges in different metropolitan districts and sections of the country and the effect of the lack of full observance of, or respect for, such rights and privileges;

(2) by formulating, in cooperation with other interested public and private agencies, comprehensive plans to encourage and promote observance of, and respect for, such civil rights and privileges, as rapidly as possible, in all sections of the country;

(3) by publishing and disseminating reports and other information relating to the observance of, and respect for, such civil rights and privileges and ways and means for bringing about a full observance of, and respect for, such civil rights and privileges;

(4) by conferring, cooperating with, and furnishing technical assistance to private and public agencies in formulating and executing policies and programs to encourage and promote observance of, and respect for, such civil rights and privileges;

(5) by receiving and investigating complaints charging a violation of any civil right or privilege and by investigating other cases where it has reason to believe that any such violation has occurred; and

(6) by making specific and detailed recommendations to the interested parties in any such case as to ways and means of preventing any further violation of such civil right or privilege.

(b) It shall be the duty of the Commission to bring about the removal of discrimination in regard to hire or tenure, terms or conditions of employment, or union membership, because of race, creed, or color—

(1) by making comprehensive studies of such discrimination in different metropolitan districts and sections of the country and of the effect of such discrimination and of the best methods of eliminating it;

(2) by formulating in cooperation with other interested public and private agencies, comprehensive plans for the elimination of such discrimination, as rapidly as possible, in regions or areas where such discrimination is prevalent;

(3) by publishing and disseminating reports and other information relating to such discrimination and to ways and means for eliminating it;

(4) by conferring, cooperating with, and furnishing technical assistance to employers, labor unions, and other private and public agencies in formu-

lating and executing policies and programs for the elimination of such discrimination;

(5) by receiving and investigating complaints charging any such discrimination and by investigating other cases where it has reason to believe that any such discrimination is practiced; and

(6) by making specific and detailed recommendations to the interested parties in any such case as to ways and means for the elimination of any such discrimination.

(c) The Commission shall at the close of each fiscal year report to the Congress and to the President describing in detail the investigations, proceedings, and hearings it has conducted and their outcome, the decisions it has rendered, and the other work performed by it, and may make such recommendations for further legislation as may appear desirable. The Commission may make such other recommendations to the President or any Federal agency as it deems necessary or appropriate to effectuate the purposes and policies of this Act.

INVESTIGATORY POWERS

SEC. 5. (a) For the purpose of all investigations, proceedings, or hearings which the Commission deems necessary or proper for the exercise of the powers vested in it by this Act, the Commission, or its authorized agent or agencies, shall at all reasonable times have the right to examine or copy any evidence of any person relating to any such investigation, proceeding, or hearing.

(b) Any member of the Commission shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence relating to any investigation, proceeding, or hearing before the Commission, its member, agent, or agency conducting such investigation, proceeding, or hearing.

(c) Any member of the Commission, or any agent or agency designated by the Commission for such purposes, may administer oaths, examine witnesses, receive evidence, and conduct investigations, proceedings, or hearings.

(d) 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.

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

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

GOVERNMENT DEPARTMENTS AND AGENCIES

SEC. 6. (a) The Commission shall make a study and investigation of the observance of, and respect for, civil rights and privileges of individuals in the departments and agencies of the Federal Government. The Commission shall recommend to the President and the heads of such departments and agencies specific plans to encourage and promote a full observance of, and respect for such civil right and privileges, and shall recommend to the Congress such legislation as it deems necessary to implement and effectuate such plans.

(b) The Commission shall make a study and investigation of discrimination in regard to hire, or tenure, terms or conditions of employment, in the depart-

ments and agencies of the Federal Government because of race, creed, or color, and shall recommend to the Congress a specific plan to eliminate it and such legislation as it deems necessary to eliminate it.

WILLFUL INTERFERENCE WITH COMMISSION AGENTS

SEC. 7. Any person who shall willfully resist, impede, or interfere with, any member of the Commission or any of its agents or agencies in the performance of their 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.

TITLE II—FINANCIAL ASSISTANCE TO THE STATES

GRANTS FOR CIVIL RIGHTS PROGRAMS

SEC. 201. Within the limit of funds made available under section 205 of this Act, the Commission is authorized to make grants to the States in the matter provided in this title to assist the States in carrying out programs designed to encourage and promote observance of, and respect for, the civil rights of individuals within the States, and to bring about the removal of discrimination within the States in regard to hire or tenure, terms or conditions of employment, or union membership, because of race, creed, or color.

ELIGIBILITY FOR ASSISTANCE

SEC. 202. To be eligible for financial assistance under this title, a State shall give assurances satisfactory to the Commission that—

(a) there has been established in such State, a State agency charged with the duty of performing functions on a State level similar to those functions imposed by this Act upon the Commission; or

(b) there has been established in one or more political subdivisions of such State, a local governmental agency charged with the duty of performing functions on a local level similar to those functions imposed by this Act upon the Commission; and

(c) the purposes and policies of the State agency or local governmental agencies, as the case may be, are not inconsistent with purposes and policies of this Act or with the policies of the Commission in performing its duties under this Act.

APPORTIONMENT OF FUNDS

SEC. 203. (a) In the case of each State which is eligible for assistance under this title under the provisions of section 202 (a), the amount of assistance to be granted to such State for each fiscal year shall not exceed an amount which bears the same ratio to the total amount appropriated under section 205 for such fiscal year as the population of such State bears to the total population of all the States.

(b) In the case of each State which is eligible for assistance under this title solely under the provisions of section 202 (b), the amount of assistance to be granted to such State for each fiscal year shall not exceed an amount which bears the same ratio to the total amount appropriated under section 205 for such fiscal year as the population of the political subdivisions having local governmental agencies which provide the basis for the State's eligibility bears to the total population of all the States.

(c) Within the limitations prescribed by subsections (a) and (b), the Commission shall make grants to the States based upon need and the scope of the State or local program.

PAYMENT OF FUNDS

SEC. 204. Payment of funds to eligible States shall be made by the Commission to the State agency, or to the State officer who, under State law, is charged with responsibility for receiving such funds. In the case of any State which is eligible for assistance under this title solely under the provisions of section 202 (b), the Commission shall require satisfactory assurances that funds paid to the State will be transmitted to the local governmental agencies which provide the basis for the State's eligibility.

AUTHORIZATION OF APPROPRIATIONS

SEC. 205. For each fiscal year, commencing with the fiscal year ending June 30, 1956, there is authorized to be appropriated the sum of $1,000,000 for making grants to the States under this title.

DEFINITION OF "STATE"

SEC. 206. As used in this title, the term "State" includes the District of Columbia, Alaska, and Hawaii.

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
March 14, 1956.

HON. HERBERT BROWNELL, JR.,
The Attorney General, Washington, D. C.

DEAR MR. ATTORNEY GENERAL: The Judiciary Committee is herewith transmitting S. 3415 for your study and report thereon in triplicate.

To facilitate the work of the committee, it is urgently requested that your report be submitted within 20 days. The committee should be formally advised in writing if any delay beyond this time period is necessary.

Most sincerely yours,

——— ———, *Chairman.*

Mr. YOUNG. S. 3604, a bill to provide for an additional Assistant Attorney General, introduced April 11, 1956, by Senator Dirksen (for himself, Mr. Kuchel, Mr. Beall, Mr. Buch, Mr. Duff, Mr. Langer, Mr. Potter, Mr. Purtell, Mr. Smith of New Jersey, Mr. Case of New Jersey, Mr. Capehart, Mr. Bender, Mr. Butler, Mr. Knowland, Mr. Ives, Mr. Jenner, Mr. Thye, and Mr. Saltonstall.)

I offer that bill for inclusion in the record, at the present time.

Senator JOHNSTON. It may became a part of the record.

(S. 3604 is as follows:)

[S. 3604, 84th Cong., 2d sess.]

A BILL To provide for an additional Assistant Attorney General

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be in the Department of Justice one additional Assistant Attorney General, who shall be appointed by the President, by and with the advice and consent of the Senate, who shall assist the Attorney General in the performance of his duties, and who shall receive compensation at the rate prescribed by law for other Assistant Attorneys General.

Mr. YOUNG. S. 3605, a bill to establish a bipartisan Commission on Civil Rights in the executive branch of the Government.

Introduced April 11, 1956, by Senator Dirksen and the same sponsors of the previous bill.

I offer that bill at the present time for inclusion in the record.

Senator JOHNSTON. It may became a part of the record.

(S. 3605 is as follows:)

[S. 3605, 84th Cong., 2d sess.]

A BILL To establish a bipartisan Commission on Civil Rights in the executive branch of the Government

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

ESTABLISHMENT OF THE COMMISSION ON CIVIL RIGHTS

SECTION 1. (a) There is created in the executive branch of the Government a Commission on Civil Rights (hereinafter called the "Commission").

(b) The Commission shall be composed of six members who shall be appointed by the President by and with the advice and consent of the Senate. Not more than three of the members shall at any one time be of the same political party.

(c) The President shall designate one of the members of the Commission as Chairman and one as Vice Chairman. The Vice Chairman shall act as Chairman in the absence or disability of the Chairman, or in the event of a vacancy in that office.

(d) Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner, and subject to the same limitation with respect to party affiliation, as the original appointment was made.

(e) Four members of the Commission shall constitute a quorum.

COMPENSATION OF MEMBERS OF THE COMMISSION

SEC. 2. (a) Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive the sum of $50 per day for each day spent in the work of the Commission, shall be reimbursed for actual and necessary travel expenses, and shall receive a per diem allowance of $12 in lieu of actual expenses for subsistence, inclusive of fees or tips to porters and stewards.

(b) Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be reimbursed for actual and necessary travel expenses, and shall receive a per diem allowance of $12 in lieu of actual expenses for subsistence, inclusive of fees or tips to porters and stewards.

DUTIES OF THE COMMISSION

SEC. 3. (a) The Commission shall—

(1) investigate the allegations that certain citizens of the United States are being deprived of their right to vote or are being subjected to unwarranted economic pressures by reason of their color, race, religion, or national origin;

(2) study and collect information concerning economic, social, and legal developments constituting a denial of equal protection of the laws under the Constitution; and

(3) appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution.

(b) The Commission shall submit interim reports to the President at such times as either the Commission or the President shall deem desirable, and shall submit to the President a final and comprehensive report of its activities, findings, and recommendation not later than two years from the date of the enactment of this statute.

(c) Sixty days after the submission of its final report and recommendations the Commission shall cease to exist.

POWERS OF THE COMMISSION

SEC. 4. (a) Within the limitation of its appropriations, the Commission may appoint a full-time staff director and such other personnel as it deems advisable, in accordance with the civil service and classification laws, and may procure services as authorized by section 15 of the Act of August 2, 1946 (60 Stat. 810; 5 U. S. C. 55a) but at rates for individuals not in excess of $50 per diem.

(b) The Commission may accept and utilize services of voluntary and uncompensated personnel and pay any such personnel actual and necessary traveling and subsistence expenses incurred while engaged in the work of the Commission (or, in lieu of subsistence, a per diem allowance at a rate not in excess of $12).

(c) The Commission may constitute such advisory committees and may consult with such representatives of State and local governments, and private organizations, as it deems advisable.

(d) All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.

(e) The Commission, or on the authorization of the Commission any subcommittee of two or more members, may, for the purpose of carrying out the

provisions of this Act, hold such hearings and act at such times and places as the Commission or such authorized subcommittee may deem advisable. Subpenas for the attendance and testimony of witnesses and/or the production of written or other matter may be issued over the signature of the Chairman of the Commission or of such subcommittee, and may be served by any person designated by such Chairman.

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

APPROPRIATIONS

SEC. 5. There is hereby authorized to be appropriated out of any money in the Treasury not otherwise appropriated, so much as may be necessary to carry out the provisions of this Act.

Mr. YOUNG. H. R. 5205, a bill to extend to members of the Armed Forces the same protection against bodily attack as is now granted to personnel of the Coast Guard.

Presented to the Senate on January 17, 1956. Referred to Constitutional Rights Subcommittee on January 18, 1956.

Reported favorably from the subcommittee to the full committee on February 23, 1956, with a correction date as of subcommittee action to be placed in the record when available.

I offer that bill H. R. 5205 as an exhibit in the record.

Senator JOHNSTON. It may be so included.

(H. R. 5205 is as follows:)

[H. R. 5205, 84th Cong., 2d sess.]

AN ACT To extend to members of the Armed Forces the same protection against bodily attack as is now granted to personnel of the Coast Guard

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 114 of title 18, United States Code, is amended by striking out the words "man of the Coast Guard," and inserting in lieu thereof the words "member of the Army, Navy, Air Force, Marine Corps, or Coast Guard,".

Passed the House of Representatives January 16, 1956.

Attest:

RALPH R. ROBERTS, *Clerk.*

Mr. YOUNG. I have before me a subcommittee print, Senate, 84th Congress, 2d session, entitled, "Extending protection against bodily attack to members of the Armed Forces," a report to accompany H. R. 5205.

I offer that print at the present time as an exhibit to the record.

Senator JOHNSTON. It may become an exhibit, hearing no objection.

The report referred to is reprinted herewith.

[Senate subcommittee print]

EXTENDING PROTECTION AGAINST BODILY ATTACK TO MEMBERS OF THE ARMED FORCES

The Committee on the Judiciary, to which was referred the bill (H. R. 5205) to extend to members of the Armed Forces the same protection against bodily attack as is now granted to personnel of the Coast Guard, having considered the same,

reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to extend to all members of the Armed Forces the same protection afforded to personnel of the Coast Guard and to certain civilian officers and employees of the United States enumerated in title 18 United States Code, section 1114.

STATEMENT

Under section 1114 of title 18, certain Federal employees are granted protection against assault, manslaughter, and murder while engaged in, or on account of, the performance of official duties. Officers and employees presently protected include:

1. Officers and enlisted men of the Coast Guard;
2. Judges of the United States;
3. United States attorneys and their assistants;
4. United States marshals and their deputies;
5. Post-office inspectors;
6. Officers and employees of United States penal and correctional institutions;
7. Secret Service personnel;
8. Customs personnel;
9. Internal-revenue personnel;
10. Immigration officers;
11. United States game wardens;
12. Bureaus of Narcotics personnel;
13. Personnel of the Federal Bureau of Investigation in the Department of Justice;
14. National Park Service personnel;
15. Bureau of Land Management personnel;
16. Employees of the Bureau of Animal Industry of the Department of Agriculture; and
17. Personnel of the Indian field service of the United States.

If any of these persons are killed while engaged in, or on account of, the performance of their official duties, the killer is liable to prosecution under sections 1111 and 1112 of title 18 of the United States Code. These two sections punish murder and manslaughter. Furthermore section 111 of title 18 of the United States Code punishes any who assault, resist, or impede any of the above persons while engaged in or on account of the performance of their official duties. Members of the armed services are protected by Federal criminal laws while they are within the special maritime and territorial jurisdiction of the United States as defined in section 7 of title 18 of the United States Code. This includes United States military bases, installations, vessels, etc. However, the duties of members of the armed services often take them away from these places. This legislation is necessary to give these highly deserving persons complete Federal criminal-law protection.

The Department of Defense recommended, and the House of Representatives approved, an amendment to this legislation which would make this protection of law available to servicemen whether or not they are in uniform. The companion Senate bill, as introduced, did not contain this amendment and the subcommittee is submitting the legislation to the full committee, leaving to the committee's determination whether such an amendment should be included.

Reports on this legislation were received from the Departments of Defense, Justice, and Treasury. The Department of Defense favors the enactment of this legislation. The Departments of Justice and Treasury make no comment on the advisability of enacting this legislation but raise a question as to the appropriateness of including members of the armed services in this section. They suggest that section 1114 is designed to protect law-enforcement officers exclusively. The subcommittee considered this question and concluded that members of the armed services are fully entitled to this protection, and that it is perfectly appropriate that they be included in this section. In addition, the duties of members of the armed services are often as closely related to law enforcement as many of the now protected officers and employees and certainly their duties are equally if not more valuable to the protection of the country.

Attached hereto and made a part hereof are the reports of the Departments of Air Force, Justice, and Treasury, made in connection with this legislation.

THOMAS C. HENNINGS, Jr.
JOSEPH C. O'MAHONEY.
WILLIAM LANGER.

DEPARTMENT OF THE AIR FORCE,
OFFICE OF THE SECRETARY,
Washington, April 13, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Defense on H. R. 5205, 84th Congress, a bill to extend to uniformed members of the Armed Forces the same protection against bodily attack as is now granted to personnel of the Coast Guard. The Secretary of Defense has delegated to this Department the responsibility for expressing the views of the Department of Defense on this matter.

The purpose of the proposed legislation is to extend to all members of the Armed Forces the same protection afforded to certain civilian officers and employees of the United States, and personnel of the Coast Guard, as enumerated in title 18, United States Code, section 1114. To accomplish this the bill would amend title 18, United States Code, section 1114, by substituting the words "uniformed members of the Army, Navy, Air Force, Marine Corps, or Coast Guard", in lieu of the words "man of the Coast Guard" as they now appear in the statute.

It is the view of the Department of Defense that the protection afforded other Government personnel by sections 1111 and 1114 of title 18 United States Code, should be extended to members of the Armed Forces. However, the use of the words "uniformed members" in this bill invites the interpretation that the amended section would not be applicable to enlisted members of the Armed Forces who are performing official duties, but who are not in uniform. There is no such limitation on the protection given enlisted members of the Coast Guard under existing law, nor does it appear that the wearing of the uniform should be a necessary requisite for the protection which would be afforded under the proposed legislation. The courts have held that, to be amenable to punishment under such a statute, a killer need not know that he is killing an officer, agent, or employee of the United States (*McNabb* v. *U. S.*, C. C. A. Tenn. 1941, 123 F. (2d) 848; cert. den., 316 U. S. 658). It is therefore recommended that the word "uniformed" be stricken from the title of the proposed legislation, and that the word "member" be inserted in lieu of the words "uniformed members" in the fifth line of the bill.

Subject to amendment in the foregoing manner, the Department of Defense would favor enactment of H. R. 5205.

The Department of Defense is unable to estimate the fiscal effects of such legislation.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

LYLE S. GARLOCK,
Assistant Secretary of the Air Force.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, June 13, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice relative to the bill (H. R. 5205) to extend to uniformed members of the Armed Forces the same protection against bodily attack as is now granted to personnel of the Coast Guard.

Section 1114 of title 18, United States Code, now provides that whoever kills any of certain designated officers or employees of the United States while engaged in

the performance of their official duties, or on account of the performance of such duties, shall be punished as provided in sections 1111 and 1112, which relate, respectively, to murder and manslaughter. Section 111 of title 18 makes it a felony forcibly to assault, resist, oppose, impede, intimidate, or interfere with any of the persons designated in section 1114 while such persons are engaged in or on account of the performance of their official duties.

The bill would amend section 1114 by striking from the list therein contained the words "man of the Coast Guard" and inserting in place thereof the words "uniformed members of the Army, Navy, Air Force, Marine Corps, or Coast Guard." Its effect would be to extend coverage of sections 1114 and 111 to all members of the Armed Forces while in uniform.

The committee's attention is called to the fact that this statute which was formerly section 253 of title 18, though amended from time to time, has included within its protection only persons whose duties involve potential risks or hazards in connection with law enforcement. Coast Guard personnel appear to have been within the protection of the section by reason of their function in protecting the revenue under section 52 of title 14 of the United States Code. Another consideration is the possible effect which this enactment would have upon the workload of the Federal courts and Federal prosecutive staffs, for it may well be anticipated that numerous minor skirmishes involving members of the Armed Forces would call for the exercise of Federal prosecutive measures.

Whether or not the bill should be enacted constitutes a question of policy concerning which the Department of Justice prefers to make no comment.

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

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

DEPARTMENT OF THE TREASURY,
April 15, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to the request of your committee for the views of the Treasury Department on H. R. 5205, to extend to uniformed members of the Armed Forces the same protection against bodily attack as is now granted to personnel of the Coast Guard.

The purpose of H. R. 5205 is to extend to uniformed members of the other Armed Forces the protection afforded officers and enlisted men of the Coast Guard by section 1114 of title 18, United States Code. Section 1114, inter alia, makes it a Federal crime to kill an officer or enlisted man of the Coast Guard, while engaged in the performance of official duties. Enactment of the bill would have the effect of also extending to members of the other Armed Forces the protection afforded by section 111 of title 18, United States Code, which makes it a Federal crime to forcibly assault, resist, oppose, impede, intimidate, or interfere with any person designated in section 1114 while engaged in or on account of his official duties.

It would appear that the primary purpose of sections 111 and 1114 of title 18, United States Code, is to protect Federal law enforcement officers while engaged in their duties. The affording to Coast Guard personnel of the protection provided by these sections would seem to be due to the law enforcement functions performed by the Coast Guard. Whether such protection should be extended to all military personnel would appear not to be of primary concern to the Treasury Department, and for that reason no comments are submitted relative to the merits of the bill.

Very truly yours,

DAVID W. KENDALL,
General Counsel.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, certain changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

"TITLE 18, UNITED STATES CODE, SECTION 1114

"Sec. 1114. Protection of officers and employees of the United States

"Whoever kills any judge of the United States, any United States attorney, any Assistant United States attorney, or any United States marshal or deputy marshal or person employed to assist such marshal or deputy marshal, any officer or employee of the Federal Bureau of Investigation of the Department of Justice, any post-office inspector, any officer or employee of the Secret Service or of the Bureau of Narcotics, any officer or enlisted [man of the Coast Guard.] *member of the Army, Navy, Air Force, Marine Corps, or Coast Guard*, any officer or employee of any United States penal or correctional institution, any officer, employee or agent of the customs or of the internal revenue or any person assisting him in the execution of his duties, any immigration officer, any officer or employee of the Department of Agriculture or of the Department of the Interior designated by the Secretary of Agriculture or the Secretary of the Interior to enforce any Act of Congress for the protection, preservation, or restoration of game and other wild birds and animals, any officer or employee of the National Park Service, any officer or employee of, or assigned to duty in, the field service of the Bureau of Land Management, any employee of the Bureau of Animal Industry of the Department of Agriculture, or any officer or employee of the Indian field service of the United States, while engaged in the performance of his official duties, or on account of the performance of his official duties, shall be punished as provided under sections 1111 and 1112 of this title."

Mr. YOUNG. I have here, Mr. Chairman, an action sheet on all the civil rights bills before this committee showing the status of each before the committee and the movement in the committee as of the time they have been here.

I offer that as an exhibit to the record.

Senator JOHNSTON. It may become an exhibit.

The document referred to is as follows:

SENATE JOINT RESOLUTION 29: PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, RELATING TO THE QUALIFICATION OF ELECTORS

Referred to the Judiciary Committee on January 26, 1955.
Referred to Subcommittee on Constitutional Amendments on February 7, 1955.
February 22, 1955: Report requested from the Attorney General.
April 11, 13, 1956: Public hearing (recorded).

SENATE CONCURRENT RESOLUTION 8: ESTABLISHING A JOINT CONGRESSIONAL COMMITTEE ON CIVIL RIGHTS

Referred to the Judiciary Committee on February 1, 1955.
Referred to Subcommittee on Constitutional Rights on February 7, 1955.
April 24, May 16, 25, June 1, 12, 1956: Public hearing (recorded).

S. 900: TO DECLARE CERTAIN RIGHTS OF ALL PERSONS WITHIN THE JURISDICTION OF THE UNITED STATES, AND FOR THE PROTECTION OF SUCH PERSONS FROM LYNCHING, AND FOR OTHER PURPOSES

Referred to the Judiciary Committee on February 1, 1955.
Referred to Subcommittee on Constitutional Rights on February 7, 1955.
February 23, 1956: Reported by subcommittee.

S. 902: TO REORGANIZE THE DEPARTMENT OF JUSTICE FOR THE PROTECTION OF CIVIL RIGHTS

Referred to the Judiciary Committee on February 1, 1955.
Referred to Subcommittee on Constitutional Rights on February 7, 1955.
March 22, 1955: Report requested from the Attorney General.
March 2, 1956: Reported by subcommittee.

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S. 903: To Protect the Right to Political Participation

Referred to the Judiciary Committee on February 1, 1955.
Referred to Subcommittee on Constitutional Rights on February 7, 1955.
July 27, 1955: Reports requested from the Attorney General and the Secretary of Labor.
September 9, 1955: Report received from the Attorney General.
January 23, 1956: Report received from the Secretary of Labor.
February 23, 1956: Reported by subcommittee.

S. 904: To Strengthen the Laws Relating to Convict Labor, Peonage, Slavery, and Involuntary Servitude

Referred to the Judiciary Committee on February 1, 1955.
Referred to Subcommittee on Constitutional Rights on February 7, 1955.
February 8, 1955: Report requested from the Attorney General.
April 21, 1955: Report received from the Attorney General.

S. 905: To Amend and Supplement Existing Civil-Rights Statutes

Referred to the Judiciary Committee on February 1, 1955.
Referred to Subcommittee on Constitutional Rights on February 7, 1955.
March 22, 1955: Report requested from the Attorney General.

S. 906: To Establish a Commission on Civil Rights in the Executive Branch of the Government

Referred to the Judiciary Committee on February 1, 1955.
Referred to the Subcommittee on Constitutional Rights on February 7, 1955.
March 22, 1955: Report requested from the Attorney General.
September 9, 1955: Report received from the Attorney General.

S. 907: To Protect the Civil Rights of Individuals by Establishing a Commission on Civil Rights in the Executive Branch of the Government, a Civil Rights Division in the Department of Justice, and a Joint Congressional Committee on Civil Rights, To Strengthen the Criminal Laws Protecting the Civil Rights of Individuals, and for Other Purposes

Referred to the Judiciary Committee on February 1, 1955.
Referred to the Subcommittee on Constitutional Rights on February 7, 1955.
March 22, 1955: Report requested from the Attorney General.

S. 1089: To Extend to Uniformed Members of the Armed Forces the Same Protection Against Bodily Attack as Is Now Granted to Personnel of the Coast Guard

Referred to the Judiciary Committee on February 15, 1955.
Referred to the Subcommittee on Constitutional Rights on February 24, 1955.
March 8, 1955: Report requested from the Secretary of Defense.
March 17, 1955: Report received from the Secretary of Defense.

S. 3415: To Establish a Federal Commission on Civil Rights and Privileges; To Promote Observance of the Civil Rights of All Individuals; and To Aid in Eliminating Discrimination in Employment Because of Race, Creed, or Color

Referred to Judiciary Committee on March 12, 1956.
March 14, 1956: Report requested from the Attorney General.

S. 3604: To Provide for an Additional Assistant Attorney General

Referred to Judiciary Committee on April 11, 1956.
April 12, 1956: Supporting data is on file from the Attorney General.

S. 3605: To Establish a Bipartisan Commission on Civil Rights in the Executive Branch of the Government

Referred to Judiciary Committee on April 11, 1956.
April 12, 1956: Supporting data is on file from the Attorney General.

H. R. 5205: To Extend to Members of the Armed Forces the Same Protection Against Bodily Attack as Is Now Granted to Personnel of the Coast Guard

Referred to Judiciary Committee on January 17, 1956.
Referred to the Subcommittee on Constitutional Rights on January 18, 1956.
February 23, 1956: Reported by subcommittee.
This bill passed the House January 16, 1956 (H. Rept. 1555).

Mr Young. I offer at this time, Mr. Chairman, the constitution of the Subcommittee on the Constitutional Rights showing Mr. Hennings as chairman, Mr. O'Mahoney and Mr. Langer as members.

Senator Johnston. It may become part of the record.

The document referred to is as follows:

CONSTITUTIONAL RIGHTS

Mr. Hennings, *Chairman*

Mr. O'Mahoney — Mr. Langer

Mr. Young. I also offer at this time, Mr. Chairman, the membership of the Subcommittee on Constitutional Amendments, showing Mr. Kefauver as chairman, Mr. Hennings, Mr. Daniel, Mr. Langer and Mr. Dirksen as the other members.

I offer that for the record.

The document referred to is as follows:

CONSTITUTIONAL AMENDMENTS

Mr. Kefauver, *Chairman*

Mr. Hennings — Mr. Langer
Mr. Daniel — Mr. Dirksen

Mr. Young. I offer at this time to be placed in the record the four bills reported out of the Subcommittee on Constitutional Rights to the full committee, with the reports of the subcommittee. The bills are S. 900, S. 902, S. 903, and H. R. 5205.

Senator Johnston. They may become a part of the record.

[S. 900, 84th Cong., 1st sess.]

A BILL To declare certain rights of all persons within the jurisdiction of the United States, and for the protection of such persons from lynching, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Antilynching Act".

FINDINGS AND POLICY

Sec. 2. The Congress hereby makes the following findings:

(a) Lynching is mob violence. It is violence which injures or kills its immediate victims. It is also violence which may be used to terrorize the racial, national, or religious groups of which its victims are members, thereby hindering all members of those groups in the free exercise of the rights guaranteed them by the Constitution and laws of the United States.

(b) The duty required of each State, by the Constitution and laws of the United States, to refrain from depriving any person of life, liberty, or property

without due process of law and from denying to any person within its jurisdiction the equal protection of the laws, imposes on all States the obligations to exercise their power in a manner which will—

(1) protect all persons from mob violence without discrimination because of race, creed, color, national origin, ancestry, language, or religion; and

(2) prevent the usurpation by mobs of the powers of correction or punishment which must be exercised exclusively by government and in accordance with the orderly processes of law.

When a State by the malfeasance or nonfeasance of governmental officers or employees permits or condones lynching, the State fails to fulfill one or both of the above obligations, and thus effectively deprives the victim of life, liberty, or property without due process of law, denies him the equal protection of the laws, and prevents his full enjoyment of other rights guaranteed him by the Constitution and laws of the United States. By permitting or condoning lynching, the State makes the lynching its own act and gives the color of State law to the acts of those guilty of the lynching.

(c) The duty required of the United States by the Constitution and laws of the United States to refrain from depriving any person of life, liberty, or property without due process of law, imposes upon it the obligations to exercise its power in all areas within its exclusive criminal jurisdiction in a manner which will—

(1) protect all persons from mob violence without discrimination because of race, creed, color, national origin, ancestry, language, or religion; and

(2) prevent the usurpation by mobs of the powers of correction or punishment which must be exercised exclusively by government and in accordance with the orderly processes of law.

When the United States by the malfeasance or nonfeasance of governmental officers or employees permits or condones lynching, the United States fails to fulfill one or both of the above obligations and thus effectively deprives the victim of life, liberty, or property without due process of law, and prevents his full enjoyment of other rights guaranteed him by the Constitution and laws of the United States.

(d) Every lynching that occurs within the United States discredits this country among the nations of the world, and the resultant damage to the prestige of the United States has serious adverse effects upon good relations between the United States and other nations. The increasing importance of maintaining friendly relations among all nations renders it imperative that Congress permit no such acts within the United States which interfere with American foreign policy and weaken American leadership in the democratic cause.

(e) The United Nations Charter and the law of nations require that every person be secure against injury to himself or his property which is (1) inflicted by reason of his race, creed, color, national origin, ancestry, language, or religion, or (2) imposed in disregard of the orderly processes of law.

PURPOSES

SEC. 3. The Congress finds that the succeeding provisions of this Act are necessary in order to accomplish the following purposes:

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

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

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

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

RIGHT TO BE FREE OF LYNCHING

SEC. 4. It is hereby declared that the right to be free from lynching is a right of all persons, whether or not citizens of the United States, who are within the jurisdiction of the United States. As to all such persons, such right accrues by virtue of the provisions of the Constitution of the United States, the United

Nations Charter and the law of nations. As to citizens of the United States, such rights additionally accrues by virtue of such citizenship. Such right is in addition to the same or any similar right or rights they may have as persons within the jurisdiction of, or as citizens of, the several States, the District of Columbia, the Territories, possessions, or other areas within the exclusive jurisdiction of the United States.

DEFINITIONS

SEC. 5. (a) Whenever two or more persons shall knowingly in concert (a) commit or attempt to commit violence upon any person or persons or on his or their property because of his or their race, creed, color, national origin, ancestry, language, or religion, or (b) exercise or attempt to exercise, by violence against person or property, any power of correction or punishment over any person or persons in the custody of any governmental officer or employee or suspected of, charged with, or convicted of the commission of any criminal offense, with the purpose or consequence of preventing the apprehension or trial or punishment by law of such person or persons, or of imposing a punishment not authorized by law, such persons shall constitute a lynch mob within the meaning of this Act. Any such action, or attempt at such action, by a lynch mob shall constitute lynching within the meaning of this Act.

(b) The term "governmental officer or employee", as used in this Act, shall mean any officer or employee of a State or any governmental subdivision thereof, or any officer or employee of the United States, the District of Columbia, or any Territory, possession or other area within the exclusive jurisdiction of the United States.

PUNISHMENT FOR LYNCHING

SEC. 6. Any person, whether or not a governmental officer or employee, (a) who is a member of a lynch mob or (b) who knowingly instigates, incites, organizes, aids, abets, or commits a lynching by any means whatsoever, shall, upon conviction, be fined not more than $1,000, or imprisoned not more than one year, or both: *Provided, however*, That where such lynching results in death or maiming or other serious physical or mental injury, or in damage to property, constituting a felony under applicable State, District of Columbia, Territorial, or similar law, any such person shall, upon conviction, be fined not more than $10,000, or imprisoned not more than twenty years, or both. A felony, for purposes of this section, shall be deemed an offense which, under applicable State, District of Columbia, Territorial, or similar law, is punishable by imprisonment for more than one year.

PUNISHMENT FOR KNOWING FAILURE TO PREVENT OR PUNISH LYNCHING

SEC. 7. Whenever a lynching shall occur, (a) any governmental officer or employee who shall have been charged with the duty or shall have possessed the authority as such officer or employee to prevent the lynching, but shall have neglected, refused, or knowingly failed to make all diligent efforts to prevent the lynching, and (b) any governmental officer or employee who shall have had custody of a person or persons lynched and shall have neglected, refused, or knowingly failed to make all diligent efforts to protect such person or persons from lynching, and (c) any governmental officer or employee who, in violation of his duty as such officer or employee, shall neglect, refuse, or knowingly fail to make all diligent efforts to apprehend, keep in custody, or prosecute any person who is a member of the lynch mob or who knowingly instigates, incites, organizes, aids, abets, or commits a lynching by any means whatsoever, shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding $5,000 or by imprisonment not exceeding five years, or by both.

DUTY OF ATTORNEY GENERAL OF THE UNITED STATES

SEC. 8. The Attorney General of the United States shall cause an investigation to be made to determine whether there has been any violation of this Act, whenever information on oath is submitted to him that a lynching has occurred, and (a) that any governmental officer or employee who shall have been charged with the duty or shall have possessed the authority as such officer or employee to prevent such lynching, has neglected, refused, or knowingly failed to make all diligent efforts to prevent such lynching, or (b) that any governmental officer or employee who shall have had custody of a person or persons lynched and has neglected, refused, or knowingly failed to make all diligent efforts to protect

such person or persons from lynching, or (c) that any governmental officer or employee, in violation of his duty as such officer or employee, has neglected, refused, or knowingly failed to make all diligent efforts to apprehend, keep in custody, or prosecute any person who is a member of the lynch mob or who knowingly instigates, incites, organizes, aids, abets, or commits a lynching by any means whatsoever.

AMENDMENT TO ANTIKIDNAPING ACT

SEC. 9. The crime defined in and punishable under the Act of June 22, 1932, as amended (18 U. S. C. 1201, 1202) shall include knowingly transporting in interstate or foreign commerce, any person unlawfully abducted and held because of his race, color, religion, national origin, ancestry, language, or religion, or for purposes of punishment, conviction, or intimidation.

CIVIL ACTIONS FOR DAMAGES

SEC. 10. (a) Any person, or in the event of his death the next of kin of any person, who as the result of a lynching suffers death, physical or mental injury, or property damage shall be entitled to maintain a civil action for damages for such death, injury, or damage against—

(1) any person who violates sections 6, 7, or 9 of this Act in connection with such lynching;

(2) (A) the United States, or the District of Columbia, or any Territory, possession, or other governmental subdivision of the United States to which local police functions have been delegated and in which the lynching takes place; or

(B) the State or governmental subdivision thereof to which local police functions have been delegated and in which the lynching takes place.

In any action brought against the United States, the District of Columbia, or any Territory or possession or other governmental subdivision of the United States, or against any State or governmental subdivision thereof, proof by a preponderance of evidence that any officers charged with preventing the lynching used all diligence and all powers vested in them for the protection of the property damaged, or of the person or persons killed or injured shall be an adequate affirmative defense. In any action brought pursuant to this section, the satisfaction of a judgment against any individual or governmental defendant shall bar further proceedings against any other individual or governmental defendant. Where recovery in any action brought pursuant to this section is based in whole or in part on death or on physical or mental injury, the judgment shall be not less than $2,000.

(b) Where any action under this section is brought against the United States, the District of Columbia, or any Territory or possession or other governmental subdivision of the United States the action shall be brought and prosecuted by the claimant or claimants and any judgment recovered shall include reasonable attorney's fees.

(c) Any judge of the United States district court for the district in which any action under this section is instituted, or in which such action may have been transferred under the provisions of section 1404 of title 28 of the United States Code, may direct that such action be tried in any place in such district as he may designate.

(d) Any action brought pursuant to this section must be initiated within three years of the accrual of the cause of action.

SEVERABILITY CLAUSE

SEC. 11. 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.

[Senate subcommittee print]

ANTILYNCHING

The Committee on the Judiciary, to which was referred the bill (S. 900) to declare certain rights of all persons within the jurisdiction of the United States, and for the protection of such persons from lynching, and for other purposes,

having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to declare certain rights of all persons within the jurisdiction of the United States and for the protection of such persons from lynching.

STATEMENT

A. SECTION-BY-SECTION ANALYSIS

Section 1 of the proposed legislation merely provides the title by which the act may be cited.

By section 2 the Congress makes certain findings and declares certain policies. The findings which the Congress makes are that lynching is mob violence which injures or kills its immediate victims and which may be used to terrorize racial, national, or religious groups of which its victims are members, thereby denying members of those groups free exercise of the rights protected by the Constitution and laws of the United States. The Congress also finds that it is the duty of each State under the Constitution and laws of the United States to refrain from depriving any person of life, liberty, or property without due process of law and to afford persons within its jurisdiction equal protection of the law and that such duties impose additional obligations; namely, that the State will protect all persons from mob violence without discrimination and that it will prevent usurpation by mobs of the power of correction and punishment which must be exercised exclusively by government in accordance with orderly processes of law. The Congress also finds that when a State fails by malfeasance or nonfeasance of its governmental officers or employees and permits or condones lynching, the State fails to fulfill its functions under the Constitution and laws of the United States of America in addition, the Congress finds that by permitting or condoning lynching the State makes the lynching its own act and gives color of State law to the acts of those guilty of lynching. The Congress also finds that there lies with the Federal Government a similar obligation to protect persons from mob violence without discrimination and from the usurpation by mobs of the powers of correction or punishment which must be exercised exclusively by government in accordance with the orderly processes of law, and that when the United States fails through its officers to fulfill these obligations, it deprives the victim of life, liberty, or property, without due process of law and prevents his full enjoyment of other rights protected by the Constitution and laws of the United States. In addition, the Congress finds that each lynching that occurs in the United States brings discredit on this Nation in the eyes of the world with resultant damage to the international prestige of this Nation. The Congress also finds that the law of nations requires that every person be secure against injury to himself or his property which is inflicted by reason of race, color, creed, national origin, ancestry, language, or religion, or imposed in disregard of the orderly processes of law

By section 3 the Congress declares the purposes of this legislation to be the insurance of complete and full enjoyment of the rights, privileges, and immunities secured and protected by the Constitution, the safeguarding of the republican form of government of the several States from the lawless conduct of persons threatening to destroy systems of public criminal justice therein and threatening to frustrate the functioning thereof through duly constituted officials, the promotion of universal respect for and observance of human rights and fundamental freedoms without distinction as to race, language, or religion and the definition and punishment of offenses against the law of nations.

Section 4 declares that the right to be free from lynching is a right of all persons within the jurisdiction of the United States and that such right accrues by virtue of the provisions of the Constitution of the United States, the United Nations Charter, and the law of nations. With respect to citizens of the United States such right additionally accrues by virtue of such citizenship and is in addition to any similar right which such persons may have within the jurisdictions of the several States, the District of Columbia, or the Territories and possessions within the exclusive control and jurisdiction of the United States.

Section 5 defines the crime of lynching. Whenever two or more persons knowingly in concert commit or attempt to commit violence on any person or his property because of his race, creed, color, national origin, ancestry, or religion or attempt by violence against such person or property any power of correction or punishment over any person in the custody of any governmental officer or employee or persons suspected of, charged with, or convicted of the commission of

any criminal offense with the purpose or consequence of preventing apprehension, trial or punishment by law of such persons or officers imposing punishment not authorized by law, such persons shall constitute a lynch mob within the meaning of this bill. Any such action or attempt by a lynch mob shall constitute lynching. The term "governmental officer or employee," as defined, shall mean any officer or employee of a State or any governmental subdivision thereof, or any officer or employee of the United States, the District of Columbia, or any Territory, possession or other area within the exclusive jurisdiction of the United States.

Section 6 provides the punishment for persons convicted of being a member of a lynch mob or knowingly committing or abetting the commission of a lynching. Punishment is to be a fine of not more than $1,000 and imprisonment not more than 1 year, or both, unless such lynching results in death, maiming or other serious physical or mental injury, or in damage to property constituting a felony under applicable State and local laws, in which case punishment may be a fine of not more than $10,000 or imprisonment for not more than 20 years, or both. A felony for the purposes of this bill is deemed to be an offense punishable by imprisonment for more than 1 year.

In addition to imposing punishment on those who participate in a lynching, section 7 of the bill also provides punishment for those governmental officers or employees who, charged with the duty, or possessing the authority, to prevent lynching, knowingly fail to make all diligent efforts to prevent the same. It also makes it a crime for any such officer or employee who, having had custody of a person lynched, knowingly failed to make all diligent efforts to protect such person from lynching. Any governmental officer or employee who knowingly fails to make all diligent efforts to apprehend, keep in custody, or prosecute any person who is a member of a lynch mob or who participates in a lynching also commits the offense. Punishment in the event of conviction of such offenses shall be by fine not exceeding $5,000 or imprisonment not exceeding 5 years, or both.

Section 8 of the proposed legislation requires that the Attorney General of the United States cause an investigation to be made to determine whether there has been any violation of this proposed legislation whenever information on oath is submitted to him that a lynching has occurred and that any governmental officer or employee has been guilty of violation of section 7 of the proposed legislation.

Section 9 extends the provisions of the entire bill to include knowingly transporting in interstate or foreign commerce any person abducted or held by reason of his race or for purposes of punishment, conviction or intimidation.

Section 10 creates the right of civil action in any person, or the next of kin of any person, who suffers injury as the result of lynching. Such person given a right of action against any person who violates section 6, 7, or 9 of the proposed legislation or the governmental subdivision to which police functions have been delegated and in which the lynching takes place. This section provides that proof by preponderance of evidence that any officers charged with preventing lynching used all diligence and powers vested in them for the protection of persons and property, shall be an adequate affirmative defense. In the event such civil action is brought against one of the violators of sections 6, 7, or 9, judgment against any individual or governmental defendant bars further proceedings against other individuals or Government defendants. In addition, this section establishes a judgment floor of $2,000 in any civil action successfully prosecuted under this section. When a civil action is brought against any Federal Government instrumentality, judgment is to include reasonable attorneys fees. The statute of limitations in such cases is 3 years from the accrual of the cause of action and Federal judges are permitted to direct that such action be tried in such place in the judicial district as the judge may designate.

Section 11 contains the customary severability clause providing that if any provision of the act or its application is held invalid, the remainder of the act and its applications shall not be affected thereby.

B. DISCUSSION

The issue here presented has engaged the committee's attention on previous occasions. Hearings on similar legislation were conducted in the 74th, 76th, 80th, and 81st Congresses. The legislation was reported to the Senate in the 74th, 75th, 76th, 80th, and 81st Congresses.

While it is true that in recent years lynchings have become comparatively rare, nevertheless the action is so repugnant that it is well to establish as part of the law of the land that such actions of mob violence are unlawful and will

be punished to the full extent of the Federal power. When this legislation has been considered on previous occasions, its constitutionality has been questioned. Most of these assertions are based upon the suspicion that lynching is nothing but murder and the Federal Government has no constitutional right to punish lynching any more than it has to punish murder. This analogy, however, between murder and lynching is dispelled upon closer examination. In murder, one or more individuals take life generally motivated by some personal reason. In lynching, a mob sets itself up in place of the State, in disregard of the processes of law, and attempts to mete out punishment to persons accused or suspected of crimes. The mob in such cases sets itself up as the judge, the jury, and the executioner. In murder, the accused merely violates the laws of the State. In lynching, the mob arrogates to itself the powers of the State and the functions of the Government. It is, therefore, not only an act of killing but a usurpation of the functions of the Government, and it is this combination of acts which this legislation seeks to prevent. If there is no usurpation of governmental authority and a homicide has been committed, the homicide, if punishable, is punishable under State laws. But where a homicide occurs, having as its basis the denial of justice to a person because of his race, color or religion, or any associated reason, the crime committed is against the sovereign and should be punishable accordingly.

Where does the Congress derive authority for the punishment of such actions? First of all, from its authority to punish attempts to usurp Federal authority; secondly, from its constitutional power to guarantee to each State of the Union a republican form of government; thirdly, from the constitutional power to enforce the provisions of the 14th amendment, prohibiting States from depriving any person of due process and equal protection of the laws. Also from the constitutionally delegated authority to define and punish offenses against the law of nations and from the authority conferred upon Congress to carry into effect all of the foregoing powers.

It should be clear that those who participate in mob violence and lynching know no boundaries or sections. The evil which is to be corrected is not confined to any geographical area or political subdivision nor does this legislation treat the offense as if it were a local or sectional problem.

The committee anticipates that enactment of the pending bill will result in substantial improvement in the protection of persons accused or suspected of criminal activity. Federal and local officials faced with surer punishment if they fail to exercise their authority and do their duty, will take more adequate steps to prevent lynchings and mob violence. Government subdivisions faced with the prospect of suits for civil damages will be impelled to see to it that lynchings are not permitted within their jurisdiction.

This Government which is looked upon as a model form of government by many peoples of the world, cannot afford to see its authority flouted by the lawless mob. The prestige of this Nation, its form of government and its advocacy of "equal justice under law" is at issue. The establishment of criminal and civil procedures against mob violence directed at individuals and groups by reason of race, creed or color, would serve to restore and enhance the prestige of this Nation in the eyes of those at home and abroad who look to our Government for hope and inspiration.

In view of all the foregoing, the committee after due deliberation and consideration of the previous history of this legislation and desirability of enactment, recommends favorable consideration of the legislation.

It is the opinion of the committee that it is necessary to dispense with the requirements of subsection (4) of rule XXIX of the Standing Rules of the Senate in order to expedite the business of the Senate.

THOMAS C. HENNINGS, Jr.
WILLIAM LANGER.

[S. 902, 84th Cong., 1st sess.]

A BILL To reorganize the Department of Justice for the protection of civil rights

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be in the Department of Justice an additional Assistant Attorney General, learned in the law, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall, under the direction of the Attorney General, be in charge of a Civil Rights Division of the Department of Justice concerned with all matters pertain-

ing to the preservation and enforcement of civil rights secured by the Constitution and laws of the United States.

SEC. 102. The personnel of the Federal Bureau of Investigation of the Department of Justice shall be increased to the extent necessary to carry out effectively the duties of such Bureau with respect to the investigation of civil-rights cases under applicable Federal law. Such Bureau shall include in the training of its agents appropriate training and instructions, to be approved by the Attorney General, in the investigation of civil-rights cases.

[Senate subcommittee print]

CIVIL RIGHTS DIVISION IN DEPARTMENT OF JUSTICE

The Committee on the Judiciary, to which was referred the bill (S. 902) to reorganize the Department of Justice for the protection of civil rights, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to elevate the civil rights section of the Department of Justice to the status of a Civil Rights Division in that Department, to be headed by an Assistant Attorney General. The bill would also increase the Federal Bureau of Investigation personnel to the extent necessary to investigate civil rights cases.

STATEMENT

The civil rights section of the Department of Justice was organized in 1939 by Attorney General Frank Murphy. When the President's Commission on Civil Rights, established pursuant to Executive Order 9808, December 5, 1946, concluded its study, one of its recommendations was that the civil rights section be elevated to a Division within the Department of Justice to be headed by an Assistant Attorney General. It also recommended the establishment within the FBI of a special unit of investigators trained in civil rights work. In its report the President's Commission pointed out that the civil rights section employs but seven attorneys who must depend upon the FBI for the development of evidence concerning possible violations of civil rights statutes. The report also pointed out that while the FBI has done valuable work in this connection, its assistance could be increased by the establishment within the Bureau of persons specialized by training and experience in the investigation of civil rights violations.

Since these recommendations of the President's Commission on Civil Rights, no action has been taken to effect these proposals.

On March 22, 1955, the committee attempted to ascertain from the Attorney General his views with respect to the need for this legislation. To this date, no reply has been received. However, information before the subcommittee is to the effect that the number of attorneys now employed in the civil rights section is the same as it was 10 years ago when the President's Commission made its report and recommended increased personnel. (In addition to the 7 attorneys, 5 clerical assistants are employed in this section.) Insofar as the budget requests for fiscal 1957 are concerned, information before the subcommittee is to the effect that no increase in personnel has been requested. The most recent information which the subcommittee has with respect to the workload of this section appears in the report of the activities of the Department of Justice for the fiscal year ended June 30, 1954. At page 183 of that report the Attorney General states:

"The civil rights section supervises and assists in the enforcement of various statutes employed to protect the federally secured civil rights and liberties of persons. The section is also charged with the responsibility of administering other statutes which relate to the conduct of elections and to labor practices having some relationship to the broad problems of civil rights of individuals.

"Six hundred and thirty-eight cases of all types were pending at the beginning of the year and 2,826 new cases were received, making a total of 3,464 cases handled during the year. Of this number 2,799 cases were terminated and 665 cases were pending at the end of the year. Approximately 10,300 complaints, letters and documents in the nature of complaints, investigative reports, memoranda, and other items of correspondence were received and analyzed."

In addition this report at page 377 states that between July 1, 1953, and June 30, 1954, the FBI instituted 1,458 preliminary investigations in civil rights cases.

Of the cases prosecuted during the fiscal year, 18 convictions resulted, an increase of 8 over the previous 12-month period.

In the absence of a report from the Attorney General bearing on the proposed legislation, there is appended to this report, other portions of the comments relating to the activities of the Department of Justice concerning investigation and enforcement of civil rights.

The subcommittee after consideration of the magnitude of the task facing the civil rights section in its enforcement and preventive work believes that the action proposed in this legislation should be approved. Elevation of the civil rights section to full divisional status in the Department of Justice under the supervision of an Assistant Attorney General would give the Federal civil rights enforcement program additional prestige, power, and efficiency which it now lacks. Moreover, if other measures approved by the subcommittee receive the approval of the Congress, the change proposed in this legislation would take on added meaning and necessity.

That part of the proposal which provides for additional funds and personnel for research and preventive work would remove the civil rights section from its current status as primarily a prosecutive agency. The work of this group should be expanded to the prevention of violations before they arise and if personnel were available, the activities of organizations and individuals fomenting racial tensions could be kept under constant security. In addition, the creation of investigators within the FBI skilled in the civil rights field would enable the FBI to render more effective service in that field than is presently possible. In view of the desirable effect which it is contemplated adoption of this legislation would have on the observance of and respect for the civil rights of all, the subcommittee recommends favorable consideration of this legislation.

Appended to this report are further pertinent statements appearing in the report of the Attorney General to the Vice President for the fiscal year ended June 30, 1954.

THOMAS C. HENNINGS, Jr.
JOSEPH C. O'MAHONEY,
WILLIAM LANGER.

CIVIL RIGHTS SECTION

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In addition to discharging its primary responsibility of supervising and directing prosecutions of violations of the civil rights statutes, the section answered much of the correspondence directed to the Department concerning the Supreme Court's decision in the segregation cases as well as correspondence directed to the White House in this and other related fields involving discrimination and segregation. As in the past, it was necessary to conduct numerous interviews and conferences with individuals who complained about real or imaginary violations of their civil rights.

To further expedite the handling of civil rights complaints and to eliminate the many frivolous or misguided complaints made to the FBI offices throughout the country, a direct liaison was established with the FBI whereby the more important or urgent matters as well as doubtful complaints are quickly disposed of by means of teletype communications from the field to the FBI, which in turn confers personally with the civil rights section thus eliminating much of the usual delay and expense involved in the preparation of formal correspondence.

Another innovation which has served to assist the United States attorneys and thus bring about a more effective and careful application of the civil rights statutes, was the preparation by staff members of a 42-page pamphlet describing the work of the civil rights section, its functions and its statutes. This document is a concise and thorough description of the functions of the civil rights section, the policies followed by the Department in enforcing the statutes, and a discussion of all the leading cases in the field of civil rights as well as the election laws and labor statutes. Each new United States attorney was thus given the benefit of the research and study done in this field. (Pp. 188–189, Attorney General's Report for fiscal year ended June 30, 1954.)

CIVIL RIGHTS

Instructions issued by the Attorney General make the FBI responsible for investigating allegations that individuals have been deprived of rights or privileges guaranteed them under the Constitution and laws of the United States. In

cases of this nature, the FBI is charged with conducting a preliminary investigation immediately upon the receipt of information alleging a civil rights violation. The information gathered in the preliminary investigation is thoroughly and impartially reported to the Department of Justice for its review, prosecutive opinion, and instructions as to further investigation. Full investigations of civil rights allegations are not conducted by the FBI unless the Department or a United States attorney so directs.

In its investigations of civil rights complaints against law-enforcement officers or personnel of other public agencies, the FBI scrupulously avoids interfering with the orderly operation of the agency concerned. At the outset of any such investigation, the FBI contacts the head of the agency—and the governor if a State institution is involved—and apprises him of the allegations against the employee. So that there may be no misunderstanding of the purpose of the investigation or the FBI's responsibility, a clear explanation of the Attorney General's instructions also is provided.

Between July 1, 1953, and June 30, 1954, the FBI instituted 1,458 preliminary investigations in civil rights cases. Of the cases which were prosecuted during the fiscal year, 18 convictions resulted, an increase of 8 over the previous 12-month period.

Through the cooperative services which the FBI makes available without charge to other law-enforcement agencies, a strong impetus is given to the full protection of civil rights. At police training schools, special-agent instructors emphasize the officer's obligations to the public, and they promote high standards of professional conduct at all levels of law enforcement. Additionally, examinations of evidence by the FBI Laboratory and Identification Division provide irrefutable facts which even the most hostile witnesses and suspects cannot deny under oath without openly perjuring themselves. (P. 377, Attorney General's Report for fiscal year ended June 30, 1954.)

[S. 903, 84th Cong., 1st Sess.]

A BILL To protect the right to political participation

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 18, United States Code, section 594, is amended to read as follows:

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

SEC. 2. Section 2004 of the Revised Statutes [(8 U. S. C. 31)] (*42 U. S. C. 1971*) is amended to read as follows:

"All citizens of the United States who are otherwise eligible by law shall be entitled to and allowed the same and equal opportunity to qualify to vote and to vote at any general, special, or primary election by the people conducted in or by any State, Territory, district, county, city, parish, township, school district, municipality, or other Territorial subdivision, without distinction, direct or indirect, based on race, color, religion, or national origin; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding. The right to qualify to vote and to vote, as set forth herein, shall be deemed a right within the meaning of, and protected by, the provisions of title 18, United States Code, section 242, as amended, section 1979 of the Revised Statutes [(8 U. S. C. 43)] (*42 U. S. C. 1983*), and other applicable provisions of law."

SEC. 3. In addition to the criminal penalties provided, any person or persons violating the provisions of the first section of this Act shall be subject to suit by the party injured, or by his estate, in an action at law, suit in equity, or other proper proceeding for damages or preventive or declaratory or other relief. The provisions of this Act shall also be enforceable by the Attorney General in suits in the district, courts for preventive or declaratory or other relief. The district courts, concurrently with State and Territorial courts, shall

have jurisdiction of all other proceedings under this section without regard to the sum or value of the matter in controversy. The term "district courts" includes any district court of the United States as constituted by chapter 5 of title 28, United States Code (28 U. S. C. 81 et seq.), and the United States court of any Territory or other place subject to the jurisdiction of the United States.

SEC. 4. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

[Senate subcommittee print]

PROTECTION OF THE RIGHT TO POLITICAL PARTICIPATION

The Committee on the Judiciary, to which was referred the bill (S. 903), to protect the right to political participation, having considered the same, reports favorably thereon, with amendments and recommends that the bill, as amended, do pass.

AMENDMENTS

1. On page 2, beginning on line 7, strike the citation "8 U. S. C. 31" and insert in lieu thereof the citation "42 U. S. C. 1971".

2. On page 2, line 23, strike the citation "8 U. S. C. 43" and insert in lieu thereof the citation "42 U. S. C. 1983".

PURPOSE OF AMENDMENTS

The purpose of the proposed amendments is to correct the citations to reflect the transfer in the United States Code of the sections referred to.

PURPOSE

The purpose of this bill, as amended, is to protect the right to political participation.

STATEMENT

Section 1 of the pending bill is an amendment to section 1 of the Hatch Act (18 U. S. C. 594). This section of the Hatch Act presently makes punishable intimination and coercion of any person for the purpose of interfering with the right of such person to vote as he may choose in an election for the office of President, Vice President, presidential elector, Member of the Senate or House of Representatives or Delegates or Commissioners from the Territories and Possessions. The only change which this legislation makes in this section of the Hatch Act as now written is that it modifies the words "election" by the words "general, special, or primary." It does not change the requirements of the statute that such elections be for the purpose of naming persons to a Federal office.

The right to vote in State primaries has heretofore been held to be a right protected by the 14th and 15th articles of amendment to the Constitution (*Smith* v. *Allwright*, 32 U. S. 649 (1944) ; *Nixon* v. *Herndon*, 273 U. S. 536 (1927) ; *Elmore* v. *Rice*, 72 F. Supp. 516 (1947), affirmed 165 F. 2d 387, certiorari denied, 333 U. S. 875 ; *Brown* v. *Basking*, 78 F. Supp. 933 (1948), affirmed 174 F. 2d 391). This has been held to be true whether the primary is conducted under State law (*Smith* v. *Allwright*, cited supra) or whether it is conducted by party machinery (*Brown* v. *Baskin* and *Elmore* v. *Rice*, cited supra) as long as the primary is an integral process of the election machinery. Thus, when in sections 1 and 2, the general term "election" is replaced by the words "any general, special, or primary election," the change only reflects case law.

The reasoning of the courts as to primaries would obviously apply to special elections, such as runoff elections.

These decisions deal primarily with the protection afforded individuals against a denial of the right to vote due to the action of any State or by any body acting for a State.

The failure of Congress to make the provisions of the Hatch Act specifically applicable to primaries was attributable to constitutional doubts created by the courts decision in *Newberry* v. *U. S.* (256 U. S. 232), which doubts were resolved in the *Classic* and *Smith* cases (see 313 U. S. 299, 324, footnote 8). Since no such doubts are now present the instant legislation makes this section of the Hatch Act specifically applicable to primaries.

In addition, article I, section 4 of the Constitution provides:

"The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time make or alter such regulations, except as to the place of choosing Senators."

This provision of the Constitution has been cited as a source of the Federal power to protect the right to vote (Report of the President's Committee on Civil Rights, p. 107 (1947)). It was also cited in the case of *Ex parte Yarbrough* (110 U. S. 651, 660–662 (1884)), in which the Supreme Court of the United States observed:

"Now the day fixed for electing Members of Congress has been established by Congress without regard to the time set for election of State officers in each State, and but for the fact that the State legislatures have, for their own accommodation, required State elections to be held at the same time, these elections would be held for Congressmen alone at the time fixed by the act of Congress.

"Will it be denied that it is in the power of that body to provide laws for the proper conduct of those elections? To provide, if necessary, the officers who shall conduct them and make return of the result? And especially to provide, in an election held under its own authority, for security of life and limb to the voter while in the exercise of this function? Can it be doubted that Congress can by law protect the act of voting, the place where it is done, and the man who votes, from personal violence or intimidation and the election itself from corruption and fraud?

"If this be so, and it is not doubted, are such powers annulled because an election for the State officers is held at the same time and place? Is it any less important that the election of Members of Congress should be the free choice of all the electors because State officers are to be elected at the same time? *Ex parte Siebold* (100 U. S. 371).

"These questions answer themselves; and it is only because the Congress of the United States, through long habit and long years of forbearance, has, in deference and respect to the States, refrained from the exercise of these powers, that they are now doubted.

"But when, in the pursuance of a new demand for action, that body as it did in the cases just enumerated, finds it necessary to make additional laws for the free, the pure, and the safe exercise of this right of voting, they stand upon the same ground and are to be upheld for the same reasons.

"It is said that the parties assaulted in these cases are not officers of the United States, and their protection in exercising the right to vote by Congress does not stand on the same ground.

"But the distinction is not well taken. The power in either case arises out of the circumstance that the function in which the party is engaged or the right which he is about to exercise is dependent on the laws of the United States.

"In both cases it is the duty of that Government to see that he may exercise this right freely, and to protect him from violence while so doing, or on account of so doing. This duty does not arise solely from the interest of the party concerned, but from the necessity of the Government itself, that its service shall be free from the adverse influence of force and fraud practiced on its agents, and that the votes by which its Members of Congress and its President are elected shall be the free votes of the electors, and the officers thus chosen the free and uncorrupted choice of those who have the right to take part in that choice."

The argument presented by the court is equally applicable to the amendment here proposed, particularly in the light of the several cases previously cited concerning the ability of the Congress to legislate with respect to primaries.

Section 2 of the proposed legislation proposes several amendments to section 2004 of the Revised Statutes which protects the rights of citizens to vote in elections by the people of any State, Territory, district, county, city, parish, township, school district, municipality or other territorial subdivision without discrimination due to race, color, or previous condition of servitude. These amendments are consistent with the evident purpose of section 2004, which is to prevent denial of the franchise to any qualified person despite any subterfuge adopted to effect such a denial.

This section has been on the statute books since 1870. Its constitutionality has long been settled as an exercise of the enforcement power conferred upon Congress by the 15th article of amendment to the Constitution. The applicability of the section to primaries was tested and confirmed in *Brown* v. *Baskin*, cited supra. Consequently, one of the amendments to this section incorporates the

effect of case law into the statutory law by making the section specifically applicable to general, special, and primary elections. Since the decisions apply whether the election is conducted by the State or by some body or group as agent for the State, the language of the statute has been broadened to include elections conducted in a State as well as by a State.

The section also seeks to protect the right to qualify to vote from interference based on race, color, religion, or national origin. The last two distinctions are new to the statute and replace distinction based on previous condition of servitude.

The section also makes it clear that the right to vote and to qualify to vote are rights protected by section 242 of title 18, United States Code and section 1979 of the Revised Statutes. Section 242 provides for infliction of punishment by fine up to $1,000 or imprisonment for 1 year, or both, on persons who, under color of law, deprive any inhabitant of a State of the privileges and immunities protected by the Constitution on account of the race, color, or alienage of the inhabitant. Section 1979 of the Revised Statutes creates a right of civil action against a violator of the privileges and immunities of persons within the United States secured by the Constitution and laws. Thus the amendment gives a remedy for a right long recognized.

Section 3 of the bill establishes a civil remedy against their tormentors for persons whose right to vote in Federal elections has been infringed by intimidation or coercion. Similar remedies have long existed in other instances where the right of franchise has been interfered with (*Nixon* v. *Herndon*, cited supra). Section 4 embodies the customary severability clause.

The right which this legislation seeks to protect is among the most sacred rights available to our citizenry. Indeed, the free and unfettered exercise of the franchise is a fundamental tenet of our system. To permit deprivation of such rights by omission or inaction, when action is possible, is to corrode the basic premise on which this Nation rests, namely, government by consent of the governed. The high principles which this Nation has exemplified since its inception cannot pervade a skeptical world if we permit infringement of the franchise for any pretext. Nor can we permit ourselves the luxury of supposing that the right to vote is protected adequately at a time when some of our citizenry are denied the privilege for such inexcusable reasons as race, color, religion or national origin. The action here proposed is no startling innovation. By and large, it simply codifies case law. It constitutes a moderate and reasonable approach to a problem, the existence of which is evident in the cases cited, but which need not vex us longer in our relationships among one another.

The legislation is sound and the subcommittee there recommends its favorable consideration.

Attached to this report are the reports of the Departments of Labor and Justice submitted in connection with this bill.

THOMAS C. HENNINGS, Jr.
JOSEPH C. O'MAHONEY.
WILLIAM LANGER.

DECEMBER 5, 1955.

Hon. H. M. KILGORE.
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR KILGORE: This is in further response to your request for a report on S. 903, a bill to protect the right to political participation.

The bill would amend several existing provisions of law relating to the right to vote in elections by, among other things, extending their applicability to primary elections and providing additional judicial remedies against infringements of this right.

The objectives of S. 903 are praiseworthy and I am in full accord with them. I am not in a position, however, to provide any information that will assist the committee in its consideration of the specific provisions of the bill or the need for its enactment at this time.

The Bureau of the Budget advises that it has no objection to the submission of this report.

Sincerely yours,

ARTHUR LARSON,
Acting Secretary of Labor.

SEPTEMBER 8, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning the bill (S. 903) to protect the right to political participation.

Section 594 of title 18 of the United States Code subjects to criminal penalties persons who interfere with the right of other persons to vote in any election held solely or in part for the purpose of electing a candidate for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, Delegate or Commissioner from a Territory or possession. As defined in section 591 of the same title, the term "election" does not include a primary election. Section 1 of the bill would amend section 594 so as to make the section hereafter applicable to primary elections.

Section 2004 of the revised statutes, formerly set forth in section 31 of title 8 of the United States Code but now contained in section 1971 of title 42, provides that all citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, etc., shall be entitled and allowed to vote without distinction of race, color, or previous condition of servitude. Section 2 of the bill would amend this section in a number of respects. First, it would extend its scope to primary elections. Second, the phrase "previous conditions of servitude" would be omitted from the enumeration of factors which are not to form the basis of discrimination and in its place the words "religion or national origin" would be substituted. Third, a new sentence would be added to the section as follows: "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."

Section 242 of title 18 imposes criminal penalties upon anyone who, under color of law, willfully subjects any inhabitant of any State, Territory or district to the deprivations of any rights protected by the Constitution or laws of the United States. Section 1979 of the Revised Status (now 42 U. S. C. 1983) provides for civil liability under similar circumstances.

Section 3 of the bill would provide that any persons violating the provisions of the first 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 section further would provide that the Attorney General may enforce the provisions of the act in the United States district courts, as defined therein. It would also provide that the district courts will have jurisdiction concurrently with State and Territorial courts.

Section 4 of the bill is a customary serverability clause.

The purpose of this bill, as stated in its title, is to protect the right to political participation. This purpose is a laudable one with which the Department of Justice is in full accord. Whether this particular measure should be enacted constitutes a question of policy concerning which the Department of Justice prefers to make no recommendation.

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

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

"TITLE 18, U. S. CODE

"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. 2004, REVISED STATUTES (42 U. S. C. 1971)

"All citizens of the United States who are otherwise [qualified] *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 [in] *conducted in or by* any State, Territory, district, county, city, parish, township, school district, municipality, or other Territorial subdivision [shall be entitled and allowed to vote at all such elections] without distinction, *direct or indirect, based of* [of] race, color, [or previous condition of servitude] *religion, or national origin;* any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding. *The right to qualify to vote and to vote, as set forth herein, shall be deemed a right within the meaning of, and protected by, the provisions of title 18, United States Code, section 242, as amended, section 1979 of the Revised Statutes (42 U. S. C. 1985), and other applicable provisions of law.*"

* * * * * * *

"In addition to the criminal penalties provided, any person or persons violating the provisions of the first section of this Act shall be subject to suit by the party injured, or by his estate, in an action at law, suit in equity, or other proper proceeding for damages or preventive or declaratory or other relief. The provisions of this Act shall also be enforcible 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.

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

[H. R. 5205, 84th Cong., 2d sess.]

AN ACT TO extend to members of the Armed Forces the same protection against bodily attack as is now granted to personnel of the Coast Guard

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1114 of title 18, United States Code, is amended by striking out the words "man of the Coast Guard," and inserting in lieu thereof the words "member of the Army, Navy, Air Force, Marine Corps, or Coast Guard,".

Passed the House of Representative January 16, 1956.

Attest:

RALPH R. ROBERTS, *Clerk.*

[Senate subcommittee print]

EXTENDING PROTECTION AGAINST BODILY ATTACK TO MEMBERS OF THE ARMED FORCES

The Committee on the Judiciary, to which was referred the bill (H. R. 5205) to extend to members of the Armed Forces the same protection against bodily attack as is now granted to personnel of the Coast Guard, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to extend to all members of the Armed Forces the same protection afforded to personnel of the Coast Guard

and to certain civilian officers and employees of the United States enumerated in title 18, United States Code, section, 1114.

STATEMENT

Under section 1114 of title 18, certain Federal employes are granted protection against assault, manslaughter, and murder while engaged in, or on account of, the performance of official duties. Officers and employees presently protected include—

1. Officers and enlisted men of the Coast Guard;
2. Judges of the United States;
3. United States attorneys and their assistants;
4. United States marshals and their deputies;
5. Post-office inspectors;
6. Officers and employees of United States penal and correctional institutions;
7. Secret Service personnel;
8. Customs personnel;
9. Internal-revenue personnel;
10. Immigration officers;
11. United States game wardens;
12. Bureau of Narcotics personnel;
13. Personnel of the Federal Bureau of Investigation in the Department of Justice;
14. National Park Service personnel;
15. Bureau of Land Management personnel;
16. Employees of the Bureau of Animal Industry of the Department of Agriculture; and
17. Personnel of the Indian field service of the United States.

If any of these persons are killed while engaged in, or an account of, the performance of their official duties, the killer is liable to prosecution under sections 1111 and 1112 of title 18 of the United States Code. These two sections punish murder and manslaughter. Furthermore section 111 of title 18 of the United States Code punishes any who assault, resist, or impede any of the above persons while engaged in or on account of the performance of their official duties. Members of the armed services are protected by Federal criminal laws while they are within the special maritime and territorial jurisdiction of the United States as defined in section 7 of title 18 of the United States Code. This includes United States military bases, installations, vessels, etc. However, the duties of members of the armed services often take them away from these places. This legislation is necessary to give these highly deserving persons complete Federal criminal-law protection.

The Department of Defense recommended, and the House of Representatives approved, an amendment to this legislation which would make this protection of law available to servicemen whether or not they are in uniform. The companion Senate bill, as introduced, did not contain this amendment and the subcommittee is submitting the legislation to the full committee, leaving to the committee's determination whether such an amendment should be included.

Reports on this legislation were received from the Departments of Defense, Justice, and Treasury. The Department of Defense favors the enactment of this legislation. The Departments of Justice and Treasury make no comment on the advisability of enacting this legislation but raise a question as to the appropriateness of including members of the armed services in this section. They suggest that section 1114 is designed to protect law-enforcement officers exclusively. The subcommittee considered this question and concluded that members of the armed services are fully entitled to this protection, and that it is perfectly appropriate that they be included in this section. In addition, the duties of members of the armed services are often as closely related to law enforcement as many of the now protected officers and employees and certainly their duties are equally if not more valuable to the protection of the country.

Attached hereto and made a part hereof are the reports of the Departments of Air Force, Justice, and Treasury, made in connection with with this legislation.

THOMAS C. HENNINGS, Jr.
JOSEPH C. O'MAHONEY.
WILLIAM LANGER.

DEPARTMENT OF THE AIR FORCE,
OFFICE OF THE SECRETARY
Washington, April 13, 1955

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Defense on H. R. 5205, 84th Congress, a bill to extend to uniformed members of the Armed Forces the same protection against bodily attack as is now granted to personnel of the Coast Guard. The Secretary of Defense has delegated to this Department the responsibility for expressing the views of the Department of Defense on this matter.

The purpose of the proposed legislation is to extend to all members of the Armed Forces the same protection afforded to certain civilian officers and employees of the United States, and personnel of the Coast Guard, as enumerated in title 18, United States Code, section 1114. To accomplish this the bill would amend title 18, United States Code, section 1114, by substituting the words "uniformed members of the Army, Navy, Air Force, Marine Corps, or Coast Guard", in lieu of the words "man of the Coast Guard" as they now appear in the statute.

It is the view of the Department of Defense that the protection afforded other Government personnel by sections 1111 and 1114 of title 18 United States Code, should be extended to members of the Armed Forces. However, the use of the words "uniformed members" in this bill invites the interpretation that the amended section would not be applicable to enlisted members of the Armed Forces who are performing official duties, but who are not in uniform. There is no such limitation on the protection given enlisted members of the Coast Guard under existing law, nor does it appear that the wearing of the uniform should be a necessary requisite for the protection which would be afforded under the proposed legislation. The courts have held that, to be amendable to punishment under such a statute, a killer need not know that he is killing an officer, agent, or employee of the United States (*McNabb* v *U. S.*, C. C. A. Tenn. 1941, 123 F. (2d) 848; cert. den., 316 U. S. 658). It is therefore recommended that the word "uniformed" be stricken from the title of the proposed legislation, and that the word "member" be inserted in lieu of the words "uniformed members" in the fifth line of the bill.

Subject to amendment in the foregoing manner, the Department of Defense would favor enactment of H. R. 5205.

The Department of Defense is unable to estimate the fiscal effects of such legislation.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

LYLE S. GARLOCK,
Assistant Secretary of the Air Force.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, June 13, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice relative to the bill (H. R. 5205) to extend to uniformed members of the Armed Forces the same protection against bodily attack as is now granted to personnel of the Coast Guard.

Section 1114 of title 18, United States Code, now provides that whoever kills any of certain designated officers or employees of the United States while engaged in the performance of their official duties, or on account of the performance of such duties, shall be punished as provided in sections 1111 and 1112, which relate, respectively, to murder and manslaughter. Section 111 of title 18 makes it a felony forcibly to assault, resist, oppose, impede, intimidate, or interfere with any of the persons designated in section 1114 while such persons are engaged in or on account of the performance of their official duties.

The bill would amend section 1114 by striking from the list therein contained the words "man of the Coast Guard' and inserting in place thereof the words "uniformed members of the Army, Navy, Air Force, Marine Corps, or Coast Guard." Its effect would be to extend coverage of sections 1114 and 111 to all members of the Armed Forces while in uniform.

The committee's attention is called to the fact that this statute which was formerly section 253 of title 18, though amended from time to time, has included within its protection only persons whose duties involve potential risks or hazards in connection with law enforcement. Coast Guard personnel appear to have been within the protection of the section by reason of their function in protecting the revenue under section 52 of title 14 of the United States Code. Another consideration is the possible effect which this enactment would have upon the workload of the Federal courts and Federal prosecutive staffs, for it may well be anticipated that numerous minor skirmishes involving members of the Armed Forces would call for the exercise of Federal prosecutive measures.

Whether or not the bill should be enacted constitutes a question of policy concerning which the Department of Justice prefers to make no comment.

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

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

DEPARTMENT OF THE TREASURY,
April 15, 1955.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to the request of your committee for the views of the Treasury Department on H. R. 5205, to extend to uniformed members of the Armed Forces the same protection against bodily attack as is now granted to personnel of the Coast Guard.

The purpose of H. R. 5205 is to extend to uniformed members of the other Armed Forces the protection afforded officers and enlisted men of the Coast Guard by section 1114 of title 18, United States Code. Section 1114, inter alia, makes it a Federal crime to kill an officer or enlisted man of the Coast Guard, while engaged in the performance of official duties. Enactment of the bill would have the effect of also extending to members of the other Armed Forces the protection afforded by section 111 of title 18, United States Code, which makes it a Federal crime to forcibly assault, resist, oppose, impede, intimidate, or interfere with any person designated in section 1114 while engaged in or on account of his official duties.

It would appear that the primary purpose of sections 111 and 1114 of title 18, United States Code, is to protect Federal law enforcement officers while engaged in their duties. The affording to Coast Guard personnel of the protection provided by these sections would seem to be due to the law enforcement functions performed by the Coast Guard. Whether such protection should be extended to all military personnel would appear not to be of primary concern to the Treasury Department, and for that reason no comments are submitted relative to the merits of the bill.

Very truly yours,

DAVID W. KENDALL,
General Counsel.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, certain changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

"TITLE 18, UNITED STATES CODE, SECTION 1114

"Sec. 1114. Protection of officers and employees of the United States

"Whoever kills any judge of the United States, any United States attorney, any Assistant United States attorney, or any United States marshal or deputy marshal or person employed to assist such marshal or deputy marshal, any

officer or employee of the Federal Bureau of Investigation of the Department of Justice, any post-office inspector, any officer or employee of the Secret Service or of the Bureau of Narcotics, any officer or enlisted [man of the Coast Guard,] *member of the Army, Navy, Air Force, Marine Corps, or Coast Guard*, any officer or employee of any United States penal or correctional institution, any officer, employee or agent of the customs or of the internal revenue or any person assisting him in the execution of his duties, any immigration officer, any officer or employee of the Department of Agriculture or of the Department of the Interior designated by the Secretary of Agriculture or the Secretary of the Interior to enforce any Act of Congress for the protection, preservation, or restoration of game and other wild birds and animals, any officer or employee of the National Park Service, any officer or employee of, or assigned to duty in, the field service of the Bureau of Land Management, any employee of the Bureau of Animal Industry of the Department of Agriculture, or any officer or employee of the Indian field service of the United States, while engaged in the performance of his official duties, or on account of the performance of his official duties, shall be punished as provided under sections 1111 and 1112 of this title."

Mr. YOUNG. I offer for the record a letter from the Attorney General, addressed to the Vice President of the United States, Washington, D. C., dated April 9, 1956, which includes two proposed bills from the executive department.

The letter above referred to, with accompanying bills, is reprinted herewith.

APRIL 9, 1956.

The VICE PRESIDENT,
United States Senate,
Washington, D. C.

DEAR MR. VICE PRESIDENT: At a time when many Americans are separated by deep emotions as to the rights of some of our citizens as guaranteed by the Constitution, there is a constant need for restraint, calm judgment, and understanding. Obedience to law as interpreted by the courts is the way differences are and must be resolved. It is essential to prevent extremists from causing irreparable harm.

In keeping with this spirit, President Eisenhower, in his state of the Union message, said:

"It is disturbing that in some localities allegations persist that Negro citizens are being deprived of their right to vote and are likewise being subjected to unwarranted economic pressures. I recommend that the substance of these charges be thoroughly examined by a bipartisan commission created by the Congress. It is hoped that such a commission will be established promptly so that it may arrive at findings which can receive early consideration.

"We must strive to have every person judged and measured by what he is, rather than by his color, race, or religion. There will soon be recommended to the Congress a program further to advance the efforts of the Government, within the area of Federal responsibility, to accomplish these objectives."

I

The right to vote is one of our most precious rights. It is the cornerstone of our form of government and affords protection for our other rights. It must be safeguarded.

Where there are charges that by one means or another the vote is being denied, we must find out all of the facts—the extent, the methods, the results. The same is true of substantial charges that unwarranted economic or other pressures are being applied to deny fundamental rights safeguarded by the Constitution and laws of the United States.

The need for a full-scale public study as requested by the President is manifest. The executive branch of the Federal Government has no general investigative power of the scope required to undertake such a study. The study should be objective and free from partisanship. It should be broad and at the same time thorough.

Civil rights are of primary concern to all our people. To this end the Commission's membership must be truly bipartisan and geographically representative.

A bill detailing the commission proposal is submitted with this statement.

The proposed legislation provides that the commission shall have six members, appointed by the President with the advice and consent of the Senate. No more than three may be of the same political party. The commission will be temporary, expiring 2 years from the effective date of the statute, unless extended by Congress. It will have authority to subpena witnesses, take testimony under oath, and request necessary data from any executive department or agency. It may be required to make interim reports pending completion of a comprehensive final report containing findings and recommendations.

The commission will have authority to hold public hearings. Knowledge and understanding of every element of the problem will give greater clarity and perspective to one of the most difficult problems facing our country. Such a study, fairly conducted, will tend to unite responsible people in common effort to solve these problems. Investigation and hearings will bring into sharper focus the areas of responsibility of the Federal Government and of the States under our constitutional system. Through greater public understanding, therefore, the commission may chart a course of progress to guide us in the years ahead.

II

At present the Civil Rights Section of the Department of Justice is one of a number of sections located within the Criminal Division. The protection of civil rights guaranteed by the Constitution is a governmental function and responsibility of first importance. It merits the full direction of a highly qualified lawyer, with the status of Assistant Attorney General, appointed by the President with the advice and consent of the Senate.

In this area, as pointed out more fully below, more emphasis should be on civil law remedies. The civil rights enforcement activities of the Department of Justice should not, therefore, be confined to the Criminal Division.

The decisions and decrees of the United States Supreme Court relating to integration in the field of education and in other areas, and the civil rights cases coming before the lower Federal courts in increasing numbers, are indicative of generally broadening legal activity in the civil rights field.

These considerations call for the authorization of an additional Assistant Attorney General to direct the Government's legal activities in the field of civil rights. A draft of legislation to effect this result is submitted herewith.

III

The present laws affecting the right of franchise were conceived in another era. Today every interference with this right should not necessarily be treated as a crime. Yet the only method of enforcing existing laws protecting this right is through criminal proceedings.

Civil remedies have not been available to the Attorney General in this field. We think that they should be. Criminal cases in a field charged with emotion are extraordinarily difficult for all concerned. Our ultimate goal is the safeguarding of the free exercise of the voting right, subject to the legitimate power of the State to prescribe necessary and fair voting qualifications. To this end, civil proceedings to forestall denials of the right may often be far more effective in the long run than harsh criminal proceedings to punish after the event.

The existing civil voting statute (sec. 1971 of title 42, U. S. C.) declares that all citizens who are otherwise qualified to vote at any election (State or Federal) shall be entitled to exercise their vote without distinction of race or color. The statute is limited, however, to deprivations of voting rights by State officers or other persons purporting to act under authority of law. In the interest of proper law enforcement to guarantee to all of our citizens the rights to which they are entitled under the Constitution, I urge consideration by the Congress and the proposed Bipartisan Commission of three changes.

First, addition of a section which will prevent anyone from threatening, intimidating, or coercing an individual in the exercise of his rght to vote, whether claiming to act under authority of law or not, in any election, general, special or primary, concerning candidates for Federal office.

Second, authorization to the Attorney General to bring injunction or other civil proceedings on behalf of the United States or the aggrieved person in any case covered by the statute, as so changed.

Third, elimination of the requirement that all State administrative and judicial remedies must be exhausted before access can be had to the Federal court.

IV

Under another civil rights statute (sec. 1985 of title 42 of the U. S. C.) conspiracies to interfere with certain rights can be redressed only by a civil suit by the individual injured thereby. I urge consideration by the Congress and the proposed Bipartisan Commission of a proposal authorizing the Attorney General to initiate civil action where necessary to protect the rights secured by that statute.

I believe that consideration of these proposals not only will give us the means intelligently to meet our responsibility for the safeguarding of constitutional rights in this country, but will reaffirm our determination to secure equal justice under law for all people.

Sincerely,

———, ———, *Attorney General.*

A BILL To establish a Bipartisan Commission on Civil Rights in the Executive Branch of the Government

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

ESTABLISHMENT OF THE COMMISSION ON CIVIL RIGHTS

SEC. 1 (a) There is created in the executive branch of the Government a Commission on Civil Rights (hereinafter called the "Commission").

(b) The Commission shall be composed of six members who shall be appointed by the President by and with the advice and consent of the Senate. Not more than three of the members shall at any one time be of the same political party.

(c) The President shall designate one of the members of the Commission as Chairman and one as Vice Chairman. The Vice Chairman shall act as Chairman in the absence or disability of the Chairman, or in the event of a vacancy in that office.

(d) Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner, and subject to the same limitation with respect to party affiliation, as the original appointment was made.

(e) Four members of the Commission shall constitute a quorum.

COMPENSATION OF MEMBERS OF THE COMMISSION

SEC. 2 (a) Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive the sum of $50.00 per day for each day spent in the work of the Commission, shall be reimbursed for actual and necessary travel expenses, and shall receive a per diem allowance of $12.00 in lieu of actual expenses for subsistence, inclusive of fees or tips to porters and stewards.

(b) Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be reimbursed for actual and necessary travel expenses, and shall receive a per diem allowance of $12.00 in lieu of actual expenses for subsistence, inclusive of fees or tips to porters and stewards.

DUTIES OF THE COMMISSION

SEC. 3 (a) The Commission shall:

(1) Investigate the allegations that certain citizens of the United States are being deprived of their right to vote or are being subjected to unwarranted economic pressures by reason of their color, race, religion, or national origin.

(2) Study and collect information concerning economic, social and legal developments constituting a denial of equal protection of the laws under the Constitution.

(3) Appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution.

(b) The Commission shall submit interim reports to the President at such times as either the Commission or the President shall deem desirable, and shall submit to the President a final and comprehensive report of its activities, find-

ings, and recommendations not later than two years from the date of the enactment of this statute.

(c) Sixty days after the submission of its final report and recommendations the Commission shall cease to exist.

POWERS OF THE COMMISSION

SEC. 4 (a) Within the limitations of its appropriations, the Commission may appoint a full-time staff director and such other personnel as it deems advisable, in accordance with the civil service and classification laws, and may procure services as authorized by section 15 of the Act of August 2, 1946 (60 Stat. 810; 5 U. S. C. 55a) but at rates for individuals not in excess of $50.00 per diem.

(b) The Commission may accept and utilize services of voluntary and uncompensated personnel and pay any such personnel actual and necessary traveling and subsistence expenses incurred while engaged in the work of the Commission (or, in lieu of subsistence, a per diem allowance at a rate not in excess of $12.00).

(c) The Commission may constitute such advisory committees and may consult with such representatives of State and local governments, and private organizations, as it deems advisable.

(d) All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.

(e) The Commission, or on the authorization of the Commission any subcommittee of two or more members, may, for the purpose of carrying out the provisions of this Act, hold such hearings and act at such times and places as the Commission or such authorized subcommittee may deem advisable. Subpoenas for the attendance and testimony of witnesses and/or the production of written or other matter may be issued over the signature of the Chairman of the Commission or of such subcommittee, and may be served by any person designated by such Chairman.

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

APPROPRIATIONS

SEC. 5. There is hereby authorized to be appropriated out of any money in the Treasury not otherwise appropriated, so much as may be necessary to carry out the provisions of this Act.

A BILL To provide for an additional Assistant Attorney General

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be in the Department of Justice one additional Assistant Attorney General, who shall be appointed by the President, by and with the advice and consent of the Senate, who shall assist the Attorney General in the performance of his duties, and who shall receive compensation at the rate prescribed by law for other Assistant Attorneys General.

Senator BUTLER. May I ask a question?

The two bills are addressed to the representative of the Presidential Program on Civil Rights?

Mr. YOUNG. That is a letter we received from the Attorney General just recently. It is his latest method.

Senator HENNINGS. Under date of April 9, the letter to the Vice President from the Attorney General?

Mr. YOUNG. Yes, sir.

Senator DIRKSON. Is the letter being included in the record?

Senator HENNINGS. You intend to have it all included?

Mr. YOUNG. The letter, and the two bills.

Senator JOHNSTON. The letter from the Attorney General to the Vice President.

Mr. YOUNG. And the two proposed bills.

Senator JOHNSTON. The two proposed bills.

Senator HENNINGS. Would counsel tell us what the purposes of the two bills are?

Senator JOHNSTON. One provides for an additional Assistant Attorney General, and the other is to establish a bipartisan Commission on Civil Rights in the executive branch of the Government.

Senator HENNINGS. There are just two bills?

Mr. YOUNG. Just two bills.

Senator DIRKSON. I may make this observation for the record, Mr. Chairman:

I believe the other two bills are a part of the program, introduced as of today—at least, as far as I know; I know they are being introduced, I thought they were introduced yesterday—I am reasonably sure they would be introduced today, and I assume they will be referred to this committee.

Mr. YOUNG. They will be.

Senator DIRKSEN. And if it requires any suggestion on my part, I would suggest that they be made a part of the record in the agenda.

Senator HENNINGS. Mr. Chairman, may I inquire of the distinguished Senator from Illinois what the two bills that have been introduced, or may be introduced, undertake to deal with?

Senator DIRKSEN. The two that have been introduced undertake to create an Assistant Attorney General.

Senator HENNINGS. I mean the other 2; the 2 you were just talking about.

Senator DIRKSEN. One, I think, gives the Attorney General power in his own right to proceed in civil actions or for violation of civil rights as against the present law, which leaves it in the hands of the aggrieved party. And then there is one other amendment—I don't recall it at the moment, but it will be introduced, I am sure.

Senator HENNINGS. I thank you, sir.

Senator JOHNSTON. You may proceed.

Mr. YOUNG. Mr. Chairman, that completes the pro forma introduction of the bills before the committee and the applicable data. All these bills—not all of them, parts of these bills—involve constitutional questions of law, and I propose at this time to introduce in the record all the applicable provisions of law and the Constitution on the books which will come up during the course of these hearings.

In that respect, I will start with the United States Constitution, the 14th amendment. I believe these ought to be read into the record.

Senator DIRKSEN. Mr. Chairman, may I supplement what I said a moment ago? You were commenting on those two bills. The first one would prevent anyone from threatening or intimidating or coercing an individual in the exercise of his right to vote, whether claiming to act under authority of law or not.

As I recall, the distinction there is, of course, the present law deals only with the State officials who may coerce or intimidate. The

amendment now, however, would be aimed at any individual, so that it becomes all-embracing.

And the second one, of course, gives the Attorney General the power to proceed civilly, whereas under existing law the initiation of the action must take place by the aggrieved person.

Senator HENNINGS. If I may interrogate the learned Senator, I take it that that is in a sense consonant of the purposes of S. 903?

Senator DIRKSEN. I would think so. I don't have 903 readily in mind.

Senator HENNINGS. That is one reported out by our subcommittee. And the Attorney General, in September, said he felt the bill was laudable in purpose, but the Department did not desire to make any recommendation. The Attorney General does now make a recommendation.

Senator DIRKSEN. Yes. I am not sure whether it is departmental or not.

Senator HENNINGS. It is to protect the right of political participation, and I assume it has generally the same objectives.

Senator DIRKSEN. It could be, of course.

Mr. YOUNG. The part of the 14th amendment which will come up in these hearings is section 1 only:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

The next provision——

Senator DIRKSEN. Did you read all of the 14th amendment?

Mr. YOUNG. No; section 1 only.

Senator DIRKSEN. Did you read all of section 1?

Mr. YOUNG. All of section 1. And it is the only section, I believe, will come up in civil rights.

Senator DIRKSEN. Did you read that provision that no State shall abridge or deny?

Mr. YOUNG. Yes, sir.

Senator BUTLER. Mr. Chairman, I don't think this has any relevancy, but the sponsorship of all the bills introduced by counsel were enumerated for the purposes of the record, and although you did not suggest the sponsorship of the President's program, is it essential or desirable that you do so?

Senator JENNER. Yes, he did so.

Senator BUTLER. I am sorry.

Mr. YOUNG. The next provision of the Constitution which will come up in the hearings on constitutional rights is the treaty provision. It is article 6, second paragraph:

This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land.

The next constitutional provision which will come up in these hearings, Mr. Chairman, is the republican form of government provision. That is article 4, section 4:

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and, on

application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

The next provision of the Constitution applicable is the law of nations provision. That is article 1, section 8, subsection 10:

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations.

The next provision that will come up is the poll tax provisions in the Constitution relative to the qualification of electors. The first one is article 1, section 2:

The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the numerous branch of the State legislature.

The 17th amendment, 1st paragraph:

The Senate of the United States shall be composed of 2 Senators from each State, elected by the people thereof, for 6 years, and each Senator shall have 1 vote. The electors in each State shall have the qualifications requisite for the electors of the most numerous branch of the State legislatures.

Senator JENNER. Would you read that article I, section 2, about the electors.

Mr. YOUNG. Section 2——

The Chairman (presiding). Wait a minute. Senator Humphrey wants to submit a statement.

STATEMENT OF HON. HUBERT H. HUMPHREY, UNITED STATES SENATOR FROM THE STATE OF MINNESOTA

Senator HUMPHREY. Mr. Chairman, I am very grateful for this privilege extended me. I know I am interrupting what is apparently a procedural course you want to follow on these bills.

My request to submit this statement at this time is due to the fact that I am scheduled to be over at a Board of Army Engineers hearing at about the same time, and I shall appreciate this accommodation.

I want to say, Mr. Chairman, that as I understand it, you are going to take up the respective bills one at a time.

I have prepared a statement in relationship to the bills of which I am a cosponsor or a sponsor, a brief statement about them, and I will be prepared if the committee feels it is necessary, to come back at a later time when you get into these bills and answer any questions pertaining to those under which I have some responsibility for authorship.

I want to say in the presence of Senator Dirksen here that in the 83d Congress I recall that we participated in the hearings—I believe you were the chairman, or was it Senator Hendrickson?

Senator Hendrickson was the chairman of the subcommittee, Senator Dirksen had a bill, S. 1 and I had a similar bill in the 83d Congress on the so-called bipartisan Commission on Civil Rights.

At that time I said it was immaterial to me as to the authorship; what was most important was the substance of it. I found Senator Dirksen's bill and my bill to be relatively alike in substance, and therefore supported his particular proposal.

Now I have a similar bill before your committee, S. 906. And I understand Senator Dirksen also has a bill of which he is the chief sponsor, with many cosponsors.

Therefore my suggestion is that regardless of authorship, that there be some action upon these particular proposals.

The other bills have been listed here by counsel. I have listened to the recitation. I am particularly interested in the bill that relates to a separate Division in the Department of Justice with a separate Assistant Attorney General, the right-to-vote bill, which I believe is absolutely basic to the fulfillment of human rights or civil rights, whatever your terminology may be, and surely the proposals which have been reported out by the subcommittee.

I believe these are S. 900, S. 902 and S. 903.

The CHAIRMAN. Senator Humphrey, we have been called for a roll call vote over in the Senate.

Senator HUMPHREY. I will just submit my statement, therefore, for the purposes of brevity.

(The prepared statement of Senator Humphrey is as follows:)

CIVIL RIGHTS TESTIMONY BY SENATOR HUBERT H. HUMPHREY BEFORE SENATE JUDICIARY COMMITTEE ON TUESDAY, APRIL 24, 1956

Mr. Chairman, I wish to commend you for your fairness in calling this hearing on an issue of vital concern to all America, knowing of its deep emotional impact in your own home State.

All of us in the Congress must find a reasoned balance between the interests of our own States which we are privileged to represent, and the entire United States which we represent together.

All of us in the Congress share common responsibilities that go beyond the needs, the desires, and yes, even the views of our own States.

The question of human rights is one of those common responsibilities.

It goes beyond any partisanship. It involves fundamental concepts of our democracy that must be of grave concern to all of us, Democrats and Republicans alike, whether our geographical background happens to be from the North or the South. It involves problems we must squarely face with reason rather than emotion, with a spirit of tolerance rather than a spirit of recrimination.

Perhaps this occasion can be an historical milestone, of responsible men reasoning together as Americans all—not as hostile blocs arrayed in bitterness against each other.

My views on human rights—and that is the term I prefer, for it is the rights of fellow human beings we are talking about when we discuss civil rights—are well known to this committee.

They are nothing new, and they are not politically inspired.

They are the result of deeply held convictions, spiritual convictions, that it is a blemish on our democracy to permit in our midst any discrimination against fellow Americans because of their race, religion, color, or national origin.

The struggle for civil rights has been a continual one since the beginning of our Nation, paralleling our country's growth as an expanding democracy.

Our Nation stands today as the freest and most democratic power in the world.

We are justly proud of the progress that we have made as a country in expanding opportunity, security, and human welware of our citizens.

There is no area of our life which has not developed toward greater democracy.

To be proud of our Nation and its progress, however, is not be be blind to the imperfections that still remain within our society.

The most evident of those imperfections, and the one which cries loudest for immediate remedy, is in the area of civil rights.

Discrimination based upon bias and prejudice still exists, and so long as it is alive, we must be vigilant to eliminate the cancer from our body politic.

Democracy is more than achievement, more than material progress, more than elections and government.

Democracy is essentially a faith of freedom, of equality, of human dignity, and brotherhood.

This is the beacon of hope we now have to offer a troubled world. This is the lesson which we must now strive to get accepted in the world, if our Nation is to avoid war and preserve its liberty.

The struggle against the totalitarian forces of communism is not merely of a military character, as recent events have made even more clear than ever before.

It is political and ideological in nature as well.

We stand opposed to the doctrines which enslave men, and reduce men to mere automatons.

We believe in the inherent dignity and worth of man, that man is an end in himself, that only in a genuinely free society can man attain his true nature.

We believe that given equality of opportunity, each individual, irrespective of color, religion, national origin, or race can realize his true self.

These are the great values for which we are currently engaged in the struggle against communism, values which we must preserve from within our society as well as safeguard against attack from without.

Those of us who strive for the enactment of civil rights legislation by the Congress do so because we are convinced that the enactment of such legislation will help us as a nation in the world struggle against communism.

We do so also, however, because we must constantly strive to strengthen the spirit and fabric of democracy itself. We do so because we believe that even if there were no Communists in the world, the discrimination which exists within our country must be eliminated if our democracy is to survive and be true to itself.

With democracy now on trial in the world, it ill behooves us to leave any chinks in our armor.

We must never forget that the image we as a nation cast abroad is mightily affected by what we do at home. One of the best criteria for predicting how a nation will behave in its international relations is its record of achievement among its own people. We judge the Soviets in this manner and part of our skepticism about their sincerity on world issues is grounded in our awareness of how brutally the Kremlin has conducted its domestic policies, how little regard it has had for human rights.

We should consider our own behavior from the same perspective.

At times we have forgotten that we shall not enhance freedom by aping the enemies of freedom.

Democratic institutions are not safeguarded by totalitarian techniques.

The central principles on which America was founded are now being considered by others, in their evaluation of us.

Brotherhood and equality of opportunity have now become central aspects of America's national image, as it is seen abroad. Just as Lincoln decided upon emancipation of the Negro slaves not only as an "act of justice" but also as "a military necessity," so the achievement in America of racial equality is now urgently needed on both these grounds.

Gandhi asked of the whole Anglo-Saxon world: "What can conquer your unpardonable pride of race?"

We must answer him. We must answer him soon. We should answer him now that the true spirit of democracy is bigger than racial pride—and prove we mean it.

Our responsibilities and the requirements of our national security no longer permit us the luxury of temporizing and evasion on civil rights here in the United States.

Communist propaganda has recognized that issue clearly, and has effectively gone to work against us with it.

You can rest assured that the Kremlin will not permit even these hearings to go unnoticed, and will gleefully exploit any failure on our part to truly exemplify the democracy we preach to the rest of the world.

You can rest assured the eyes of millions of uncommitted peoples throughout the world—people who may sway the balance between a world of freedom and a world of totalitarian oppression—are upon this issue in the United States, and upon what we do about it—upon what we do about it at this very hearing, and in this very Congress.

Our proper response, both to the Kremlin waiting for us to falter and to the other vast areas of the world looking desperately to us as mankind's greatest beacon of hope for universal recognition of the dignity of man, is to do what we should have done anyway, to do what is right and just; to do what we eventually must do, regardless of external threats, to fulfill the vision of our Founding Fathers for creating a nation fully respecting the individual dignity of man, as an inalienable, inherent right, under God.

Communism and the atom have only heightened our age-old dilemma of good and evil, and raised the stakes of moral choice.

Ever since I have been in the Senate, I have consistently and continually sought greater fulfillment of human rights by legislative action aimed at eliminating discrimination.

Three years ago, at the start of a new Republican administration, I again introduced a series of bills aimed at my continuing objective. At that time, in the hope of bipartisan action for a cause that should be above partisanship, I declared:

"We have just completed a national election. Both political parties came to the American people and said that they were champions of civil rights. I ask unanimous consent to have printed at the conclusion of these remarks excerpts from the platforms of both the Democratic and Republican parties. The President-elect came to the American people and on many occasions stated his opposition to discrimination and his convictions in favor of equal opportunity. I ask unanimous consent to have printed at the end of these remarks, excerpts from some of his statements."

It remains for the Congress to act in accordance with the wishes of the vast majority of the American people.

In addition to reintroducing, for the third time, the Humphrey-Ives bill for a fair employment practices commission to guarantee equal opportunity of employment, I introduced at that time nine other measures covering legislative improvements needed for adequate civil rights protection.

Unfortunately, despite the campaign pledges of the Republican Party, no action was taken on any of these measures by the Republican 83d Congress.

Included among my measures introduced on January 16, 1953, was a new and more moderate approach that I hoped would at least be accepted as a minimum step in the right direction.

It was a bill to create a Federal commission on civil rights, providing for a commission to study continuously the problem of civil rights and discrimination and measures being taken to deal with the problem.

At that time I declared:

"I have never believed in an all-or-nothing approach to any of the major social, economic, or political problems which face our Nation.

"I therefore urge the Senate to find a middle approach, and take some steps to spell progress. * * * It is my belief that a commission on civil rights would provide a constructive and factual approach to a problem which is torn with emotionalism. It is not a substitute for other legislative proposals, but it may in fact turn out to be a preliminary step which must be taken to bridge the gap between divergent opinions and establish a foundation for a more constructive, positive legislative program. I shall, in fact, continue to devote my efforts to the enactment of a full program which I have presented to the Senate."

That was 3 years ago, but I stand by those words today. They are even more meaningful today.

Regretably, no attempt was made by the Republican administration and Republican Congress to act on even such a minimum approach to a crucial national problem.

When the Democrats regained control of the Congress in 1955, I again introduced a civil rights package program of 11 basic bills, including the same commission proposal.

For a year, I am told, this committee has been awaiting administration views on such a program.

Now, at long last, the administration has recommended enactment of such a commission, along with some other minimum steps all covered in long-pending legislation.

As belated as it has been, I welcome this administration support. I hope sincerely it is offered in good faith, in sincere intent that will be backed by concerted efforts for Republicans to vote side by side with Democrats for enactment of such legislation. If they do, we can make progres of which all of us can be proud. If they do not, America's conscience will have a continued burden upon it.

When I introduced this group of legislative measures a year ago, I declared enactment of any part of them would be striking a blow for freedom all over the world.

I reiterate that statement today.

Instead of conflict and bitterness, my hope and prayer is that the 84th Congress can earn a place in history by symbolizing instead a feeling of good will and brotherhood in consideration of this vital program, with mutual respect and mutual tolerance for deeply held convictions however opposite they may be.

Already favorably reported to this committee by your Subcommittee on Constitutional Rights are measures I have sponsored with some of my colleagues to protect the right to political participation and make it a crime to intimidate or coerce or otherwise interfere with the right to vote; to create a new Civil Rights Division in the Department of Justice under an Assistant Attorney General; and to protect persons in the United States against lynching.

These, together with the proposed Commission which the President has now joined in supporting after 3 years, should provide a basic minimum of positive action, going a long way toward eliminating the injustices of discrimination.

I appeal for this committee's favorable action in the name of democracy, in the name of humanity, in the name of morality.

If the Republicans will match the Democrats vote for vote on this committee, this legislation can be approved by the committee and readied for floor action.

Surely, if the administration is really behind its civil rights program, it can muster four Republican votes favorable to such action on this committee.

In their 1952 platform, the Republican promised that they would not "mislead, exploit, or attempt to confuse minority groups for political purposes." The Republican Party now has an opportunity to live up to that promise. The Democratic Party will welcome their support.

Together, we can build a stronger America, and brighten the beacon of hope for the rest of the world.

Senator HUMPHREY. And in expression of my gratitude to the chairman, may I commend him for his fairness in calling this committee meeting together.

I want to say that it is very reassuring. And I have noticed that the procedure is along the lines that I think is most commendable. You are taking these bills up one at a time on the basis of the law and the basis of constitutional provisions.

The CHAIRMAN. Thank you, sir.

We will now recess for rollcall.

(A short recess was taken.)

Mr. YOUNG. The hearing has been recessed, subject to the call of the Chair.

The Senators are busy on the floor, and they can't get back today.

The chairman will call the next meeting later in the week.

(Whereupon, at 4 p. m., the committee adjourned, subject to the call of the Chair.)

CIVIL RIGHTS PROPOSALS

WEDNESDAY, MAY 16, 1956

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

The committee met at 2:35 p. m., pursuant to notice, in room 424, Senate Office Building, Hon. Olin D. Johnston presiding.

Present: Senators Eastland, Johnston, Hennings, McClellan, O'Mahoney, Wiley, Jenner, Watkins and Dirksen.

Also present: Robert B. Young, professional staff member, and Richard F. Wambach, assistant to counsel.

Senator JOHNSTON. The Committee on the Judiciary will come to order.

We have met today to start the hearings on the civil rights bills. I have been informed that we have 16 bills dealing with civil rights. Our first witness today is the Attorney General of the United States, Mr. Brownell.

Mr. Brownell, you may testify and proceed as you see fit in regard to what you have to say, either by following your paper or by discussion. If you don't want to be interrupted, we won't interrupt you. Or if you don't mind, we may interrupt you along the way if we have a question we want to ask.

STATEMENT OF HON. HERBERT BROWNELL, ATTORNEY GENERAL OF THE UNITED STATES

Attorney General BROWNELL. Thank you very much, Mr. Chairman. I appreciate the opportunity to be here this afternoon to testify on this important series of bills which the chairman has rightly designated the civil rights bills.

In his state of the Union message, President Eisenhower said that his administration would recommend to the Congress in this session a program——

Senator O'MAHONEY. What was the date of that message?

Attorney General BROWNELL. In January, the regular state of the Union message.

To advance the efforts of the Government, within the area of Federal responsibility, to the end that every person may be judged and measured by what he is, rather than by his color, race, or religion. On April 9, 1956, I transmitted to the President of the Senate and to the Speaker of the House our proposals in this area. I am grateful for the opportunity to appear before this committee to discuss these proposals and, if the members wish, to comment as well upon other

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proposals relating to this same subject which are also pending before this Committee.

My letters to the President of the Senate and to the Speaker of the House recommended congressional action on four matters: First, the creation of the bipartisan Commission on Civil Rights to implement recommendations made by the President in his state of the Union message; second, creation of an additional office of Assistant Attorney General to head a new Civil Rights Division in the Department of Justice; third, amendment of existing statutes to give further protection to the right to vote and to add civil remedies in the Department of Justice for their enforcement; and fourth, amendment of other civil rights laws to include the addition of civil remedies in the Department of Justice for their enforcement.

I would like to take those up in their order.

1. Civil Rights Commission:

In recommending the creation of a bipartisan Civil Rights Commission, President Eisenhower said in his state of the Union message:

> **It is disturbing that in some localities allegations persist that Negro citizens are being deprived of their right to vote and are likewise being subjected to unwarranted economic pressures. I recommend that the substance of these charges be thoroughly examined by a bipartisan Commission created by the Congress.**

A bill detailing the Commission proposal was submitted with my letters to the President of the Senate and the Speaker of the House. It provides that the Commission shall have six members, appointed by the President with the advice and consent of the Senate. No more than three shall be from the same political party. The Commission shall be temporary, expiring 2 years from the effective date of the statute, unless extended by Congress. It will have authority to subpena witnesses, take testimony under oath and request necessary data from any executive department or agency. It may be required to make interim reports pending completion of a comprehensive final report containing findings and recommendations.

The Commission will have authority to hold public hearings. It will investigate the allegations that certain citizens of the United States are being deprived of their right to vote or are being subjected to unwarranted economic pressures by reason of their color, race, religion, or national origin. This bill proposes that the Commission study and collect information concerning economic, social, and legal developments constituting a denial of equal protection of the laws. It will appraise the laws now on the books and policies of the Federal Government with respect to equal protection of the laws under the Federal Constitution.

The number of the bill that carries this out is S. 3605, introduced on April 11, 1956, and referred to your committee, with respect to the creation of a Civil Rights Commission.

The need for more knowledge and greater understanding of these most complex and difficult problems is manifest. A full-scale public study of them conducted over a 2-year period by a competent bipartisan Commission, will tend, we believe, to unite responsible people of good will in common effort to solve these problems. Such a study will bring clearer definition of the constiutional boundaries between Federal and State governments and will insure that remedial proposals are within the appropriate areas of Federal and State respon-

sibility. Finally as an added advantage through greater public understanding of these matters the Commission may chart a course of progress to guide the Nation in the years ahead.

For a study such as that proposed by the President, the authority to hold public hearings, to subpena witnesses, to take testimony under oath and to request necessary data from executive departments and agencies is necessary. No agency in the executive branch of Government has the legal authority to exercise these powers which we believe have to be given the Commission in a study of matters relating to civil rights.

2. Civil Rights Division in the Department of Justice:

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

Recently, however, the Justice Department has been obliged to engage in activity in the civil rights field which is noncriminal in character. An example is the recent participation of the Department, as "friend of the court," in a civil suit to prevent by injunction unlawful interference with the efforts of the school board at Hoxie, Ark., to eliminate racial discrimination in the school in order to conform with the Supreme Court's decision. The noncriminal activity of the Department in the civil rights field is constantly increasing in importance as well as in amount. If my recommendations, discussed subsequently, for legislation to provide civil remedies in the Department of Justice for the enforcement of voting and other civil rights are followed, the Department's duties and activities in the civil courts will increase even more rapidly than in the past.

So we believe and recommend to you that all the Department's civil rights activities, both criminal and noncriminal, be consolidated in a single organization, but it is not appropriate that an organization with important civil as well as criminal functions should be administered as a part of the Criminal Division.

Consequently, I most earnestly recommend that the appointment of a new Assistant Attorney General be authorized by the Congress in order to permit the proper consolidation and organization of the Department's civil and criminal activities in the area of civil rights into a division of the Department under the direction of a highly qualified lawyer with the status of an Assistant Attorney General. In other words an appointee of the President. A draft of legislation to effect this result was transmitted with my letters to the President of the Senate and the Speaker of the House. S. 3604, which was introduced on April 11, 1956, and has been referred to your committee, embodies this proposal.

We have observed that S. 902 would also provide for a Civil Rights Division in the Department of Justice. I believe, however, that bill is more detailed than is necessary.

3. Amendments to give greater protection to the right to vote and to provide civil remedies in the Department of Justice for their enforcement:

I need not tell this committee, which is made up of lawyers, who have studied this for years, that the right to vote is one of our most precious rights. It is the cornerstone of our form of government and affords protection for our other rights. It must be zealously safeguarded.

Article I, sections 2 and 4, of the Constitution place in the Congress the power and the duty to protect by appropriate laws elections for office under the Government of the United States. With respect to elections to State and local office, the fifteenth amendment to the Constitution provides that the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. And the fourteenth amendment prohibits any State from making or enforcing laws which abridge the privileges and immunities of citizens of the United States and from denying to any person the equal protection of the laws. The courts have held that these prohibitions in the fourteenth amendment operate against election laws which discriminate on account of race, color, religion or national origin.

To implement these provisions of the Constitution Congress passed many years ago a voting statute, now title 42, United States Code, section 1971 (Rev. Stat. 2004), which provides that all citizens shall be entitled and allowed to vote at all elections, State or Federal, without distinction based upon race or color. It was the duty of Congress under the Constitution and its amendments to pass legislation giving full protection to the right to vote and undoubtedly it was the intent of Congress to provide such protection when it passed title 42, United States Code, section 1971.

However, in the years since its enactment, a number of serious defects in the statute have become plainly apparent, most of them having been pointed out in actual cases in court. The most obvious defect in this law is that it does not protect the voters in Federal elections from unlawful interference with their voting rights by private persons. It applies only to those who act "under color of law," which means to public officials. The activities of private persons and organizations designed to disfranchise voters in Federal or State elections on account of race or color are not covered by the present wording of title 42, United States Code, section 1971 and the statute fails, therefore, to afford voters the full protection from discrimination contemplated and guaranteed by the Constitution and its amendments.

Also section 1971 of title 42, United States Code, is clearly defective in another important respect. It fails to lodge in the Attorney General any authority to invoke civil remedies for enforcement of voting rights and is particularly lacking in any provision authorizing the Attorney General to apply to the courts for preventive relief against violation of voting rights. We think this is a major defect and I'll try to point out why. The ultimate goal of the Constitution and of Congress is the safeguarding of the free exercise of the voting right, acknowledging the legitimate power of the States to prescribe necessary and fair voting qualifications. Civil proceedings by the Attorney General to forestall illegal interference and denial of the right to vote, I think, would be far more effective in achieving this goal than the private suits for damages presently authorized by the statute or the criminal proceedings authorized under other laws which can never be instituted until after the harm is done.

I think that Congress should now recognize that in order to properly execute the Constitution and its amendments, and in order to perfect the intended application of the statute, section 1971 of title 42, United States Code, should be amended in these particular ways.

First, the addition of a section which will prevent anyone, whether acting under color of law or not, from threatening, intimidating or coercing an individual in his right to vote in any election, general, special or primary, concerning candidates for Federal office.

Second, authorization to the Attorney General to bring civil proceedings that I mentioned a moment ago on behalf of the United States or for that matter any aggrieved person for preventive or other civil relief in any case covered by the statute.

Third, express provision that all State administrative and judicial remedies need not be first exhausted before resort to the Federal courts.

We have put these provisions into a third bill, which is S. 3718.

4. Amendment of another civil rights statute to include the addition of civil remedies in the Department of Justice for their enforcement:

In attempting to achieve the constitutional goal of respect for and observance of the civil rights of individuals, it has been, in my opinion, a mistake for the Congress to have relied so heavily upon the criminal law and to have made so little use of the more flexible and often more practical and effective processes of the civil courts. Although the Attorney General, under present statutes, can prosecute after violations of the civil rights laws have occurred, he has no authority at the present time to seek preventive relief in the courts when violations are threatened or, in spite of an occasional arrest or prosecution, are persistently repeated.

Criminal prosecution can never begin until after the harm is done and it can never be invoked to forestall a violation of civil rights no matter how obvious the threat of violation may be. Moreover, criminal prosecutions for civil rights violations, when they involve State or local officials as they often do, stir up an immense amount of ill feeling in the community and inevitably tend to cause very bad relations between State and local officials on the one hand and the Federal officials on the other who are responsible for the investigation and prosecution. A great deal of this could be avoided if the Congress would authorize the Attorney General to seek preventive and other appropriate relief from the civil courts in civil rights cases.

I would like to give you one illustration.

In 1952, several Negro citizens of a certain county in Mississippi submitted affidavits to us alleging that because of their race the registrar of voters refused to register them. Although the Mississippi statutes at that time required only that an applicant be able to read and write the Constituion, these affidavits alleged that the registrar demanded that the Negro citizens answer such questions as "What is due process of law?" "How many bubbles in a bar of soap?" and questions of that type. Those submitting affidavits included college graduates, teachers and businessmen, yet none of them, according to the registrar, could meet the voting requirements. The reason I give the illustration is if the Attorney General had the power to invoke the injunctive process, the registrar could have been ordered to stop these discriminatory practices and qualify these citizens according to Mississippi law.

Senator JOHNSTON. Do you know what the law is? Could you give that right here?

Attorney General BROWNELL. I don't have it right here——

Senator JOHNSTON. I would like you to read that into your statement right here, what the Mississippi law is with regard to that.

Attorney General BROWNELL. I can summarize it for you. I haven't got the language here, but I can put that into the record.

The sum and substance is that they must be able to read and write.

Senator JOHNSTON. Does it use the word "interpret" the Constitution? Some States have that.

Attorney General BROWNELL. I'll check that, and I'll be glad to put it in the record.

Senator JOHNSTON. I don't know whether it does or not, but some do.

Attorney General BROWNELL. I'll be glad to add that to the record of the proceedings.

(This information was subsequently received by letter dated June 4, 1956, and is as follows:)

JUNE 4, 1956.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
United States Senate,
Washington, D. C.

DEAR SENATOR: At the hearing held on May 16, 1956, before the Committee on the Judiciary on certain civil rights bills, including S. 3604, S. 3605, S. 3717 and S. 3718, Hon. Olin D. Johnston requested that the Attorney General submit for the record the provisions of Mississippi laws in force in 1952 relating to qualifications necessary to enable an individual to register as a voter. Mr. Robert B. Young of the staff requested that the Attorney General submit certain affidavits referred to in his statement to the committee concerning questions allegedly asked of Negro citizens who sought to register in a Mississippi county.

(1) The relevant provisions (excluding such matters as residence, nonconviction of certain crimes, etc.) of the Mississippi Constitution and statutes as they existed in 1952 are as follows.

Article 12, section 244, Mississippi Constitution:

"On and after the first day of January A. D. 1892, every elector shall, in addition to the foregoing qualifications, be able to read any section of the Constitution of this State; or he shall be able to understand the same when read to him, or give a reasonable interpretation thereof. A new registration shall be made before the next ensuing election after January the first A. D. 1892."

Section 3212, Title 14, Mississippi Code, 1942:

"A person shall not be registered unless he be able to read any section of the constitution, or in case he cannot read, unless he be able to understand any section thereof when read to him, or to give a reasonable interpretation thereof."

(2) We are enclosing herewith two photostats of the affidavits requested by Mr. Young. Since the name of the affiant is under the circumstances regarded as confidential, it, as will be noted, has been deleted. Affidavits identical with the photostat enclosed were filed by seven individuals.

We might add with respect to this situation that before the Negro citizens of Forrest County complained to this Department, they instituted a civil action against the registrar of voters in the United States District Court for the Southern District of Mississippi seeking to restrain the racial discrimination allegedly involved in the registrar's refusal to register Negroes as voters. When the case reached the Court of Appeals, Fifth Circuit, in 1951, that court held (*Peay* v. *Cox* 190 F. 2d 123) that the complainants were not entitled to the relief sought since they had failed to exhaust the administrative remedies (consisting of appeals to the county election commissioners and thence through the circuit court to the supreme court of the State) provided by the State. When the matter was subsequently referred to this Department it was, after investigation, presented to a Federal grand jury in Mississippi. The grand jury declined to return an indictment.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

Attorney General BROWNELL.

Another illustration:

The United States Supreme Court recently reversed the conviction of a Negro sentenced to death by a State court because of a showing that Negroes had been systematically excluded from the panels of the grand and petit juries that had indicted and tried him. In so doing the Supreme Court stated that according to the undisputed evidence in the record before it systematic discrimination against Negroes in the selection of jury panels had persisted for many years past in the county where the case had been tried. In its opinion the Court mentioned parenthetically, but we thought pointedly, that such discrimination was a denial of equal protection of the laws, and it would follow that it was a violation of the Federal civil rights laws.

Accordingly, the Department of Justice had no alternative except to institute an investigation to determine whether in the selection of jury panels in the county in question the civil rights laws of the United States were being violated, as suggested by the record before the Supreme Court. I think it must be clear to you that the mere institution of this inquiry aroused a storm of indignation in the county and State in question. This is understandable since, if such violations were continuing the only course open to the Government under the laws as they stand now, was criminal prosecution of those responsible. That might well have meant the indictment in the Federal court of the local court attachés and others responsible under the circumstances.

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

Supposing, however, that on investigation, the facts had proved otherwise. The necessarily resulting prosecution would have stirred up such dissension and ill will in the community that it might well have done more harm than good. Such unfortunate collisions in the criminal courts between Federal and State officials can be avoided if the Congress would authorize the Attorney General to apply to the civil courts for preventive relief in civil rights cases. In such a proceeding the facts can be determined, the rights of the parties adjudicated and future violations of the law prevented by proper order of the court without having to subject State officials to the indignity, hazards and personal expense of a criminal prosecution in the Federal courts.

Congress could authorize the Attorney General to seek civil remedies in the civil courts for the enforcement of civil rights by a simple amendment to section 1985 of title 42, United States Code (R. S. 1980). That is the statute that presently authorizes civil suits by private persons who are injured by acts done in furtherance of a conspiracy to do any of the following things: (1) to prevent officers from performing their duties; (2) to obstruct justice; (3) to deprive persons of their rights to the equal protection of the laws and equal privileges under the laws.

A subsection could be added to that statute to give authority to the Attorney General to institute a civil action for redress or preventive relief whenever any persons have engaged or are about to engage in

any acts or practices which would give rise to a cause of action under the present provisions of the law.

Such an amendment would provide a procedure for enforcement of civil rights which would be far simpler, more flexible, more reasonable and more effective than the criminal sanctions which are the only remedy now available.

A bill embodying these proposals was drafted in the Department. It was introduced in the Senate as S. 3717 on April 24, 1956, and referred to your committee.

At the outset, you suggested that if I had any comments on other proposed amendments which we are not sponsoring, but which are before the committee, I could make such comments. I will say this much.

There must certainly be grave doubt as to whether it is wise to propose at the present time any further extension of the criminal law into the extraordinarily sensitive and delicate area of civil rights. Because of this doubt and because of my conviction previously expressed as to the importance of civil remedies in this field, we are not proposing at this time any amendments to sections 241 and 242 of title 18, United States Code, which are the two principal criminal statutes intended for the protection of civil rights. Whether the present moment is appropriate for such legislation is, of course, a question for the Congress to determine.

Nevertheless, it must be conceded that all questions of timeliness aside and considered strictly from a law enforcement point of view both statutes have defects. Some of the bills before the committee deal with them. I have observed that S. 905, for example, would amend them both and, if they are to be amended, I have a few comments and suggestions to offer.

First: Section 241 of title 18, United States Code, makes it unlawful for two or more persons to 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." The statute fails to penalize such injury, oppression, threats, or intimidation when committed by a single individual, which not infrequently occurs.

So if you are going to amend it, this should be corrected.

Second: The word "citizen" now appearing in the statute should be changed to "person" and the words "right or privilege secured to him by the Constitution" should be changed to "right, privilege, or immunity secured or protected by the Constitution."

Third: The penalty in ordinary cases should be left as it is, a misdemeanor, but if you decide to amend that statute, we think more substantial penalties should be provided for unlawful conduct prohibited by this statute which results in maiming or death.

The amendment of section 242 of title 18 would be so extraordinarily complicated that I do not recommend that it be attempted at the present time.

I could go into a discussion of this, *Screws* v. *The United States* (325 U. S. 91), but perhaps this isn't the place to do so.

You will remember for a period of a year or so, there was an interim period between the two Supreme Court decisions with respect to the school cases, where it seemed unwise to move forward until we knew exactly what the final decree of the Court was to be.

I, of course, am aware of the fact that a number of bills dealing with voting and other aspects of civil rights have been introduced in the Senate. The Department has been asked to comment on some of these measures. In most instances, comment was withheld by the Department because we were studying the entire problem and preparing our recommendations. These recommendations were outlined in the statement I have just made and I strongly urge their adoption by the Senate.

In the light of the Department's proposals, I can now comment generally upon the bills introduced in the Senate and referred to your Committee.

The Department has decided not to recommend adoption of any legislation which would amend or add to the criminal statutes dealing with civil rights. As I stated earlier, we are convinced that the proper approach to this most sensitive field should be through civil remedies and procedures. The changes I urge in section 1971, dealing with voting, and in section 1985, dealing with equal protection of the laws and other constitutional rights, in title 42 of the United States Code, would, I believe, give the Department sufficient powers and authority to deal with most situations. Thus, the changes contemplated by S. 903 in 18 U. S. C. 594, a criminal statute dealing with Federal elections, would be unnecessary. The changes intended by S. 903 with respect to 42 U. S. C. 1971, are incorporated in the bill drafted and recommended by the Department.

S. 905, I have already discussed.

S. 907, an omnibus civil rights bill, which would establish a Civil Rights Commission, create a Civil Rights Division in the Department of Justice, create a congressional Committee on Civil Rights, amend 18 U. S. C. 241 and 242, amend 18 U. S. C. 594 and 42 U. S. C. 1971 (the voting statutes), the antislavery statutes, and prohibit discrimination in interstate transportation, has many laudable features. However, the most important of its provisions, those dealing with voting and civil rights and providing civil powers in the Department of Justice, are covered by the Department's bills, which, to conclude my prepared remarks, are the specific recommendations the Department of Justice is making to this committee today.

Senator JOHNSTON. Are there any questions?

Senator HENNINGS. Mr. Chairman, with the permission of the committee, as I happen to be chairman of the Subcommittee on Constitutional Rights, I would like very much if the Attorney General would indulge me to inquire into some of these matters.

Mr. Attorney General, this is the first time, is it not, that the Justice Department has seen fit to transmit to the Congress any suggestions as to legislation relating to civil rights or cognate matters?

Attorney General BROWNELL. We have commented on bills that were introduced, in response to requests from Congress.

Senator HENNINGS. But you have come up with no program during your 4 years, until last month, I believe, April 1, was it not?

Attorney General BROWNELL. Let me say that might lead to a very misleading answer. I know you don't mean to do so.

The program the Department of Justice has carried on in this area in the past few years I would characterize as, and I hope you would agree with me, the most vigorous in the Department's history.

Almost the first day I was down here, we had the Thompson Restaurant case, which was in the courts then, on which we filed a brief, and got a favorable decision from the courts, which laid the groundwork for doing away with discrimination here in the Nation's Capital, specifically in the restaurants. I can't exaggerate the importance that has had nationwide.

Then we have had 2 years of steady litigation in the Supreme Court on school segregation, which took a great deal of time. You know the results there.

Furthermore, we worked closely with the President's Advisory Committee on eliminating discrimination in employment and contracts. We did the legal work on abolishing discrimination in the Armed Forces.

All of those things we have been active on. In addition to that, we have had great success in carrying our cases forward in elimination of peonage, stopping a revival of this Ku Klux Klan in one of the States, and as I mentioned in my prepared statement, we are now getting to the point where we are participating in some of these civil cases. I wouldn't want your question to imply we haven't been awfully busy on this.

Senator HENNINGS. You may know that I haven't any intention of being misleading. You know these were initiated in the preceding administration.

Attorney General BROWNELL. A great many of them, yes.

Senator HENNINGS. It has not been initiated, and I don't mean to bring this into the realm of politics, except to indicate perhaps insofar as being a knight in shining armor, and we welcome you, indeed, to that fold, and hope you will continue your good work in the prosecution of these good cases.

Attorney General BROWNELL. I am not here as a knight in shining armor today. I read your speech in which you pointed out your 20 years of activity in this field.

I have tried throughout my private and public life to do the same thing. I do want to say I am not here today except in my capacity to carry out the President's program, and I claim no personal credit whatsoever.

Senator HENNINGS. I just wanted it clear that many of the things that this administration has done have been initiated in preceding administrations.

Attorney General BROWNELL. I think there are men of good will in both parties, who want to see these objectives attained.

Senator HENNINGS. Certainly I can agree with you on that. If you will forgive me, I think that we should have the record clear on some things.

Attorney General BROWNELL. I agree with you on that.

Senator HENNINGS. We welcome your suggestion, for example, that there be a Commission on Civil Rights in the Department of Justice. At my request on March 22, 1955, this letter was addressed to you, signed by the late Harley Kilgore, former chairman of the Committee on the Judiciary. The letter reads as follows:

DEAR MR. ATTORNEY GENERAL: Attached herewith are copies of S. 902, S. 905, S. 906, and S. 907, concerning the protection of civil rights, amending and supplementing existing civil rights statutes, and establishing a Commission on Civil Rights in the executive branch of the Government.

These four bills are now pending before the standing Subcommittee on Constitutional Rights which intends to schedule hearings on all of the above mentioned measures within the very near future.

Accordingly, it will be appreciated if you will submit to the committee as soon as possible individual reports on each of these measures.

With kindest regards, I am

Most sincerely yours,

HARLEY M. KILGORE, *Chairman.*

Now, as relates to the question of the Division of Civil Rights.

Attorney General BROWNELL. It is all in the Congressional Record if you haven't it there.

Senator HENNINGS. There was no reply in our records of the subcommittee, no reply from you whatever over a year ago relating to the establishment of a commission or a division, I should say, of Civil Rights in the Department of Justice. We have no record of your ever having replied to that request.

Attorney General BROWNELL. I hesitate to say there, but the fact is I discussed the matter with the then chairman of the committee. He was unable to get together on a hearing on the subject.

You are undoubtedly correct that there is nothing in writing in answer to that.

Senator HENNINGS. Did you want to testify on the subject?

Attorney General BROWNELL. If a hearing could have been arranged, I would have been glad to.

Senator HENNINGS. But you did not thereafter request that a hearing be held.

Attorney General BROWNELL. I discussed it with the then Chairman of the Committee.

Senator HENNINGS. That would be Senator Kilgore.

I don't recall that you ever discussed it with me.

Attorney General BROWNELL. I don't recall that I did.

Senator HENNINGS. These bills are lodged in the subcommittee of which I happen to be chairman.

Attorney General BROWNELL. Didn't you read the letter that came from him?

Senator HENNINGS. You will recall that last fall, we made a number of efforts to get you to testify before the subcommittee on Constitutional Rights.

Attorney General BROWNELL. That was on a different subject.

Senator HENNINGS. On a number of subjects.

Attorney General BROWNELL. Yes.

Senator HENNINGS. You wanted to know what subject it would be, and we said it would cover multitude of things. We were unable to persuade you to come.

Attorney General BROWNELL. I remember that.

Senator HENNINGS. Now, then, Mr. Attorney General, on July 27, 1955, some 9 months ago a letter was addressed to you as follows:

The Judiciary Committee is herewith transmitting S. 903 for your study and report thereon in triplicate.

To facilitate the work of the committee, it is urgently requested that your report be submitted within 20 days. The committee should be formally advised in writing if any delay beyond this time period is necessary.

Most sincerely yours,

HARLEY M. KILGORE, *Chairman.*

On September 8, 1955, the following letter was received by the then chairman of this committee, Senator Kilgore, which letter reads as follows:

DEAR SENATORS This is in response to your request for the views of the Department of Justice concerning the bill (S. 903) to protect the right to political participation.

Section 594 of title 18 of the United States Code subjects to criminal penalties persons who interfere with the right of other persons to vote in any election held solely or in part for the purpose of electing a candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate or Commissioner from a Territory or possession. As defined in section 591 of the same title, the term "election" does not include a primary election. Section 1 of the bill would amend section 594 so as to make the section hereafter applicable to primary elections.

Section 2004 of the revised statutes, formerly set forth in section 31 of title 8 of the United States Code but now contained in section 1971 of title 42, provides that all citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, etc., shall be entitled and allowed to vote without distinction of race, color, or previous condition of servitude. Section 2 of the bill would amend this section in a number of respects. First, it would extend its scope to primary elections. Second, the phrase "previous condition of servitude" would be omitted from the enumeration of factors which are not to form the basis of discrimination and in its place the words "religion or national origin" would be substituted. Third, a new sentence would be added to the section as follows:

"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."

Section 242 of title 18 imposes criminal penalties upon anyone who, under color of law, willfully subjects any inhabitant of any State, Terriotry, or District to the deprivations of any rights protected by the Constitution or laws of the United States. Section 1979 of the Revised Statutes (now 42 U. S. C. 1983) provides for civil liability under similar circumstances.

Section 3 of the bill would provide that any persons violating the provisions of the first 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 section further would provide that the Attorney General may enforce the provisions of the act in the United States district courts, as defined therein. It would also provide that the district courts will have jurisdiction concurrently with State and Territorial courts.

Section 4 of the bill is a customary severability clause.

The purpose of the bill, as stated in its title, is "to protect the right to political participation." This purpose is a laudable one with which the Department of Justice is in full accord. Whether this particular measure should be enacted constitutes a question of policy concerning which the Department of Justice prefers to make no recommendation.

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

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

So at that time, the Department of Justice had no recommendation. Would you like to look at this letter to see that it is an accurate copy?

Attorney General BROWNELL. I am sure that must be an accurate copy of the letter.

Senator HENNINGS. I'll be glad to hand it to you for your verification.

Attorney General BROWNELL. I am sure it must be accurate. If it weren't, I am sure you wouldn't be reading it.

Senator HENNINGS. I usually make sure that I have accurate copies to read from.

Senator O'MAHONEY. Would the Senator yield for a moment?

Senator HENNINGS. Yes, surely.

Senator O'MAHONEY. Does the Attorney General mean to suggest that through a letter written by Mr. William P. Rogers, it did not reflect the view of the Department of Justice at that time?

Attorney General BROWNELL. No such implication as that. Quite the contrary, Senator.

Senator O'MAHONEY. Thank you.

Senator HENNINGS. Now, then, pursuant to the letter of March 22, which I undertake to call to your attention—at that time, on the matter of the so-called right to vote provision, and on the so-called S. 907, which relates to protection of civil rights of individuals by establishing a commission on civil rights in the executive branch of the Government—as long ago as March 22, over a year and some months or so last past, there had been at that time, until April 1, no expression from the Department of Justice upon any of this legislation.

Had there, Mr. Brownell?

Attorney General BROWNELL. I think, Senator, that letter that you read is right. I think no hearings were held, however, by the committee at which we had a chance to give oral testimony.

Senator HENNINGS. I am speaking now of the letters that were written to you asking for your advice and guidance.

Attorney General BROWNELL. As far as I know, those are the only letters on those subjects.

Senator HENNINGS. And you had no advice, and indeed you had no guidance to give this committee on that subject at that time.

Attorney General BROWNELL. I wouldn't say that, because we were never invited up to a hearing before.

Senator HENNINGS. But you didn't answer the letter.

Attorney General BROWNELL. The letters will speak for themselves.

Senator HENNINGS. If there is no letter, it can't speak for itself. There is one letter I read in which you said that is a matter for Congress to determine. The words in the letter were, "whether or not such a measure should be enacted constitutes a question of policy concerning which the Department of Justice prefers to make no recommendation."

This was as of last September 1955. At that time, you had no recommendation to make upon any of these subjects.

Attorney General BROWNELL. Congress wasn't in session then, was it, Senator?

Senator HENNINGS. Well, the committees were functioning. We had a Subcommittee on Constitutional Rights sitting here. We extended a number of invitations to you to appear before that subcommittee, up to December 1, commencing on October 15.

Now, then, on S. 908, relating to the commission on civil rights in the executive branch of the Government, as indicated by the letter which I read, on September 8, on that same date, and in that same letter. This relates to S. 903. I have another letter here, also dated September 8, 1955, relating to S. 906. In both cases, on page 2, the conclusion of Mr. William P. Rogers, the Deputy Attorney General, is that—

whether or not this measure should be enacted constitutes a question of policy concerning which the Department of Justice prefers to make no recommendation.

In the accompanying letter relating to S. 903, to protect the rights of political participation, you say—

whether or not this measure should be enacted constitutes a question of policy concerning which the Department of Justice prefers to make no recommendation.

Now, then, you of course are aware, Mr. Attorney General, that on December 3, 1955, I wrote to you—rather, I should say Senator Kilgore wrote at our request—the following:

DEAR MR. ATTORNEY GENERAL: Attached herewith is a list of bills on which reports previously have been requested but, according to records of the committee, have not been received.

It will be appreciated if every action is taken to insure the receipt of the requested reports so that these bills may be processed for presentation to the committee before the beginning of the 2d session, 84th Congress.

With kindest regards, I am

Most sincerely yours,

———— ————, *Chairman.*

Now, then, that was way back in December 1955, December 3, to be exact. In an attachment to that letter are listed S. 902, S. 905, S. 907, and I should say a total of 28 bills upon which the Department of Justice had not given either the full committee or its subcommittee the benefit of its impression.

Does the Attorney General remember this correspondence?

Attorney General BROWNELL. You refreshed my recollection. I am sure that also is accurate.

Senator HENNINGS. Now, then, of course, on February 24, I had written this one:

DEAR MR. ATTORNEY GENERAL: The Subcommittee on Constitutional Rights of the Committee on the Judiciary has scheduled a hearing on S. 902, a bill to reorganize the Department of Justice for the protection of civil rights, on March 2, 1956, at 10 a. m., in room 424 of the Senate Office Building.

By letter dated March 22, 1955, the Committee on the Judiciary requested the views of your department on this legislation, but, as yet, no answer to the letter of March 22 has been received. Inasmuch as this measure directly concerns your department and its functions, the subcommittee hopes that you will be able to present your views on this very important matter at the scheduled hearing. If for any reason, you cannot appear on the scheduled date, would you please suggest a date and time within 10 days of that date when it would be possible for you to appear personally and present your views.

Then, on February 28, 1956, I sent a telegram to you as follows:

With respect to my invitation to you of February 24 to appear and testify before the Subcommittee on Constitutional Rights on Friday, March 2, with respect to bill S. 902, I respectfully wish to advise you that the hour of the meeting has been changed from 10:30 until 11:30 to permit committee members to attend the funeral services of our distinguished colleague, Senator Kilgore. The committee is exceedingly desirious of learning your views with respect to S. 902 and we are looking forward to your being with us.

Does the Attorney General remember any of these communications?

Attorney General BROWNELL. It sounds right to me.

Senator O'MAHONEY. Will the Senator yield for a minute?

Senator HENNINGS. I'll be glad to yield.

Senator O'MAHONEY. I direct your attention to page 5 of your statement, Mr. Attorney General. The first two sentences of the first paragraph.

We have observed that S. 902 would also provide for a Civil Rights Division in the Department of Justice. I believe, however, that bill is more detailed than is necessary.

I have looked at both of these bills, which are in the folder of the Assistant Attorney General, Mr. Rogers, who has kindly loaned them to me, and I find that S. 3604, which is the bill you recommend, was introduced in the Senate on April 11, 1956, by several members of this committee and several other members of the Senate, all of whom happen to be Republicans.

S. 902 was introduced February 1, 1955, by Senator Humphrey of Minnesota for himself, Mr. Douglas, Mr. Lehman, Mr. McNamara, Mr. Langer, Mr. Magnuson, Mr. Morse, Mr. Murray, Mr. Neely, and Mr. Neuberger.

The first section of S. 902 deals with the exact subject of the bill S. 3604, which you endorsed. It contains 80 words. Your bill contains 69 words.

Attorney General BROWNELL. A little on the side of economy there.

Senator O'MAHONEY. A little on the side of economy.

The bill introduced in February 1955 used the words, when describing an assistant attorney general, "learned in the law." You seem to strike them out.

Attorney General BROWNELL. We do that automatically.

Senator O'MAHONEY. Well, I am sorry to see that you do it automatically.

Attorney General BROWNELL. Without legislation, that is.

Senator O'MAHONEY. You don't mean to say that you don't choose men learned in the law, do you?

Attorney General BROWNELL. I mean to say we don't have to wait for a statute to do that. We do it automatically.

Senator O'MAHONEY. Then we have the words in S. 902, "under the direction of the Attorney General."

Those also you have eliminated. In the place of those words, you substitute, "who shall assist the Attorney General in the performance of his duties."

All in all, it would seem to be the difference between 58 words and 80 words, two bills doing exactly the same thing, with the exception of section 2, to which I will come in a minute.

S. 902, in order that the record be made clear, section 1, reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That there shall be in the Department of Justice an additional Assistant Attorney General, learned in the law, who shall be appointed by the President and 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.

The bill which you now recommend to us reads as follows:

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

Now, it will be observed that among the omissions in S. 3604, the bill which you recommend, are the words contained in S. 902, with reference to the Assistant Attorney General:

> Who shall 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.

Will you please state to the committee why you characterized this difference as something more detailed than is necessary?

Attorney General BROWNELL. Our reference was to section 2, and we think you haven't come to that.

Senator HENNINGS. If I may interrogate just another moment on that point, Senator O'Mahoney.

Senator O'MAHONEY. I'm through.

Senator HENNINGS. Of course, Mr. Attorney General, we want to be sure in the drafting of S. 902 in the committee in which Senator O'Mahoney is a distinguished Member, we wanted to be sure that the Division in fact would be created to concern itself with matters relating to the enforcement of civil rights.

Now, in your legislation, I am unable to find any reference whatsoever to civil rights. Your bill would seem to provide for the appointment of an additional Assistant Attorney General.

Attorney General BROWNELL. Are you asking me the reason for that, Senator?

Senator HENNINGS. Yes, I am.

Attorney General BROWNELL. The reason for that is that the act under which the Department of Justice is set up does not specify any particular duties for any Assistant Attorney General.

That is, the Antitrust Division of the Tax Division or the Criminal Division. It just authorizes the Assistant Attorney Geenral, then it is an executive function of the Attorney General to designate the scope of the work of that assistant.

Senator HENNINGS. That is very true, doubtless. And as you know, our bill relating to this matter was reported on February 9, I believe. Your suggestion came up in April. However, I would like to say this, that it is my understanding——

Senator O'MAHONEY. Excuse me——

Senator HENNING. If the Senator will bear with me just a moment—it is my understanding that the Attorney General has he power to designate an Assistant Attorney General and charge him with the duty and responsibility of enforcing civil rights. Is that so?

Attorney General BROWNELL. No, he has to go to Congress for the authorization for a new Assistant Attorney General. Once Congress gives him the authority, then he can designate the particular area in which he is to work.

Senator O'MAHONEY. Why should you object to Congress giving you the authority to put this Assistant Attorney General in charge of civil rights?

Attorney General BROWNELL. That is what we are asking for. We are only doing it in the orthodox way in which Congress has done it before.

Senator O'MAHONEY. It may be authorized always to follow in the footsteps of one predecessor, but Congress has the right to legislate. Congress has the right to pass a law, if it is so desired, directing the

Department of Justice in the first instance without any request to appoint an Assistant Attorney General in charge of civil rights.

You don't deny that, of course?

Attorney General BROWNELL. The way it came up you asked our opinion as to which would be better form. We thought this would be better form.

Senator O'MAHONEY. I didn't ask you anything about the form. I asked you why you objected to S. 902, which designated that the work of this Assistant Attorney General should be a specific job. You objected to a bill which does not designate a specific job.

Attorney General BROWNELL. We think there is a very sound reason for that, which has been adopted by the Congress over the years. That is from time to time you eliminate getting into jurisdictional disputes between your Divisions that way. The Attorney General has full authority to allocate the work as he sees fit. That very often varies. Every once in a while I transfer the——

Senator O'MAHONEY. Are you objecting to the Attorney General being subject—why can't we use the discretion and say you shall have an Assistant Attorney General in charge of Civil Rights?

Attorney General BROWNELL. So often in these hearings we are talking about two different things. I was talking about the way Congress has acted in the past.

Senator O'MAHONEY. I am talking about the way the Attorney General has acted in the present.

Attorney General BROWNELL. Congress has the authority to pass it your way or the way it did in the past.

Senator O'MAHONEY. You eliminated these words——

Senator JOHNSTON. If you pass it like you have it, you also set this Commission up and also the Indians were given the right to contract freely like other persons in the United States. Under your bill they can do that presently.

Senator O'MAHONEY. I was asking the Attorney General——

Senator JOHNSTON. I would like to get an answer to that question.

Senator O'MAHONEY. Let me get the answer to my question first.

Mr. Attorney General, in your statement to us just a few minutes ago, you said that you believe the bill, S. 902, is more detailed than is necessary.

Now, why is it more detailed than is necessary?

Attorney General BROWNELL. Are you ready to discuss section 2? That is the one I meant.

Senator O'MAHONEY. I'll be ready to discuss section 2 in just a minute.

Senator HENNINGS. We can't discuss it until you come to it. It is in section 2 that I am addressing my remarks.

Senator O'MAHONEY. You then have no objection to section 1?

Attorney General BROWNELL. We prefer it without the description of the scope of the Division.

Senator O'MAHONEY. You would prefer the bill not to be a directive to you and to have this Attorney General work on civil rights and civil rights alone. That is your objection?

Attorney General BROWNELL. We prefer to have it done so that the work in the whole Department, as it has been for 100 years or more, is divided as the Attorney General sees fit from time to time.

Senator O'MAHONEY. In 1956, of couse, we can't do all things that were done a hundred years ago. That should be obvious to everyone.

Section 2 of the bill, the one which you now say is more detailed than you think is necessary, has the provision—I am now referring to the second section of S. 902, which reads as follows:

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 provided by the Attorney General in the investigation of civil rights cases.

Now, you have already answered that question by saying that that is the section to which you objected when you said S. 902 went into more detail than is necessary. Do you object to the Assistant Attorney General having the assistance of the Federal Bureau of Investigation in investigating civil rights cases?

Attorney General BROWNELL. No.

My point is rather this, Senator, if I am permitted to put it on the record. The experience in the past has been that it is inadvisable to try to pin down by statute investigative jurisdiction of the FBI. That has always been left to the discretion of the head of the FBI. We felt it would be advisable to drop this entire section 2 out because plenty of authority exists under the present law.

Senator O'MAHONEY. Then why didn't you say that back in 1955, when this bill was introduced, instead of waiting until today to say in these few vague words you have used?

Attorney General BROWNELL. I came up here today in the frame of mind to be all the help I could be today, and if I have made errors in the past, I am sorry.

Senator HENNINGS. I think it only appropriate, Mr. Attorney General, and I really mean it when I say that we are not trying to put you through the mill up here on some of these things.

Indeed, you did come out with what you heralded as a new administration civil-rights program. At the time you did that, there were three bills that had been reported out—four bills, indeed—by the subcommittee of this standing committee of the Senate, the Subcommittee on Constitutional Rights.

I don't think that you could or would want to say to me that I have not made consistent and protracted efforts to get your views on this legislation before this committee met.

Senator O'Mahoney will bear witness that I did that a number of times. We put some thought into these matters. Perhaps we are not as expert or have the great legal precision or the legal craftsmen or technicians that you may have at your command, but we on the subcommittee did the best we could on this legislation to bring that out. We did bring it out way back in February.

I wrote you this letter on April 9, following up some of the other letters of 1955. If you will indulge me, I would like to read that, as indicative of the fact that the Standing Subcommittee on Constitutional Rights of this Committee on the Judiciary was not sitting here doing nothing; that we were working on this legislation; that in the preceding Congress, there were only two meetings held on that sub-

committee when Senator Hendrickson was chairman of it, and that we immediately commenced to think about this and many other matters which I know are of sincere concern to you. I want to say, too, that I don't question your good faith. I think you believe in this sort of thing. I am satisfied you do.

Attorney General BROWNELL. Thank you, Senator.

Senator HENNINGS. But I do want to know and I think I am entitled to know why we were consistently by-passed, why our letters were ignored, why we were given no assistance or help from the Department which later unveiled with considerable publicity a new civil rights program.

Now, on April 9, I took the liberty of addressing this letter to you, and I hold a copy of it in my hand:

DEAR MR. ATTORNEY GENERAL: Before leaving for Missouri more than a week ago, I dictated a letter inviting you to appear tomorrow morning before the Senate Subcommittee on Constitutional Rights, to give your views on civil rights legislation. I find that through inadvertence, this letter was not dispatched in my absence. Notice, however, had gone to the other two Senators on the subcommittee that a meeting would be held tomorrow at 10:30 a. m. The subcommittee would appreciate very much your appearance before the House Judiciary Committee which I understand meets tomorrow morning at 12 noon.

Recent newspaper stories have indicated that you desire to present to Congress a three-point program on civil rights comprising proposals for a Civil Rights Commission with subpena powers, a Civil Rights Division within the Department of Justice, and a bill to protect every citizen's right to vote by providing for civil action in the Federal courts.

You are undoubtedly aware that the subcommittee reported favorably on February 9, 1956 on four civil rights bills (1) to establish a Civil Rights Division in the Department of Justice, (2) to protect the voting rights of all citizens in Federal elections and primaries, (3) an anti-lynching bill, and (4) a bill to protect members of the Armed Forces against bodily attack.

As you will recall, the subcommittee requested your views on two of these bills last year. These were S. 902, a bill to establish a Civil Rights Division in the Department of Justice; and S. 903, a bill to protect the rights of all citizens to political participation. You replied to our request for your views on S. 903 that since this bill concerned a matter of policy, you preferred to make no recommendation; and to our request for your views on S. 902, although this bill concerned the creation of a new division in your own department, you had made no response up to the time the subcommittee reported the bill on February 9.

In view of the recent statement of President Eisenhower and the newspaper reports that you will present the administration's civil-rights program to Congress, we would again like to give you the opportunity of presenting your views on this legislation. Even though these bills have been reported, we feel that your appearance and testimony would assure bipartisan support which is necessary to their enactment, and would at this time assist in their early consideration by the full Senate Judiciary Committee.

As you also undoubtedly know, there are presently pending before the committee other civil-rights legislation. The subcommittee would very much like to have your views and recommendations on this important legislation. These bills are:

S. 904, a bill to tighten criminal provisions relating to peonage and slavery.

S. 905, a bill to amend and supplement existing civil rights legislation.

S. 906, a bill to create a permanent Commission on Civil Rights to gather and disseminate information on developments affecting civil rights.

S. 907, an omnibus bill incorporating the principal provisions of S. 902, S. 903, S. 904, S. 905 and S. 906.

We are particularly interested in your recommendations concerning S. 906 to create a Civil Rights Commission since it has been mentioned in the press that this is a proposal that has administration backing. We are most desirous of having the administration's recommendations on this proposal, and feel that you as the proponent of the administration's three-point program, are in the best position to give us these views.

I would appreciate it if you would notify me whether you will be able to appear before our Subcommittee following your testimony before the House Judiciary Committee.

Sincerely yours,

THOMAS C. HENNINGS, Jr.,
United States Senator.

We have no record of any reply to that letter.

Now, all of this may seem, Mr. Chairman, collateral. All of it may in some respects be subsidiary to the principal issues in some of these bills. But some of us who have been engaged in the preparation of this legislation believe that we were entitled to the assistance of the Attorney General, just as the Attorney General comes before our committee with his nominations for the Federal judiciary, for additional district judges, for various other related matters where we seek and enlist your cooperation.

But on these measures, I think it fair to say, and I think you will agree with me, that we had no cooperation.

As to your additional legislation, we can go into a great deal of detail on that, but I will not at this time take the further time of the committee on the subject except for one matter.

I understand, Mr. Attorney General, from the statement that you read that you are opposed to any penal provisions relating to any acts which would intimidate, threaten, or force any other person for the purpose of interfering with the right of such other person to vote, or vote as he may choose, or causing him by contrariwise to vote for such other person or not to vote for any candiate in a Federal election.

Attorney General BROWNELL. We are not opposed to it, Senator. I tried to point out we—

Senator HENNINGS. I understand. You are opposed to it at this time.

Attorney General BROWNELL. We think that is a matter of congressional consideration. We would not recommend it affirmatively to you at this time. We prefer to stress the civil aspects. We would not oppose it, however, if you decide to pass it.

Senator HENNINGS. You would not recommend it, but you would not oppose it.

Attorney General BROWNELL. That is right. We think more stress should be laid now on the civil remedies.

Senator HENNINGS. I don't mean to paraphrase you. When you say any act which would intimidate, threaten, or force him—you think it might be more sufficiently compensatory to him to have a money judgment than to have those who deny him that right suffer some penal punishment?

Attorney General BROWNELL. That would not represent my views.

Senator HENNINGS. I don't mean to try to represent your views, but I didn't quite grasp your philosophy on that.

Attorney General BROWNELL. We think when we see an action of this kind impending, or a course of action over a period of time, it would be much better to try to go in and get injunctive relief, to try to prevent it from happening again than to try to get penal punishment for the offender.

Senator HENNINGS. You know a group of men who are bound or determined to keep one or several persons away from the polls on a given day, and you would get an injunction against——

Attorney General BROWNELL. It very often happens that there is a good chance to do that, because when they come to register, the denial of their right to register is shown to be on the basis of color or race, and if that is so, we can move in then.

Senator HENNINGS. Your belief is that injunctive relief would be more effective than the possibility of a penal clause punishing them for such efforts?

Attorney General BROWNELL. There are, of course, some penal sections in the statutes now which could be used.

I would use the same analogy that we have in the antitrust laws. There we have both the civil and criminal remedies for what we call the per se violations, the persistent or willful violations well recognized. In some instances, we use the criminal process. In others, we use the civil process.

Senator HENNINGS. I am going to conclude now.

I am sure we are all very glad that you are evidencing this interest in this very important field. I wonder if you could tell me, Mr. Attorney General, why you did not see fit to reply to these numerous requests for advice and counsel; why you didn't answer?

Attorney General BROWNELL. In order to make an answer on that, I would have to consult with my staff, because I know there was a great deal of telephoning and correspondence on it. Very often in a situation of that kind we will talk to members of the staff or the chairman of the committee. I would have to check with my own staff on that.

Senator HENNINGS. Some of these letters were written by me, and some of those wherein I listed the numbers of the bills to which you gave no answer or no guidance. I know for a fact that you and I didn't talk about those things, nor was I called by telephone to discuss it.

Attorney General BROWNELL. That is my recollection also.

Senator HENNINGS. Then you don't remember exactly why these letters were not answered?

Attorney General BROWNELL. No; I don't, Senator.

Senator JOHNSTON. You prepared this to handle it like you do in the Antitrust Division?

Attorney General BROWNELL. I was using that as an analogy.

Senator JOHNSTON. Now, have you sent anybody to jail under the antitrust laws?

Attorney General BROWNELL. Yes, sir.

Senator JOHNSTON. When?

Attorney General BROWNELL. I think the first time in a good many years, but we have had at least two cases since I have been there.

Senator JOHNSTON. Only two cases in which you have given a criminal sentence since you have been Attorney General. So that is the way you want to handle this?

Attorney General BROWNELL. That would be rather misleading to leave the record that way, because there have been dozens and dozens of criminal penalties in the form of fines, and jail sentences which were suspended, but there we take exactly the general attitude that we do here, that it is better to use the civil process wherever we can accomplish the goal.

Now, in some exaggerated and willful cases, the only way you can punish is by the criminal law.

Certainly in this very delicate field of civil rights, I believe you all must agree that it would be wise to the extent possible to use civil process and try to avoid charges in the criminal courts between the State, Federal, and local authorities.

Senator JOHNSTON. Are there any other questions?

Senator DIRKSEN. No; but I would like to make a little comment. And I make this with the utmost respect for my colleague, because I have served with him on the Civil Rights Committee of the 83d Congress, and I know how diligent he was in seeking to achieve some action.

But I point out that in the 82d Congress there were quite a number of civil rights bills introduced, all of which got to the subcommittee stage, and no further.

And then I point out that in the 83d Congress there were some bills introduced, I introduced a bill on the civil rights and FEPC. It was a rather all-inclusive bill. My good friend from Missouri will remember that we had a few hearings on that, and we did report it out of the subcommittee, but it never got out of the full committee.

Senator Ferguson introduced a bill on antilynching, I don't know whether it got out or not.

Senator HENNINGS. We have one that is out at the present time.

Senator DIRKSEN. I am speaking about prior.

And there was a bill to set up a Civil Rights Division, introduced in 1954, and it was pending at the time, and no further action was taken.

Now, certainly since I can remember—I think Senator O'Mahoney will remember and Senator Hennings will remember that on five occasions we passed an antipoll tax bill in the House, and it got over to the Senate side, and no action was taken.

In the last 12 years we have had 6 bills dealing with fair employment practices, and evidently no action was taken on this side—some action was taken on the House side, as I recall it.

And then we have had bills in the last 8 years in every Congress that create some type of commission to deal with the problem.

I allude to it, Mr. Chairman, only for this reason, without for the moment commenting on the omission of any public servant with respect to correspondence between the executive branch and the legislative branch. But I sincerely hope that now there is an opportunity to get some action, now that the time and circumstances and interest and everything are somehow combined to set the stage for action, I sincerely hope that we can go ahead.

I am not insensible to the fact that probably on occasions I may have been fallible enough to think in terms of political credit. It could be that others have thought in terms of a little political credit. But whatever our derelictions and sins of omission and commission were in other days, I hope now that we have come to this point where the issues have been pretty well dramatized not only by the Congress but by the Attorney General and by the Supreme Court, I hope that we can now address ourselves to the substance of the thing that is before us, and go through regardless of the consequences.

Senator O'MAHONEY. With neither political credit nor discredit.

Senator DIRKSEN. I am just a frail human casting ember, I admit to my own sins, and I feel—I am still anxious, of course, to get some action. And now that we have ventilated the record I trust that we can put all that to one side and devote ourselves to what is before the committee.

Senator HENNINGS. In reply to the distinguished Senator from Illinois, having served on this committee I know that we have sought at all times to get guidance. I believe it was 2 weeks ago that the Senator from Illinois introduced the administration bill, or the Attorney General's measure, into the Senate.

Senator DIRKSEN. And if my good friend will permit a comment, we went back to look at the record the other day, and I introduced an anti-poll-tax bill in January of 1945 in the House, also an antilynching bill, and an FEPC bill. I have continued from that day to this.

So I think the record will add up to a claim that I have had a sustained interest in it.

Senator HENNINGS. I believe that you and I introduced our first antilynching bills when we were together back in 1935 in the House of Representatives, and every year after that.

Senator DIRKSEN. It could well be.

Senator HENNINGS. And other legislation.

Senator DIRKSEN. Yes.

Senator O'MAHONEY. Mr. Chairman, I would like to make just a little historical addition to what the Senator from Illinois has said.

Before my leave of absence in 1952, I was a member of the Judiciary Committee, and I remember very well that Senator Borah of Idaho was also a member of that committee. Senator Borah I believe thought that the anti-poll-tax bill and antilynching bills were unconstitutional, because they were an invasion of the rights of the States, and that the only sensible way to proceed under such laws, to gain such objectives by law, would be to amend the Constitution.

Following his suggestion, I introduced a constitutional amendment—I drafted it myself, believe it or not—and introduced it to amend the Constitution so as to make the levying of the poll tax illegal.

Well, it rested in the cubby holes of the committee. And then when the 80th Congress came along I was startled and surprised when the late Senator Murray introduced my amendment in his own name. And it lay in the cubby holes all the time in the 80th Congress, too.

So we can forget the political credit and discredit and go to work.

Senator JOHNSTON. While everybody is getting on the record in regard to it I had better get on the record, too. If you will search the records of the House you will see where I was taking the opposite view, and I would get everybody I could to really stand up for State rights at the time.

Senator MCCLELLAN. Mr. Chairman, I am sure that no one was ever suspicious that this issue was tainted in the least degree with politics.

Senator JOHNSTON. Not a bit.

Senator MCCLELLAN. We have wasted a lot of time, but I would like now to suggest that our distinguished friend talk a little bit about something substantial.

Senator DIRKSEN. Would you permit the intrusion of one more historical postscript?

Senator MCCLELLAN. Yes.

Senator DIRKSEN. It comes about—it is not of the caliber of the distinguished Attorney General and my friend from Missouri—but I think you will bear me out that while we were sensible of the fact that constitutional issues were involved here, and that people did not

always agree as to whether it could be controlled by statute or whether constitutional amendments were required, the bills upon which action was taken in the House so often came over to this very deliberative body, and I have a recollection that we felt terribly ignored over on the other side that we could not even get an expression from the Senate as to whether they were opposed or indifferent on constitutional grounds.

So this issue simmered. Those bills found a nice, comfortable dark pigeonhole, and they seemed to stay there. So there has been a sort of an impasse as to this issue for a long time.

So now, as I say, we have washed out all the petty little things in the spirit. I think we are now prepared to go ahead and devote ourselves to it.

Senator O'MAHONEY. There were hearings held on the constitutional amendment and on the anti-poll-tax bill, and I presided over them. The hearings were printed, and the whole record was free, even to the Members of the House, who abandoned the House——

Senator HENNINGS. If they would pay for it.

Senator O'MAHONEY. And came to the Senate by preference.

Senator JOHNSTON. I think we had better get back to the bill under discussion.

Senator O'MAHONEY. I have an appointment at 4 o'clock that I can't miss with some members of the Senate who do not happen to be members of this committee.

Will you excuse me, please?

Senator JOHNSTON. Are there any further questions of the Attorney General?

Senator MCCLELLAN. I would like to ask some questions.

Mr. Attorney General, what is embraced in the term "civil rights" as it is used to create this division?

Attorney General BROWNELL. Well, under that proposal it would be left to the discretion of the Attorney General to decide what exactly would be in that division, what classes of statutes would come under that division.

Senator MCCLELLAN. Where the law just says in general terms "civil rights," do you think that would leave it entirely to the discretion of the Attorney General as to what class of cases or work he assigned to that division?

Attorney General BROWNELL. Maybe I can clarify it a little bit better this way.

The jurisdiction of the Department of Justice is governed by the Constitution and the acts of Congress. But I was speaking of limiting ourselves to those matters within the proper Federal jurisdiction, and then the division of the work between the other office of the Department and the new assistant Attorney General's Office would be discretionary with the Attorney General.

Senator MCCLELLAN. What offenses would you regard as a violation of civil rights? Would cases of murder be a proper function of that division?

Attorney General BROWNELL. No, that would not be within the Federal jurisdiction. I think there are some bills before the Congress—I am not sure whether they are before this committee or not, but I know they are over in the House—which would, in my opinion, go so far as to bring murder cases into the Federal jurisdiction.

As I stated before the House committee, we would be opposed to that.

Senator McCLELLAN. What about extortion? Using the mails to defraud, would that come within the civil rights?

Attorney General BROWNELL. There are a number of those statutes on the books now.

Senator McCLELLAN. Would you recognize the right to possess and enjoy property—would all those cases come within the jurisdiction of the Civil Rights Division?

Attorney General BROWNELL. Well, now, for example, the so-called labor extortion cases, I was speaking offhand, I would think more properly belong in the Criminal Division than they would in the new Civil Rights Division.

Senator McCLELLAN. Would they be violative of civil rights, the offense?

Attorney General BROWNELL. Well, you are undoubtedly dramatizing that the term has never been given a specific definition. That is one reason.

Senator McCLELLAN. I think when we are going into a field like that we ought to have some idea how it is going to operate.

Attorney General BROWNELL. Well, I could give you this assurance——

Senator McCLELLAN. Would kidnaping violate civil rights?

Attorney General BROWNELL. Yes, I think so.

Senator McCLELLAN. Would that come within the jurisdiction of this Division?

Attorney General BROWNELL. Yes, the ones within the Federal jurisdiction.

Senator McCLELLAN. How are we going to know if we don't spell it out? Are you going to leave it to each Attorney General to decide which responsibility he will place in this Division?

Attorney General BROWNELL. No, the limits on his authority are very explicit. They are the Constitution of the United States and the statutes, and he has no authority whatsoever to bring into Federal jurisdiction anything that isn't placed there by the Constitution and the Congress.

Senator McCLELLAN. I am talking about the things you have jurisdiction over, not extraneous ones.

Attorney General BROWNELL. Let me give you this example. At the present time the Fair Labor Standards Act violations are in the Civil Rights Section of the Criminal Division, and have been for years. That might not seem like a very logical division of authority between the divisions, but it has been going on for a long time, and it has worked pretty well.

So there is a little discretion there to decide which division can handle it.

Senator McCLELLAN. I would like to know, and I think the Senate and the Members of Congress would like to know what particular function this Civil Rights Division is going to perform, what is going to be assigned to it, what is going to be its responsibility, what crimes, what offenses—not just passing it blindly, just given the name "Civil Rights Division," without any interpretation of what "civil rights" means with respect to this particular statute.

Attorney General BROWNELL. I can give a pretty good description of that right now, I think, if you would like to have it.

Senator McCLELLAN. Let's have your idea.

Attorney General BROWNELL. My idea would be to place in the new division, if it is created, the violations of sections 241 and 242 that I mentioned here today; also the violations of 1971 that I mentioned here today, of the Lindbergh kidnaping law, the Fair Labor Standards Act, the antipeonage law, the Ku Klux Klan law, Anti-Ku Klux Klan law, and any new—if any of our recommendations before the committee today are adopted they would also go into that section.

Senator McCLELLAN. What about the use of the mails to defraud, or extortion?

Attorney General BROWNELL. I am inclined to think that would stay in one of the other divisions.

Senator McCLELLAN. Don't you think that violates civil rights?

Attorney General BROWNELL. In a broad sense it does.

Senator McCLELLAN. It does in a financial sense, doesn't it?

Attorney General BROWNELL. Yes. I would say those financial frauds would probably stay where they are and not go into this.

Senator McCLELLAN. I would like to request, Mr. Chairman, that you submit to the committee a statement as to what functions, what offense, and so forth, this particular Division would supervise and have jurisdiction over.

(This information was subsequently received by letter dated June 4, 1956, and is as follows:)

JUNE 4, 1956.

Hon. JAMES O. EASTLAND,
Chairman, Senate Committee on the Judiciary,
Washington 25, D. C.

DEAR SENATOR: During the hearing of May 16, 1956, conducted by your committee on proposed civil rights legislation, Senator McClellan requested the Attorney General to furnish a list of the statutes that would be assigned to the Civil Rights Division which would be created if the proposed legislation were enacted.

The Civil Rights Section is now responsible for the enforcement of the following statutes:

The civil rights conspiracy statute (18 U. S. C. 241)
The substantive (color of law) civil rights statute (18 U. S. C. 242)
Election crimes, Hatch Act, and corrupt practices law (18 U. S. C. 591–612. 2 U. S. C. 241–248, 252–256)
Involuntary servitude, peonage, and slavery statutes (18 U. S. C. 1581–1588)
Sale of Government positions and public office laws (18 U. S. C. 214, 215)
Fair Labor Standards Act (criminal provisions only) (29 U. S. C. 201–219)
Transportation of strike breakers statute (18 U. S. C. 1231)
Railway Labor Act (criminal provisions only) (45 U. S. C. 152)
Safety Appliance Act (45 U. S. C. 1–16)
Hours of service law (45 U. S. C. 61–66)
Air carriers law (45 U. S. C. 181, 182)
Accident reports law, railways (45 U. S. C. 38, 39)
Signal Inspection Act (49 U. S. C. 26)
Eight-hour law on public works (40 U. S. C. 321–326)
Kickbacks from Public Works Employees Act (18 U. S. C. 874)
Shanghaing sailors statute (18 U. S. C. 2194)
Merchant seamen laws (18 U. S. C. 2191–2193, 2195, 2196; 46 U. S. C. 542a, 545–546, 567, 568, 570, 571, 575, 643, 652, 653, 658, 660, 662, 667, 672, 701)
Soldiers' and Sailors' Civil Relief Act of 1940 (50 U. S. C. (App.) 520, 530)

In addition to these statutes, there would probably be assigned to the Civil Rights Division the following:

Protection of voting rights (42 U. S. C. 1971 as it would be amended by the legislative proposals). (See e. g., S. 3718.)
Conspiracy to interfere with civil rights (42 U. S. C. 1985 as it would be amended by legislative proposals). (See e. g., S. 3717.)

The antikidnaping statutes (Lindbergh law) (18 U. S. C. 1201, 1202)
The Mann Act (white slave traffic) (18 U. S. C. 2421–2424)

The Civil Rights Division probably would also be responsible for the formulation of legal and policy approaches involving constitutional and civil rights within the Department of Justice, and would serve as liaison between the Department and other Government departments, agencies and commissions in such matters. For example. the new Division might assist the President's Committee on Government Contracts in its program to diminish discriminatory practices in its field; advise the the State Department in connection with human rights problems involving the United Nations; or assist other government establishments in maintaining equality of opportunity in employment in their staffs. The Civil Rights Division would also be responsible for keeping the Attorney General informed of developments in constitutional law affecting the basic rights of the people, and it would participate in cases before the courts involving important civil rights issues.

After further consideration of the problem and experience in the operation of the Civil Rights Division, additional statutes and functions, might be transferred to the Division and reassignments might well be made. The foregoing tentative list of statutes and outline of functions, however, should indicate the scope and nature of the proposed Division's authority and duties.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

Attorney General BROWNELL. I think that is a very constructive suggestion, Mr. Chairman. I will be very glad to comply with it.

Senator JOHNSTON. We will be glad to have it.

Senator MCCLELLAN. That is all I wanted to know, Mr. Chairman.

Senator JOHNSTON. Any other questions?

Senator HENNINGS. One more question.

Mr. Attorney General, I read to you a list of a number of those civil rights so-called bills that are now pending before the subcommittee. We would appreciate it very much if your Department would undertake to give us an opinion on all of them, where it is a policy to give an opinion, or where you feel that you can.

Attorney General BROWNELL. I think I covered quite a few of them in my statement today, but I will check over them.

Senator HENNINGS. I am sure you did. There were a number of others, however, and I don't think any of us are so wise as to think that certain points reported out might be and should be reported out, or might very well be reported.

Thank you very much.

Senator JOHNSTON. Did you have a question?

Mr. YOUNG. Yes, sir, 1 or 2.

On page 8 of the statement you picked a Mississippi illustration. One of the questions asked in those cases before they could vote was a question such as, "How many bubbles in a bar of soap?" Do you have that affidavit that was submitted on that?

Attorney General BROWNELL. We have that in the files of the Department.

Mr. YOUNG. Would you submit that to the committee?

Attorney General Brownell. I would be very glad to.

(The affidavit is as follows:)

STATE OF MISSISSIPPI,
County of Forrest:

Before me the undersigned authority personally came and appeared and after being, by me, first duly sworn deposes and says:

1. My name is ——— ———, Negro female of majority age, and I reside at ——— ———, Hattiesburg, Forrest County, Miss.

2. That on Friday, April 11, 1952, I, along with other Negro citizens, all of whom are residents of Forrest County, Miss., applied to the office of the Registrar of Voters, to be registered to vote for the President of the United States, Congressmen, and other State, county, and city offices.

3. Over a period of years, I, along with other Negroes, who possesses all the qualifications as prescribed by the Constitution of the State of Mississippi, have tried to register from time to time and have been asked such questions as:

A. How many bubbles in a bar of soap?

B. What is the due process of law?

All of which is not required by the laws of the State of Mississippi.

4. That on all occasion the registrars submitted Negroes to tests not required of whites during the same period and not provided for in the Constitution of the State of Mississippi.

5. That on Friday, April 11, 1952, around 10:00 a. m. when I, along with other duly qualified Negroes applied for registration, were told by two white ladies, who are employees of the Registrar of Voters and reported to be Deputy Registrars, that they could not register us but we would have to come back when Mr. Cox, the Registrar and County Clerk was there.

6. The young white ladies, on other occasions, have been observed registering persons of the white race but never registering persons of the Negro Race.

7. I possess all the qualifications to register required by law and the only reason for denying me is because of my race and color.

8. That the action of the registrar and his deputies is in violation of the Constitution of the State of Mississippi and the Fourteenth and Fifteenth Amendments of the United States Constitution.

9. That I am not by name nor have I been a party by name to any suit against the Registrar of Voters of Forrest County, Miss.

Mr. YOUNG. I direct your attention from there to section 1971 of title 42 of the United States Code, one of the titles that you suggest we amend here. And according to my reading of that code, such a question would be in violation of the law. Was any attempt made by the Department of Justice to prosecute in that case?

Attorney General BROWNELL. That was before we came down here. Maybe Mr. Caldwell would know.

Yes, that was presented to the grand jury.

Mr. YOUNG. Was there an indictment?

Attorney General BROWNELL. No, the grand jury refused to indict. That is the trouble we get into in many of these criminal cases.

Mr. YOUNG. Would you have had better success with the injunctive process in that case?

Attorney General BROWNELL. Yes.

Mr. YOUNG. I direct your attention to 3 other statutes on the books, the conflict of interest statute, 1 of them applies to the prosecution of claims against the Government; and the third one has a 2-year prohibition on making claims against the Government after leaving the Government employment. In this Commission would these statutes cause you any trouble in selecting the members of your Commission or your staff?

Attorney General BROWNELL. As I remember, the bill provides for an exemption there. What is the number of that bill? I have got it right here. It is S. 3605, the one that I am speaking of.

Mr. YOUNG. Perhaps I didn't see it in this bill.

Attorney General BROWNELL. I don't see it either. We would have no objection to putting that in there.

Mr. YOUNG. Would you be in favor of labeling those statutes for the purpose of the personnel of this Commission?

Attorney General BROWNELL. I think it might be helpful in getting the right personnel. You have got a point there.

Mr. YOUNG. In your amending of the voting statutes in general, we have certain objections to this type of program which you presented, that it is tainted with unconstitutionality. We have other objections which do not bear that taint; we have serious objections from large groups of people in sections of the country on the basis of the invasion of the police powers of the State, an invasion of States rights. These groups object to the civil remedies as much as they do the criminal, and I believe more.

The anticipatory remedies put the Federal Government in the county at the slightest provocation, and at all places and at all times. Do you have any material there, or would you like to make any statement or comment on those objections—not the constitutional ones, they are in a different category?

Attorney General BROWNELL. Well, the other category, then, would be an objection to the bill on the ground that it brought the Federal Government more actively into the civil-rights area.

Mr. YOUNG. And more actively into the localities?

Attorney General BROWNELL. More actively into the localities.

Mr. YOUNG. You see, under the wording of your bills here, you can go into a locality on just a guess and a hope that something is being done to impinge upon the civil rights that might be on the statute if it is interpreted correctly by the person who files an affidavit. That would put the Federal Government at any time in any county.

Attorney Geenral BROWNELL. Of course, the private persons can do that now. We are asking for the right of the Department of Justice to go in. We believe that cases would arise, and to that extent it would be a different remedy.

Of course, we can go into those courts now if a crime has been committed. We cannot go in now for the injunction. So the injunction proceedings would be new.

Mr. YOUNG. Now, the Attorney General is an appointive office; isn't it, sir?

Attorney Geenral BROWNELL. Yes.

Mr. YOUNG. And as an appointive officer appointed by the President of the United States, and controled as an appointive officer, political considerations have a great deal to do with which way the Department of Justice moves in certain types of cases and certain fields; is that correct?

Attorney General BROWNELL. I think that my record over the past 3 years would have to speak for itself on that.

Mr. YOUNG. Nothing personal. This committee on previous occasions has had a great deal of trouble in securing from the Attorney General information on abuses in the voting field, and information has been withheld from this committee on a number of occasions. Now, the Attorney General is asking for power to go into the field of protecting of voters' rights. The people who fear the loss of police power, the invasion of police power in the States, are thinking about the political influences that are necessarily in the Department of Justice.

Attorney General BROWNELL. Well, as to the withholding of information, I would say this, there is a time-honored rule over there that when we have an active investigation proceeding, whether it is civil or criminal, that it is unwise, and most people, I think, would agree on that, to disclose what is in the files.

In the first place, the investigation may prove that there is nothing to it, and we would be smearing somebody's name and reputation.

In the second place, if this is substantiated and it is going to end up in a grand jury or lawsuit, we wouldn't want to give up our evidence ahead of that. Except for that, the closed cases, the files are public property.

As far as the political motivations are concerned, I can only speak from my own experience, I have found the lawyers in the Department of Justice are competent, thoroughly professional officers in court. I trust them, and I believe this committee can trust them to do an impartial, workmanlike job.

Mr. YOUNG. That is all.

Senator JOHNSTON. Any other questions?

We certainly thank you.

The committee will stand recessed. It will not come back today, because we have some votes in the next few minutes. We have just about run out of time. And that being so, the committee will stand adjourned until further call of the Chair.

(Whereupon, at 4:25 p. m., the committee adjourned subject to the call of the Chair.)

CIVIL RIGHTS PROPOSALS

FRIDAY, MAY 25, 1956

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

The committee met, at 2:35 p. m., pursuant to notice, in room 424, Senate Office Building, Hon. Thomas C. Hennings, Jr., presiding.

Present: Senators Hennings (presiding), Jenner, and Dirksen.

Also present: Robert B. Young, professional staff member, and Richard F. Wambach, assistant to counsel.

Senator HENNINGS. The committee will please come to order.

I must apologize to the witnesses who have been kept waiting. I was erroneously advised that the meeting this afternoon would start at half past 2. And I went to the floor of the Senate and had just returned from there, when I was advised, Senator Dirksen, that you had called, and Mr. Young had called.

I am very sorry about any delay or inconvenience I may have caused any of you.

This afternoon we have as our first witness Mr. Roy Wilkins, who is the executive secretary of the National Association for the Advancement of Colored People.

Would you like to come forward, please, Mr. Wilkins? Sit where it is most convenient. Perhaps right here. Would you suggest, Senator Dirksen, Mr. Wilkins might sit there?

Senator DIRKSEN. Yes, indeed.

Mr. WILKINS. Thank, you, Senator.

Senator HENNINGS. You may proceed, Mr. Wilkins.

We are very glad to have you here this afternoon to add to our information, I am sure, and our enlightenment upon the subject under consideration. And you may, if you will, proceed in any manner you please.

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

Mr. WILKINS. Thank you, Mr. Chairman.

My name is Roy Wilkins and I am executive secretary of the National Association for the Advancement of Colored People. Joining our association in this statement are the organizations listed on the attached sheet which, through authorized spokesmen, have consented to the use of their names as endorsers of this testimony.

And, with your permission, I would like to call the names of them and I think some of the representatives are here, and may identify themselves.

The American Council on Human Rights.

The American Jewish Congress.
The American Veterans Committee, Mr. Andrew Rice.
The Americans for Democratic Action, Mr. John Gunther.
The Brotherhood of Sleeping Car Porters, which was not able to have a representative here.
The Catholic Interracial Council.
The National Union of Electrical, Radio and Machine Workers, AFL-CIO.
Mr. Peterson or Mr. Hartland.
The Jewish Labor Committee.
The National Alliance of Postal Employees, Mr. James Cobb.
The National Association for the Advancement of Colored People, of course, I am representing.
The National Council of Negro Women.
The United Automobile Workers of America, AFL–CIO, Mr. Paul Sifton.
The United Steel Workers of America.
The Workers Defense League.
And the Women's International League for Peace and Freedom.

Senator HENNINGS. I am sure that we are very glad, and that Senator Dirksen joins me in welcoming all of you representatives of these groups to these hearings. And with that, you may proceed, if you please, Mr. Wilkins.

Mr. WILKINS. Mr. Chairman, all of these groups through authorized spokesmen have consented to my speaking in their behalf, in this testimony.

Because of the short notice a number of other national organizations could not be reached for definite authorization, although in the past these have also supported the legislation under consideration, as reference to past committee hearings will reveal.

The Constitution of the United States guarantees full equality of rights and opportunities to Americans of every race, color, religion and national origin. Legislation to secure for every American his constitutional rights has been repeatedly presented for enactment by the Congress, thus far, unfortunately, without result. Chief among these proposals have been measures to:

1. Wipe out interference with the right to register or vote in primary or general Federal elections, and to abolish the poll tax.
2. Create a Civil Rights Division within the Department of Justice, headed by an Assistant Attorney General, with authority to protect civil rights in all sections of the country.
3. Establish a permanent Federal Commission on Civil Rights to make continuous appraisals and to recommend action with respect to civil-rights problems.
4. Set up an effective Federal FEPC to prevent discrimination in employment.
5. Make lynching and other assaults by public officials or private citizens, acting either in concert or individually, on persons or property because of race, color, religion or national origin, a Federal crime.

6. Eliminate remaining segregation and other forms of discrimination in interstate travel.

The organizations subscribing to this statement endorse all these measures and have repeatedly called for their enactment into law. But what has happened to these proposals in the successive Congresses in which they have been introduced?

With respect to the right to vote, legislation to outlaw the poll tax has passed the House five times, but has never come to a vote in the Senate.

In four instances since 1942 the filibuster kept poll tax bills off the Senate floor. In more recent years the mere threat of a filibuster has prevented action on this measure.

With respect to civil-rights enforcement, responsibility for the enforcement of existing civil-rights laws is vested in a nonstatutory Civil Rights Section of the Criminal Division of the Department of Justice. It has been proved to lack the resources or the authority necessary to cope with increasingly flagrant civil-rights violations.

Legislation to establish a Civil Rights Division in the Department of Justice, with sufficient authority and appropriations to prevent civil-rights violations has been before the Congress continually since 1948. No such legislation has ever been brought to the floor of either House for debate and vote.

As for a Federal Civil Rights Commission, in a democratic society, the systematic, critical review of social needs and public policy is a fundamental necessity. This is especially true of a field like civil rights, where the problems are enduring and range widely.

Yet, nowhere in the Federal Government is there an agency charged with the continuous appraisal of the status of civil rights and the efficiency of the machinery with which we hope to improve that status.

Bills to establish such a Commission have been pending in the Congress since 1948. No such bill has ever been brought to the floor of either House for debate and vote.

FEPC bills have been before every session of Congress since 1944. Committees have reported FEPC bills favorably in the past six Congresses.

Yet, no FEPC bill has ever been allowed to come to the floor of the Senate for debate and vote. In 1946, the vote to break the filibuster and take up an FEPC bill was 48 to 36; in 1950, the votes were 52 to 32 and 55 to 33, all for taking up FEPC.

Yet the filibusterers blocked the majority will because rule 22 required a two-thirds vote to break a filibuster.

Security of the person: Legislation to make lynching a Federal crime was killed by filibuster in 1922. 1922, I repeat. This matter has been before Congress continually since that time but has not been brought to a vote in the Senate.

On interstate travel, the Supreme Court has ruled that segregation in interstate transportation is a denial of constitutional rights. However, there is no adequate machinery to protect these rights, with the result that segregation and other discriminatory practices persist.

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Legislation to provide specific penalties for those who impose segregation in interstate transportation has been before the Congress, Mr. Chairman, continually since 1948. None of this legislation has ever been brought to the floor of either House for debate and vote.

During this same period significant advances have been made in safeguarding the civil rights of American citizens through the courts, through the acts of State legislatures and municipal bodies, through administrative and executive actions and through the efforts of voluntary organizations. Only the Congress has stood still. No Federal civil rights legislation has been enacted by the Congress for 80 years.

In recent years there have been frequent declarations that the judicial and executive branches of the Government were acting on civil rights in areas and in ways which are alleged to be more properly the responsibility of the Congress. But those who so contend are the very ones who have consistently denied the Congress an opportunity to express its will on civil rights.

Let them now permit the Congress to record its view. Let them allow the democratic process to work. Let them now at long last, after reasonable debate, permit civil rights legislation to be brought to a vote.

Mr. Chairman, while the organizations submitting this statement endorse all the measures referred to above and believe that their enactment is long overdue, developments during the past year have especially highlighted the need for legislation to guarantee security of the person, to protect the right to vote and to provide the Justice Department with adequate enforcement powers.

Thus, while lynching has changed in character over the years, protection of the person is still a problem. Organized mob violence and terror of the Ku Klux Klan variety, often in collusion with local enforcement officials, are reappearing in new forms. The present-day lynchers arrange economic reprisals or bombings, as well as acts of personal violence, against individuals who do not conform to established community patterns.

The poll tax is still a substantial barrier to voting in 5 States. Where it does not suffice, discriminatory administration of voter qualification tests serves to bar many who should be allowed to vote. When these have failed, threats, intimidation and even murder have been used with great effectiveness.

Flagrantly and systematically, the right to vote has been denied colored citizens in many parts of the South.

I offer the committee a sample of the kind of ballot used in Alabama elections which have just been concluded. You will note that the ballot carries a rooster and the declaration of white supremacy. It is fantastic that in America at the polling booths there would be such open flaunting of theories of racial superiority.

Mr. Chairman, I pass this for your inspection, sir.

Senator HENNINGS. Mr. Wilkins, would you not like to have this made a part of the record of these hearings?

Mr. WILKINS. I would, sir.

Senator HENNINGS. Without objection, that will be so ordered.

(The document is as follows:)

SAMPLE BALLOT - - - SHOUP VOTING MACHINE

INSTRUCTIONS TO VOTERS

AFTER MARKING YOUR BALLOT

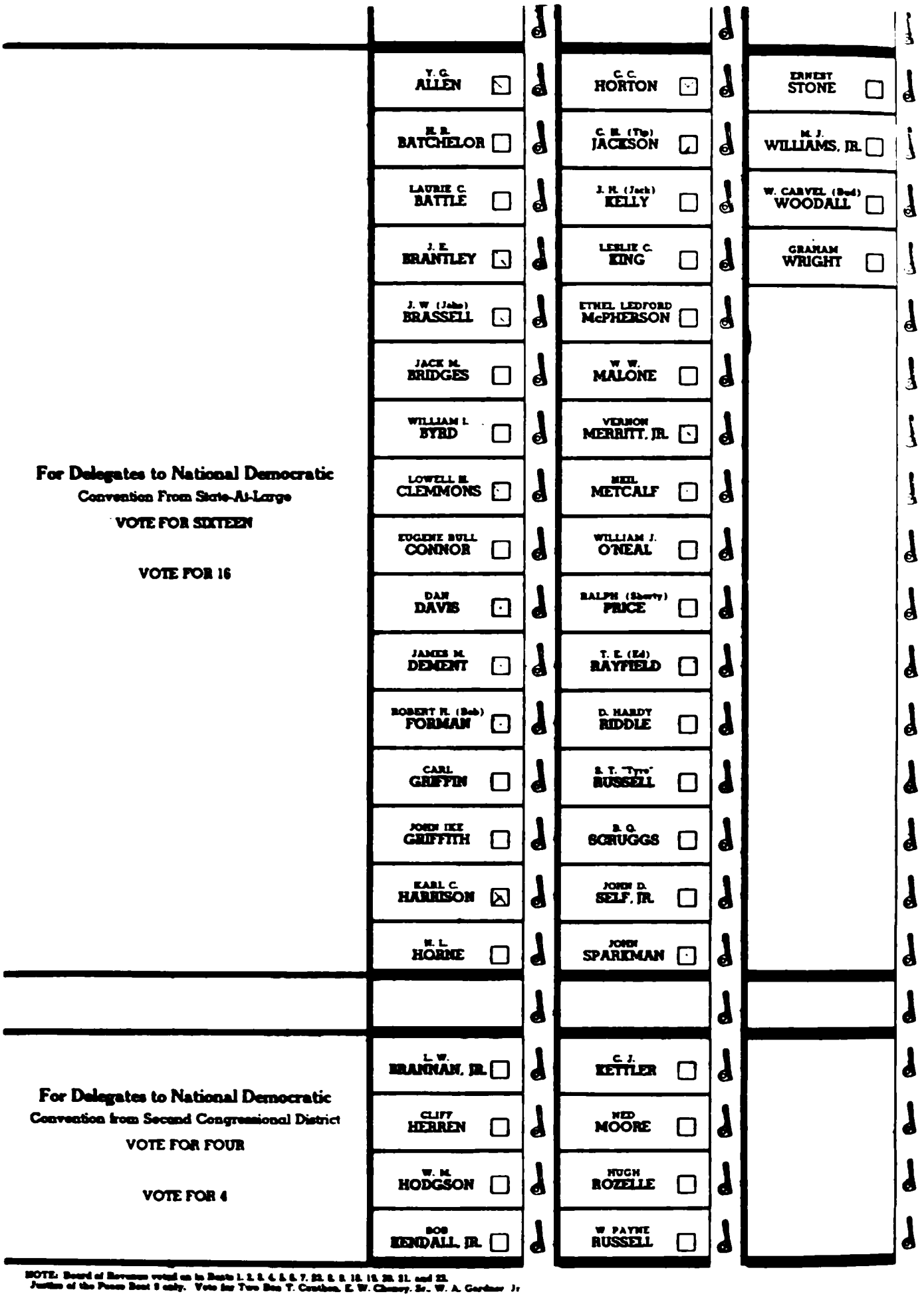
Leave Levers In Voting Position With Crosses Showing Like This 

The machine clears itself for next voter.

By casting this ballot I do pledge myself to abide by the result of this primary election and to aid and support all the nominees thereof in the ensuing general election.

Democratic Primary Election, May 1, 1956, Montgomery County

	OFFICIAL PRIMARY ELECTION BALLOT MAY 1 1956 DEMOCRATIC PARTY MONTGOMERY COUNTY Column 1	OFFICIAL PRIMARY ELECTION BALLOT MAY 1 1956 DEMOCRATIC PARTY MONTGOMERY COUNTY Column 2	OFFICIAL PRIMARY ELECTION BALLOT MAY 1 1956 DEMOCRATIC PARTY MONTGOMERY COUNTY Column 3
For United States Senator VOTE FOR ONE	JNO G CROMMELIN ☐	LISTER HILL ☐	
For Associate Justice Supreme Court Place No. 1 VOTE FOR ONE	ROY MAYHALL ☒	DAVIS Y STAKELY ☐	
For Associate Justice Supreme Court Place No. 2 VOTE FOR ONE	JAMES S COLEMAN JR. ☐	JAMES J MAYFIELD ☐	
For Judge of the Court of Appeals, Place No. 3 VOTE FOR ONE	ROWAN S BONE ☒	AUBREY M CATES, JR. ☐	WILLIAM CONWAY ☐
For President of Alabama Public Service Commission VOTE FOR ONE	JOHN E DRINKARD ☒	C [illegible] OWEN ☐	W F (Bull) TUCKER ☐
For Representative in the 85th Congress from the Second Congressional District VOTE FOR ONE	GEORGE GRANT ☒	WILBUR R NOLEN JR. ☐	
For Member County Board of Revenue, Northern District, Place No. 1 VOTE FOR ONE	L R "Daddy" GRIMES ☐	S T (Tyre) RUSSELL ☐	
	C' ENN HARRISON ☐	JOHN T WEAVER ☐	
For Member County Board of Revenue, Northern District, Place No. 2 VOTE FOR ONE	W TOM JONES ☐	GEORGE J RIVERS ☐	
For Member County Board of Revenue, Northern District, Place No. 3 VOTE FOR ONE	R THEON BRADLEY ☐	M BIBB FOLMAR ☐	GUY A SHANNON ☐
	A L (Ace) CARTER ☐	WOODROW W JAMES ☐	
For Member County Board of Education, Place No. 2 VOTE FOR ONE	HUGH M ASHURST ☐	T O (Tillie) WALKER ☐	
For Member County Board of Education, Place No. 3 VOTE FOR ONE	C WARD HALL ☐	JAMES Z PERRY ☐	
For Democratic National Committeeman VOTE FOR ONE	JAMES E FOLSOM ☐	ROY DAVIS McCORD ☐	C W (Charlie) McKAY, JR. ☐



Mr. WILKINS. In Alabama the opposition to voting by colored people is not merely symbolic. Macon County, for example, is the seat of Tuskegee Institute—a world famous institution of higher learning. In Macon County colored citizens have had a long hard struggle to obtain the right to vote. The latest effort to keep many of them from casting a ballot has been most effective. State officials have simply refused to appoint a full board of registrars. At least two

members are necessary for the board to function, and at present there is only one.

An interesting commentary on the Macon County, Ala., situation is that State Senator Sam Inglehart, who hails from that county, and who is a State senator, by reason of the fact that many thousands of colored citizens in his county cannot vote, Senator Inglehart is the State chairman of the White Citizens Council in Alabama, which organization is now busily engaged in trying to keep still more Negroes from voting, not only in Macon County but throughout Alabama.

Because there has been a steady increase in the number of qualified colored voters in Louisiana an organization known as the White Citizens Council has started a campaign to purge as many of these voters from the books as possible.

In Monroe, La., representatives of the councils have actually invaded the office of the registrar of voting for the purpose of purging colored voters. It is estimated that at least 500 colored voters have been taken from the rolls because of this activity. At one point the action of those who oppose voting by colored people became so flagrant that a former Governor of Louisiana, Mr. Knowles, went to the office of the registrar to challenge the proceeding. A near fist fight ensued.

It should be noted here that this is an illustration of one of the conditions that would be corrected by a section of the legislation before this committee. These citizens in Louisiana who were summarily purged from the polls a few days before election had no chance to get themselves back on the rolls.

There was no machinery, there was no law, and the Federal Government, the Department of Justice, had no law under which it could proceed. The result was that in 10 days or 2 weeks, after the summary action against them, an election was held and they were denied an opportunity to participate in it.

An Associated Press dispatch from Baton Rouge, La., dated May 14, 1956, reported that Governor Robert Kennon had announced the dismissal of a woman registrar of voters in Webster Parish after complaints from members of the White Citizens Councils that she had failed to enforce voter registration qualifications.

After criticism—

says the Associated Press dispatch—

Mrs. Clement (the registrar) applied the law uniformly to both races and disqualified 24 white persons.

For this, of course, she was dismissed.

She contended, "What's fair for one race is fair for the other."

It is an interesting commentary on this situation to interpolate, this woman who saw such fairness in administering the law without discrimination, has been restored to her post, a few days after a new State administration took office in Louisiana. Presumably the new administration regards the fair administration of the voter registration laws as not cause for dismissal from office.

Mississippi has run the entire scale from economic reprisal to outright violence in preventing colored people from voting.

The following is a quote from an issue of the State Times of Jackson, Miss., in March 1955:

An offshoot—

says the paper—

of a meeting of Mississippi circuit court clerks Tuesday was a suggestion that the clerks seek information of citizen's councils in their counties to halt an overload of Negro voting.

Earl W. Crenshaw, circuit court clerk of Montgomery County, said the councils are very effective. He spelled out their method of operations as follows—

And I quote again:

The council obtains names of Negroes registered from the circuit court clerk. If those who are working for someone sympathetic to the council's views are found objectionable, their employer tells them to take a vacation. Then if the names are purged from the registration books they are told that the vacation is over and they can return to work.

A dramatic illustration of how the program of fear works comes from Humphreys County area of Mississippi. Prior to May 1955, there were approximately 400 colored voters in this county. By May 7, 1955, the number of colored voters had been reduced to 92. On that day, the Rev. G. W. Lee, a leader in the register and vote effort among colored people, was fatally shot in Belzoni, Miss.

Today, Mr. Chairman, there is only one colored eligible to vote in Belzoni, Miss. He is Gus Courts, who once ran a grocery store in the community. On November 25, 1955, he was shot and seriously wounded while in his store, but has since recovered.

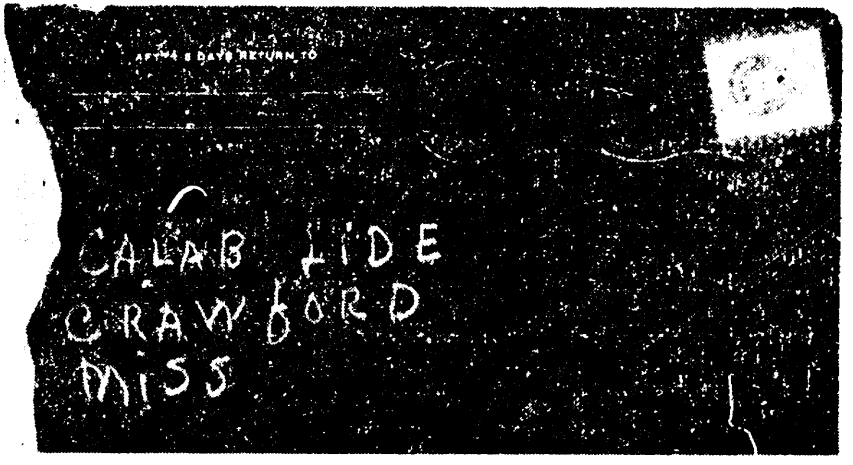
I offer the committee a photostat of an envelope and a threatening message mailed by persons unknown in Columbus, Miss., July 30, 1955, to Caleb Lide, one of the few registered Negro voters in Crawford, Miss. The message reads:

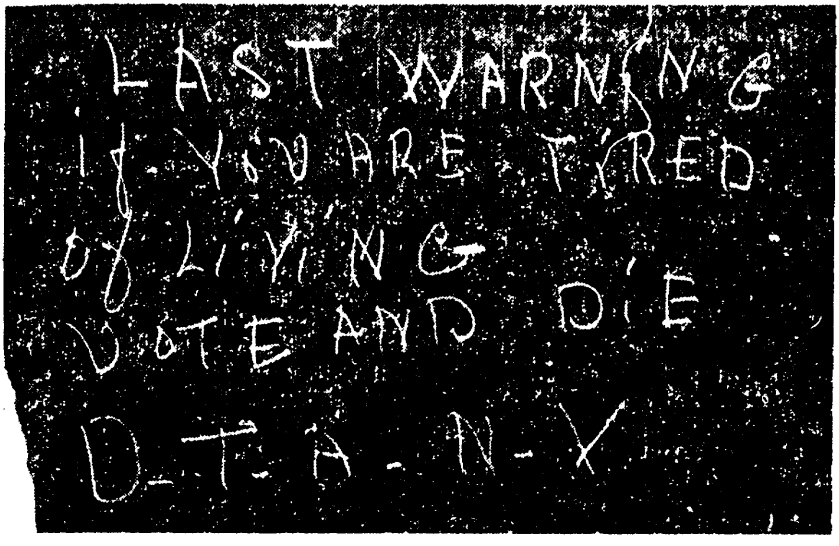
Last warning. If you are tired of living vote and die.

I submit the reproduction of the envelope and of the message, Mr. Chairman.

Senator HENNINGS. Without objection it will be admitted into the record and made a part thereof.

(The documents are as follows:)





Mr. WILKINS. The need for minimum safeguards to civil rights along these lines is reflected in the volumes of favorable testimony at congressional hearings, in the many favorable reports of committees of the House and Senate, in the platforms of both political parties, and in the sponsorship of such legislation by Republicans and Democrats alike.

The House Judiciary Committee, after reviewing all the bills now before this committee, has reported out H. R. 627, a measure which combines the proposals submitted by the administration with those previously introduced by the Democratic chairman of the committee.

As reported, H. R. 627 had the support of both Democrats and Republicans in the House committee. It would provide for (1) the establishment of a commission in the executive branch of the Government to hold hearings and make inquiries on problems of discrimination; (2) the establishment of a Civil Rights Division under an Assistant Attorney General in the Department of Justice; (3) the protection of the right to vote; and (4) the strengthening of existing civil-rights statutes.

H. R. 627 will meet in a small but substantial and worthwhile degree the most immediate needs of the American people in terms of justice for and protection of millions of American citizens who have been and are still today treated as second-class citizens.

The present session has less than 90 days to go. In the light of past history, protracted hearings at this time or the reporting out of a bill which will later require conference between House and Senate, must be interpreted as delaying tactics designed to prevent action in this session. A sincere desire to enact legislation calls for prompt reporting out of a Senate measure identical with H. R. 627.

What is involved here would add no new civil rights but calls merely for provisions to protect rights established 75 years ago.

Is this going too fast? Both parties have endorsed these principles.

Sincere nonpartisan effort can assure enough votes for passage in this session. Give the voters in 1956 a chance to judge by performance rather than words.

We urge your committee and both Houses of the Congress to put H. R. 627 and its Senate counterpart on President Eisenhower's desk before adjournment.

Thank You.

Senator HENNINGS. Thank you, Mr. Wilkins.

Senator Dirksen, have you any questions?

Senator DIRKSEN. No; I have no questions. I have just one observation. I am sure that the chairman was in the House when I was there. We were voting on antilynch bills and antipoll tax bills and sent them over a long time ago.

Senator HENNINGS. Twenty years ago.

Senator DIRKSEN. I think we have endeavored——

Senator HENNINGS. More or less.

Senator DIRKSEN. By action in order to get something accomplished in this field. I just wanted to make that statement.

Senator HENNINGS. I am sure that is true of my learned friend of Illinois. Some of us have been doing that.

Just a moment, Mr. Wilkins.

Mr. WILKINS, you will bear with me, I hope, if I undertake to have you give us your opinion upon some of these specific measures. I do not know to what extent you may have studied all of the legislation. I would not undertake to tax you with remembering all of it, nor even having studied all that may be before the committee on Constitution rights of which the chairman happens to be chairman of the subcommittee.

I was wondering whether you have any expression to give us today, Mr. Wilkins, on S. 900, styled "an antilynching bill introduced by Senator Humphrey and a number of others on February 1, 1955."

I read from my notes that our subcommittee reported this out in February of 1956. This related to certain rights of all persons within the United States, to protect them from lynching and provided by penal provisions punishment, of course, for this offense.

Mr. WILKINS. I think, Mr. Chairman, you know that our association endorsed that legislation——

Senator HENNINGS. Yes.

Mr. WILKINS. Heartily, and approved it at the time it was introduced. And I believe your subcommittee reported it out. We also communicated our feeling on that.

Senator HENNINGS. I just want to get this all on the record, if you will bear with some repetition.

I think you and I well understand each other's feelings on some of these matters, in some of our communications. In fact, when the Constitutional Rights Subcommittee began its hearings last September, you were invited as 1 of 8 or 10 distinguished Americans to make a statement upon that occasion in the old Supreme Court room.

Mr. WILKINS. I remember it very well.

Senator HENNINGS. And you made an excellent impressive statement at that time.

Now, coming down to S. 902, that is the legislation that provides for a Civil Rights Division in the Department of Justice.

In this instance a report from the Attorney General of the United States was requested after its introduction on February 1, 1955, a report was requested on March 22, 1955, and no reply was received from the Attorney General.

In synopsis, and my staff has undertaken to prepare the synopsis and I hope that I may be corrected if we have erred in any of the provisions of this summation.

It provides for an additional Assistant Attorney General creating a Civil Rights Division in the Department of Justice together with FBI personnel to be increased enough to adequately handle the civil-rights field, and be specially trained therein.

I believe Senator Dirksen, on April 11, 1956, introduced S. 3604, which was, I believe, consonant with the program the Attorney General had announced sometime in early April.

That legislation introduced by my respected colleague from Illinois provides for an additional Assistant Attorney General in the Department of Justice, but does not suggest that there be created a Civil Rights Division, nor does it make any provision for FBI personnel to be increased sufficiently to adequately handle the civil-rights field.

Will you comment upon that, or would you care to distinguish between these measures and give us the benefit of your views?

Mr. WILKINS. S. 3604, introduced by the Senator from Illinois, embodying Mr. Brownell's proposal and on which he testified last week, is one of those measures included in so-called omnibus bills, but which omitted a provision which had come out in your bill, S. 902, if I recall correctly.

Senator HENNINGS. Ours was the omnibus bill relating to S. 907, title 210. I do not mean to undertake to get you into a technical discussion of legislation.

Mr. WILKINS. I know you do not, but I wanted to——

Senator HENNINGS. I just thought we might get your counsel, if you care to give it?

Mr. WILKINS. There are a great many bills before your committee and other committees in the civil-rights field. As I tried to indicate in my testimony, there are certain aspects of the civil-rights question which have developed in the past year which would seem to dictate attention to certain aspects of the field itself, and to concentrate on legislation directed toward correction of those evils.

This matter of the Civil Rights Division in the Department of Justice is an important one.

Senator HENNINGS. As you know, there is now a section denominated "Civil Rights Section."

Mr. WILKINS. To be sure. And as I tried to indicate a nonstatutory section.

Senator HENNINGS. Yes.

Mr. WILKINS. We are intensely interested in this aspect of the civil-rights legislation. Naturally, we are interested in the best training for the people who are going to look after this, and in the provision for the establishment of a division, specifically.

I believe H. R. 627 which my testimony was based upon, does make such a provision, if I am not mistaken, in that respect.

Senator HENNINGS. I am, of course, speaking of the Senate bills only. I am not cognizant at all with the provisions of the House bills.

Do I take it then that you would prefer, as the bill reported out by the Subcommittee on Constitutional Rights in February, that it create a Civil Rights Division with the additional provision that there be an increase in the FBI personnel?

I am reading from section 102—The personnel of the Federal Bureau of Investigation of the Department of Justice shall be increased to the extent necessary to carry out effectively the duties of such Bureau with respect to the investigation of civil-rights cases under Federal law. Such Bureau shall include a training of its agents, appropriate training and instructions to be approved by the Attorney General in the investigation of civil-rights cases.

Mr. WILKINS. We, certainly, would want a Civil Rights Division within the Department.

Senator HENNINGS. Don't you think that the bill reported by the committee is superior to the bill recently introduced, with all respect, by Senator Dirksen?

Mr. WILKINS. Mr. Chairman, I rely upon——

Senator HENNINGS. I am not asking you to be invidious by comparing the legislation but we must get down to business on these things.

Mr. WILKINS. I will attempt not to be invidious.

Senator HENNINGS. I am sure you won't.

Mr. WILKINS. By saying that we feel certain that the committee will be able to resolve this matter of the insertion of the clause wherever it will be effective.

Senator HENNINGS. We have inserted the clause in the bill we reported way back in February.

Mr. WILKINS. Yes.

Senator HENNINGS. The Attorney General came up here, as you know, last week, or 2 weeks ago, and his bill provided only for the appointment, and creation of an additional Assistant Attorney General, did it not, or do I misstate it, Senator Dirksen?

Senator DIRKSEN. No, that is correct.

Senator HENNINGS. I thought that was it.

Mr. WILKINS. I do not think the committee will find any difficulty——

Senator HENNINGS. I fear, Mr. Wilkins, that the committee may find a great deal of difficulty over much of this legislation. I hope we shall not.

The Constitutional Rights Subcommittee found no difficulty over the bill to which I have just averted, providing for the creation of a Civil Rights Division, and providing for the additional trained personnel of the FBI, especially provided for the investigation and enforcement of matters relating to civil rights.

Now, that is the bill reported by the Subcommittee on Constitutional Rights of this committee.

Mr. WILKINS. Our feeling, sir, is that this establishment of a Civil Rights Division is one of the necessary civil-rights points in this legislation. Whether it is brought about through a separate bill or whether it is included and incorporated in the so-called omnibus bill, I do not suppose we can debate about it.

We would prefer that all essential points, the points that we feel, according to this testimony, are essential, could be included in a piece of legislation which could be presented and acted upon by the Senate, without the necessity of considering separate items, separate pieces of legislation, to cover separate aspects of the civil-rights picture.

However, if it is not possible to include these in an omnibus piece of legislation, we certainly would want the strongest piece of individual legislation on one point that could be put together.

Do I make myself clear?

Senator HENNINGS. You do, indeed, sir.

Then your answer to me would seem obvious that you would prefer S. 902—I do not mean——

Mr. WILKINS. No, I do not think that is quite it, sir.

If I may, that is not quite the interpretation.

Senator HENNINGS. I am just asking which of the two bills before the Senate committee—I do not know about the House legislation——

Mr. WILKINS. The Senate legislation, of course. What I am trying to suggest, Senator, and this may be an insurmountable task, I am trying to suggest that the committee may be able to incorporate the best features of the legislation before your subcommittee that has already been passed and which is ready for further action, into an omnibus bill which will include, and if I may refer to the House again, as the House did, to take some proposal from one side and some from another, and to incorporate them in an omnibus bill.

That does not mean to say, and I hope it won't be so interpreted, and you reminded me not to be invidious——

Senator HENNINGS. No; I did not. I said I knew you would not be. I did not say that you would be. I didn't need to remind you.

Mr. WILKINS. That does not mean that I want to enter into any comparison between the bills.

Senator HENNINGS. We are speaking of legislation and not individuals. This is no reflection upon persons. This relates to legislation.

Mr. WILKINS. I am inclined to think of it in that respect.

Senator HENNINGS. We may for the moment depart from the aspects of the House omnibus bill which is not before the Senate Committee on the Judiciary. We are considering these Senate bills, matters that are immediately before us. And I am asking you, sir, if you care to express yourself as to whether you prefer a bill, S. 902, which says:

There shall be an Assistant Attorney General learned in the law who shall be appointed by the President, by and with the advice and consent of the Senate, 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.

That is the first section.

The next section:

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 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.

Would you prefer, sir, that bill, since we are not concerned with the omnibus bill now—Mr. Wilkins, if I may undertake to suggest it, we are concerned, I think my learned friend from Illinois will agree with me, we are concerned with matters which must come before the full Committee on the Judiciary.

S. 902 has been reported out by the standing Subcommittee on Constitutional Rights. It provides for a Civil Rights Division. It provides for FBI personnel and the other things which I have read.

Would you prefer that bill, or a bill such as the other one which provides that an additional Assistant Attorney General learned in the law, et cetera, be appointed, period. Which bill would you rather have? We want your counsel on this.

Mr. WILKINS. At the risk of repeating myself, I'd like to see that, of course, we want a bill which will provide for the setting up of a Civil Rights Division in the Department of Justice, under an Assistant Attorney General. This is our testimony here. On that we stand.

Whether it comes out in S. 902, 908, 198, that is the provision we would like to have.

Senator HENNINGS. We are speaking of a specific bill, S. 902 that is before us and the number of the other bills.

Mr. WILKINS. S. 3604.

Senator HENNINGS. Here we are, S. 3604:

To provide for an additional Assistant Attorney General in the Department of Justice.

Now, I do not mean——

Mr. WILKINS. I believe——

Senator HENNINGS. I do not mean to press you, Mr. Wilkins.

Mr. WILKINS. I am trying to recall, sir—will you permit me—I think from last week, Attorney General Brownell discussed that very point before the committee, and my recollection is that he stated that the assignment of an Attorney General—someone asked him, I believe you did so, sir.

Senator HENNINGS. I did so.

Mr. WILKINS. Why he did not designate the additional Attorney General as head of the Civil Rights Division. He said it was not customary in the Department to so designate a man in legislation calling for the enlargement of the Department, but merely to call for the addition of an Attorney General.

I believe you endeavored with some little success to get him to say——

Senator HENNINGS. You say some little success?

Mr. WILKINS. To get him to say how such a man would be necessarily assigned to civil rights, how would we know that. He said that was an administrative matter within the Department.

Senator HENNINGS. In other words, the Attorney General, as I recall it, did say that there was no provision in his legislation for the creation of a Civil Rights Division. Did he not? It is now a section. What we want is a division, isn't that all we want?

Mr. WILKINS. That is right.

Senator HENNINGS. There is nothing in the other legislation that says anything whatsoever about a division.

Mr. WILKINS. We want a division, no matter.

Senator HENNINGS. I am very aware that the learned Attorney General answered, but I couldn't, speaking only for myself, I couldn't quite follow his rationale.

Mr. WILKINS. I followed it but it didn't lead to the conclusion that you wanted it to lead to.

Senator HENNINGS. No, sir. Now, Mr. Wilkins, you and I are going to get along perfectly fine if you will forgive me, I am not going to

suggest that I wanted to lead to anything or another except what I believe you wanted to lead to.

Mr. WILKINS. I wanted to lead to the same thing.

Senator HENNINGS. Ah, now we are together. What I want it to lead to was the creation of a division, sir.

Mr. WILKINS. Precisely.

Senator HENNINGS. And I do not see it in that legislation. Do you? You have read the bill?

Mr. WILKINS. No; there is nothing in it—there is no language there for that.

Senator HENNINGS. And nothing providing for the FBI is there? there?

Mr. WILKINS. Well, there is no FBI language there; no.

Senator Hennings, what I'd like to ask—no——

Senator HENNINGS. You may go ahead, feel perfectly free.

Mr. WILKINS. To ask you——

Senator HENNINGS. This is all in good spirit.

Mr. WILKINS. Whereas the creation of a division in language specific to that effect is necessary and desirable, and whereas the designation of an Assistant Attorney General to handle this matter is imminently necessary, I was going to ask, not to comment, to ask whether the specific provision about the additional FBI men and the training of FBI men, although desirable—and I believe, sir, that the public press has told of some training being held by FBI men recently in the civil-rights field, which was disclosed to the press, indicating that the training designated in S. 902 lacked, let us say, that the people now in charge have realized existed—and so it would seem to be that even that provision which in first scanning might appear to be merely an administrative direction, is, also, a necessity if we are to give any credence to the reports of the last 10 days.

Senator HENNINGS. Yes.

Mr. WILKINS. So——

Senator HENNINGS. I think so. Indeed, that is why we put it in the bill. We spelled it out.

STATEMENT OF CLARENCE MITCHELL, DIRECTOR, WASHINGTON BUREAU, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. MITCHELL. Could I identify myself for the record and comment on that?

I am Clarence Mitchell, director of the Washington bureau of the NAACP.

I think that in fairness it should be said that your efforts on these matters deserve the greatest of commendation. Being down here in Washington and knowing——

Senator HENNINGS. Thank you.

Mr. MITCHELL. What you do——

Senator HENNINGS. Thank you; we appreciate that.

Mr. MITCHELL. I think it is important to have that in the record.

I think we would say in all fairness that if we had the ideal thing, these two bills side by side, it is far better to have spelled out specifical-

ly in legislation exactly what a given person is supposed to do when he takes office.

But in this case, we have the word of the Attorney General, on record, that it is his intention to appoint an assistant attorney general to do this job. We also have many officially on record as saying that he prefers for administrative reasons not to have it spelled out in the bill.

I think in view of the time element confronting us, that if the hurdle that we have to cross is whether the legislation contains the very excellent and desirable language that you have, or whether it is worded as Senator Dirksen has worded it, it would be better not to lose the legislation on that point.

Senator HENNINGS. I am in thorough agreement with you, Mr. Mitchell, on certainly part of your statement, that we do not want to lose any step forward. We do not want to impede progress in this field.

But I must most respectfully disagree with the learned Attorney General, that it isn't necessary to have a civil rights division. I don't know how Senator Dirksen feels about that. Don't you think it is desirable to have a civil rights division?

Senator DIRKSEN. I would have no objection except the Attorney General testified that it probably would give him greater flexibility if he were left to his own devices.

Mr. MITCHELL. As I recall his testimony, it was that he would establish a division, with an assistant attorney general in charge of it, but he didn't feel that he ought to be pinned down by a congressional requirement to do so because as it is now, under their regulations, he has assistant attorney generals assigned to him, and by administrative, he makes the assignments with the Department.

Senator HENNINGS. Well now, Mr. Mitchell, I am reading from United States Code annotated, title 5, at page 88, at 296:

Assistant Attorney General in charge of customs matters, deputy, special attorneys.

An act creating an assistant attorney general in charge of customs matters.

We have an assistant attorney general in charge of tax matters.

Mr. MITCHELL. Yes, sir; I am agreeing.

Senator HENNINGS. An assistant attorney general in charge of antitrust, for example. We have an assistant attorney general in charge of criminal matters, indeed.

Mr. MITCHELL. I am agreeing, Senator, and that it would be—I think Mr. Wilkins, no one would be stronger for having this thing all spelled out in the law. But we are confronted——

Senator HENNINGS. I can say to you, Mr. Mitchell, that Senator Dirksen and some of the others of us are not going to engage in any unseemingly diversionary tactics that is likely to impede this legislation.

Mr. WILKINS. I am certain of that.

Senator HENNINGS. If that is what you are fearing that we might hang on, whether it is to be 902, or Senator Dirksen's bill amended or some other bill, S. 3718—that isn't what we are trying to discuss here today.

Mr. WILKINS. Senator Hennings, in view of your record we could not think that at all.

Senator HENNINGS. I thank you very much, Mr. Wilkins. I hope that it has been a record of some long standing in these matters.

But, at any rate, we are just trying to inquire, we are not trying to harass, nor embarrass, nor to suggest to you gentlemen that you denounce any one bill and necessarily commend another one.

We do not think that there are certain differences, perhaps there are improvements in some of the other bills, over those reported by the subcommittee. If so, we would like very much to know about those.

Mr. MITCHELL. Could I observe that I have certainly studied this legislation very carefully for a long time, as I think you know. I am certain that there is no improvement over what you and other members have proposed by the administration's proposal. It boils down really to the same kind of objective but slightly different language and a different number.

So that ideally we could take either set of these bills and come off with very, very substantial progress in the civil rights field.

Senator HENNINGS. May I put this to you, Mr. Mitchell, please, sir?

Let us take it for granted that the Attorney General, having expressed himself and his intentions, and assuming as I am perfectly happy to assume, that he is in completely good faith, suppose he is succeeded by another attorney general who takes the man, the additional attorney general, with no duties, no limitations placed upon him by any legislation enactment, and says, "We do not need that fellow over in the Civil Rights Division. We are going to put him over here in Antitrust."

What protection have you then?

Mr. MITCHELL. I fear very much, Mr. Chairman, that you would not have any.

Senator HENNINGS. Giving full credit to the present distinguished Attorney General, where would you be then?

Mr. MITCHELL. I fear very much that a new Attorney General could do precisely what you have said he might do. I think, as a practical matter, that situation would not arise.

Also, I would like to say that it could not happen if the language in your bill is a part of the law.

Senator HENNINGS. Then it would not be within the discretion of any Attorney General; would it?

Mr. MITCHELL. It would have to come under the Reorganization Act.

Senator HENNINGS. It would be right there, embedded in the law; wouldn't it?

Mr. MITCHELL. That is correct.

Senator HENNINGS. All right, sir. Gentlemen, I will pass on if there are no further comments. I don't want to linger unduly upon that.

To get down to S. 903 gentlemen, which relates to the right to vote and the companion to that, S. 3718 which was introduced by Senator Case of New Jersey on April 24 of 1956. S. 903 was introduced by Senator Humphrey and a number of others on February 1, 1955.

My record shows that as to S. 903 reports were requested from the Attorney General and the Secretary of Labor on the 27th of July of 1955. The Attorney General replied in September on the 9th day of 1955 and said he had no recommendation.

As to Senator Case's bill, both of these bills related to further securing and protecting the right to vote. S. 903 in synopsis extends the Hatch Act provisions of the Criminal Code. That is United States Code 18–594 relating to intimidation of voters, which is already on the books. It is a consolidation of section 61 (i) and 61 (j) of title 18 of United States Code 1940.

In their determination the latter sections are based on section 1 of the Hatch Act, 1939 as amended.

S. 903 reported by the subcommittee of this Committee of the Judiciary provides in section 1 thereof:

Extends the Hatch Act provisions, Criminal Code to cover special and primary elections also and reflects certain case law that has already been enunciated by the courts.

Section 2 extends Revised Statutes, section 2004 protecting the right to vote to special and primary elections and broadened to include elections in as well as by a State. Protects right to qualify to vote from interference based on race, color, religion, or national origin.

Further specifies that the right to vote is protected by title 18, 242, Criminal Code already on the books and by Revised Statutes, section 1979. Creating a right to civil action against violator of privileges and immunities of persons.

Section 3 establishes civil remedy for a person against those who interfere with his right to vote in Federal elections, makes provisions of the act enforceable by Attorney General in suits for preventive, declaratory or other relief and gives United States district courts concurrent jurisdiction regardless of sum in controversy.

In the companion bill on the right to vote, there is a penal clause as you understand it, providing for punishment, in S. 903. S. 3718—and I shall read from this synopsis—provides means of further securing and protecting the right to vote. No criminal provisions. It prevents language of Revised Statutes, section 2004, protecting right to vote left as is but added to it as follows: (b) Prohibits interference with the right to vote in general, special or primary elections. Permits Attorney General to institute civil action for benefit of real party in interest.

(d) Gives United States district courts concurrent jurisdiction.

Does not provide criminal penalties for nor expand existing language of Revised Statutes, section 2004 to reflect case law, special or primary elections.

If you gentlemen would care to comment on those bills as I am sure you have studied them as I have taken to outline them, it might be very helpful to us.

Mr. WILKINS. Senator Hennings, of course the language of S. 903 is the stronger language.

We are confronted here with the same choice as we were 903 and the companion bill introduced by the administration: Either one of these bills would be a good bill from our standpoint. The language in S. 903 being a little stronger language in the sense that it provides a criminal penalty in addition to providing for civil action. Am I correct there?

Senator HENNINGS. You are exactly correct there. May I ask you don't you think it should be a crime for anybody to coerce or intimidate or otherwise attempt to prevent or prevent any citizen in this country from exercising his franchise?

Mr. WILKINS. This of course is what we have called for in our testimony.

The making of this a crime.

Senator HENNINGS. Yes, sir.

Mr. WILKINS. I recall the reasons advanced for limiting this matter to civil action.

Senator HENNINGS. I believe the Attorney General said he was afraid he could not get jurisdiction to enforce criminal penalty.

Mr. WILKINS. I don't recall what the Attorney General said in that respect but I am familiar with the arguments that have been made in this matter that civil action is all that should be attempted.

We would settle for civil action if that is all we can get, but we think it ought to be made a crime. That means that the language that makes it a crime and provides also for civil action not a choice of either or is natural of course the stronger bill.

Senator HENNINGS. That is the language in S. 903 reported by the Subcommittee on Constitutional Rights last February. And now on the agenda of the committee.

Mr. WILKINS. I would like to point out that S. 3718, I reiterate that either one of these bills in the long history I have read here of inaction, nonaction and filibustering, the strongest language we could get is the language we would want.

Senator HENNINGS. You would rather have a half loaf than none?

Mr. WILKINS. Sometimes I would, sometimes I would rather have none.

Senator HENNINGS. We have tried to give you the whole bill. Would you prefer that bill, Mr. Wilkins?

Mr. WILKINS. It is a very good bill.

Senator HENNINGS. Do you think it is better than the other bill?

Mr. WILKINS. The language is stronger.

Senator HENNINGS. Well, we lawyers have an expression which we call putting teeth in a law.

Mr. MITCHELL. Mr. Chairman, could I again ——

Senator HENNINGS. Yes. I don't mean to embarrass either of you gentlemen.

I hope I am not.

Mr. MITCHELL. You are doing the thing I wish we had done back a year ago.

Senator HENNINGS. Lawyers can't help getting into a discussion about these things. When this Judiciary Committee meets, we will all sit around this table and some of us we hope will make effective arguments for strong legislation.

Mr. MITCHELL. I think we ought to make it very clear on the record what everybody ought to know that our organization has been trying to get hearings and actions on this bill ever since the Congress started and many conversations have been held with various people trying to get action.

I think there is enough glory to go around and blame to go around as to who is responsible. We don't want to fix blame. We don't want a half loaf or three quarters of a loaf; we want the whole thing.

We don't interpret S. 3718 as a half loaf. The Attorney General made very clear the practical situation we are confronted with. He used the illustration of Mississippi where we have an air-tight case of

individuals being denied a right to a voting to a grand jury and you cannot get an indictment. If you get an indictment before a grand jury you can't get a conviction.

Senator HENNINGS. That is what I said to Mr. Wilkins, and he said he did not remember.

Mr. MITCHELL. Yes. This legislation as I understand it does not lack in strength because as I understand judicial procedures correctly if the Attorney General finds that there is a violation of the law and if a court duly constituted issues an injunction telling people to cease from interfering with the right to vote and they continue to do so, they may be convicted for contempt and there would not be the hurdle of these juries that refuse to convict and grand juries that refuse to indict.

Senator HENNINGS. Mr. Mitchell, in all kindness and in all friendship, let us say that a number of citizens the night preceding an election are asked to go for a long ride. And during the course of that ride they are—as this letter for example—certain threats, certain coercive pressures are brought to bear upon them, or indeed they may even be kept away from the polls.

The polls open in the morning in some places at least at 7 in the morning and close at 7 at night. Do you think that a Federal judge would be more likely to grant an injunction under those circumstances assuming the man could get to the Federal judge to ask for it, than provisions relating to punishment for having visited such outrages upon American citizens?

Mr. MITCHELL. I am sorry to say that our experience indicates that under the present legislation under which somebody could go to a Federal judge in certain cases and get him to seek criminal prosecution against the people who take individuals for long rides, unhappily, it turns out to be a situation where nobody acts in time to prevent the damage.

As I understand the proposed action under this bill, this would be locking the barn door before the horse is stolen in that if we apply it to the situation in Monroe, La., which Mr. Wilkins mentioned in his testimony, instead of waiting as the Department of Justice has waited in that instance until after the election is over to see if there will be any criminal violations, as I understand this legislation, if it were the law now, in that situation 2 or 3 months ago when it was developing, the Department of Justice could have gone in there and made certain that those who were trying to prevent people from voting by purging them from the list were frustrated in their plan.

Senator DIRKSEN. Mr. Mitchell, in substance what we are here contending with is not unlike the old Chinese adage, the longest journey begins with a single step. So if we can get a couple of steps on this journey in the right direction we will be able to work from there and then it resolves itself into getting as much as we can as quickly as we can against the realities of the moment.

Mr. MITCHELL. I think it is very clear, Senator Dirksen, that so far as this legislaation is concerned, it could not be characterized as a weak approach to the civil rights question, because if it were our organization certainly would not be in here asking for it. I think that it is obvious to everyone that if we could spell out as Senator Hennings and his colleagues who sponsored this legislation have done, all of the things that we hope to accomplish in the detail we would be in a

position where no administration or no person under an administration would have freedom to misinterpret the law, because it would be very clear there.

There is in this legislation the risk and hazard that Senator Hennings has pointed out of some other Attorney General doing the wrong thing at another time. I think we are realistic to know that with the Republicans solidly behind this program and the Democrats solidly behind the other program, the only way we are going to get any legislation out here is something which is going to be satisfactory to both groups, so we would hope that you would not in any sense weaken any of this legislation, but that we might settle the problem by taking one of Senator Hennings' bills and one of yours.

Senator HENNINGS. Mr. Mitchell, I assure you that I have no pride either in authorship or in sponsorship or in having reported these bills out almost at the beginning of this session, February 9.

Senator DIRKSEN. And I subscribe to that.

Senator HENNINGS. That is the way we feel about it.

As I tried to say to Mr. Wilkins, this is not a question of somebody taking the abuse. This is a question of trying to get at—and you gentlemen are certainly eminently qualified to give us your views upon specific legislation and we thank you for having done so.

However, this is not going to resolve itself into a fight in committee. I assure you. Senator Dirksen, will give you that assurance as well. Whether it be this bill or that bill or the bill, the other bill, and the element of whose bills may not be reported being dogs in the manger and saying we don't want any legislation, that would be contemptible and unseeming and unworthy of anybody who has an interest in such legislation as a matter of conscience and right.

I don't think you gentlemen need have any fear about that. If you can give it to us and will and I think you have in many instances, we want your best judgment and best opinion as to what you would like to have and we will do our best to get all we can get that is consistent with what we think is right in terms of the law and conscience, and if we can't get that, we may have to come on down the line and as Senator Dirksen says, take the matter a small step at a time.

Mr. MITCHELL. I don't want to go away from this hearing room—and I doubt whether any of the rest of us would—giving the impression that we want to accept a small step.

We are confronted with a practical political situation, as everybody knows. Over in the House we had a bill which was a far stronger and more extensive bill introduced by Mr. Celler, H. R. 627 than what the House Judiciary Committee finally reported out, but the practical situation within that committee was such that there was no way to get out the Celler bill. Therefore the members agreed to keep Mr. Celler's number and Mr. Celler's name but to report out the language introduced by Mr. Keating.

It so happened that Mr. Keating's language was just about a duplicate of many parts of the Celler bill and I think here it is certainly true if we come out with what the administration offered, we will have essentially the same thing that you have proposed except the antilynching bill and the H. R. 5205 which is designed to protect servicemen against violence.

We will have also these administrative problems which I think quite correctly you have pointed up, but I also think that if we are

going to get some legislation, it is unlikely that we will get it if each side is adamant on its position.

Senator HENNINGS. I can speak only for myself but I feel confident I can speak for Senator Dirksen, too, knowing his attitude for many years.

Senator DIRKSEN. I concur.

Senator HENNINGS. What we want is the best legislation. Have you any further questions?

Senator DIRKSEN. No further questions.

Senator HENNINGS. Thank you, gentlemen. Have you any further comments to make upon any other pending bills relating to civil rights. I believe Mr. Mitchell adverted.

Mr. MITCHELL. To H. R. 5205?

Senator HENNINGS. Yes, that was another one that our subcommittee reported.

Mr. MITCHELL. That has already passed the House and has been endorsed by the Department of Defense. It is inconceivable to me that the Senate Judiciary Committee could not report that bill out speedily.

Senator HENNINGS. This is S. 1089. This is the bill of Senator Lehman and certain other cosponsors.

Mr. MITCHELL. That's right.

Senator HENNINGS. And we ultimately, our subcommittee after considering this matter for—we began consideration of this I want you to know almost at the commencement of this Congress, in January—and reported the bills some 5 weeks later. So we reported on February 23 in this instance, H. R. 5205, which is the bill you have all been discussing.

Mr. MITCHELL. That is Mr. Celler's bill.

Senator HENNINGS. Because there was little difference between the two and we thought in the interest of expedition again that we would report the House bill, extending to members of the Armed Forces the same protection against bodily attack as now granted to personnel of the Coast Guard, et cetera. That is the distillation of that. The administration has offered no comparable bill on this subject.

No comparable bill on antilynching. No comparable bill on peonage, slavery, or involuntary servitude.

I take it you gentlemen have no objection to S. 904, which is another one of those bills.

Mr. MITCHELL. We have stated in our testimony that we are in favor of all of them and wish to get them.

Senator HENNINGS. I am going down the specific bills just for that purpose, Mr. Mitchell.

If there are no further questions, thank you very much for coming.

Mr. WILKINS. Thank you, Senator.

Senator HENNINGS. We appreciate your coming to give us the benefit of your views.

We are very sorry that Senator Dirksen must leave us because of other commitments.

May we hear from Mr. Biemiller?

Is Mr. Biemiller here?

We are very glad to welcome you to the hearing, Mr. Biemiller, and we are very glad to have you proceed in your own way to discuss whatever you care to discuss relating to the matters under consideration.

STATEMENT OF ANDREW J. BIEMILLER, LEGISLATIVE REPRESENTATIVE, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, ACCOMPANIED BY BORIS SHISHKIN, AFL–CIO

Mr. BIEMILLER. Thank you, Mr. Chairman. For the record I am Andrew J. Biemiller. I am a legislative representative for the American Federation of Labor and Congress of Industrial Organizations. My office is located at 815 Sixteenth Street NW., Washington, D. C. I appear here today on behalf of that organization. We appreciate this opportunity to testify on this important subject of civil rights legislation.

I am accompanied by Mr. Boris Shishkin, the Executive Director of our Civil Rights Department.

The resolution on civil rights adopted at the First Constitutional Convention of the AFL–CIO last December states:

> The AFL and the CIO have always believed in the principle and practice of equal rights for all, regardless of race, color, creed, or national origin. Each federation has separately played a distinguished role in the continuing struggle to realize for all Americans the democratic rights promised to all by the Constitution of the United States.
>
> The AFL–CIO is similarly pledged and dedicated to promote and defend the civil rights of all Americans. Its constitution declares that one of its objects and principles is:
>
> "To encourage all workers without regard to race, creed, color, or national origin to share in the full benefits of union organization."
>
> Another such object and principle of the new Federation is:
>
> "To protect and strengthen our democratic institutions, to secure full recognition and enjoyment of the rights and liberties to which we are justly entitled, and to preserve and perpetuate the cherished traditions of our democracy."
>
> Our Constitution likewise provides for a Committee on Civil Rights which:
>
> "Shall be vested with the duty and responsibility to assist the executive council to bring about at the earliest possible date the effective implementation of the principle stated in this constitution of nondiscrimination in accordance with the provisions of this constitution."
>
> Thus the AFL–CIO stands dedicated no less than its predecessors to bring about the full and equal rights for all Americans in every field of life.

The resolution further states:

> The AFL–CIO wholeheartedly supports the decisions of the Supreme Court outlawing segregation in the public schools. We urge all of our affiliated State and local bodies to work with other liberal forces in their communities to facilitate a peaceful and effective transition to an unsegregated American educational system. We urge the administration to utilize the full powers of the Federal Government to frustrate and punish unlawful attempts to block implementation of the Supreme Court's decision.
>
> We urge the Congress to enact legislation making lynching a Federal crime, and to invalidate State laws requiring the payment of a poll tax as a prerequisite to voting.

That is the general position taken by our organization on this subject of civil rights legislation.

Senator HENNINGS. Are you the same Mr. Biemiller who caused quite a furor in the Democratic Convention, I believe it was, by offering a resolution on civil rights?

Mr. BIEMILLER. I was the author of a minority plank which became the majority plank.

Senator HENNINGS. Was it not known as the Biemiller resolution?

Mr. BIEMILLER. The Biemiller-Humphrey resolution, that is correct.

Senator HENNINGS. You are not the same Biemiller I went to school with about 30 years ago?

Mr. BIEMILLER. The same.

Senator HENNINGS. At the university?

Mr. BIEMILLER. Right.

Senator HENNINGS. Please proceed.

Mr. BIEMILLER. Today I should like to state a little more fully our position with respect to the various specific proposals which are pending before this committee.

First, let us look at the civil rights proposals which have emanated from the administration through the person of Attorney General Brownell.

We are pleased that this Administration has seen fit after a little over 3 years in office to turn its attention to this vital subject of civil rights legislation.

We are sure that it is only coincidence that this subject is raised in an election year. Unfortunately, however, the administration proposals are not only belated but rather inadequate. Let us look at each of them.

The administration proposes first that there be established a Commission on Civil Rights.

It would be the duty of this Commission:

1. To investigate allegations that certain citizens of the United States are being deprived of the right to vote or are being subjected to unwarranted economic pressures by reason of their color or race:

2. To study developments constituting a denial of the equal protection of the law; and

3. To appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution.

While the proposal carefully avoids mentioning the school segregation issue I take it as not really unrelated to that subject.

We are in favor of an investigation and study of this whole subject of civil rights. We would be happy to see such a study undertaken by appropriate committees of the Congress. If Congress does not care to undertake such a study, we agree with the administration that a public Commission should be established.

We feel that such a Commission could not accomplish its purpose unless it were composed of eminent and public-spirited citizens and is adequately financed and adequately staffed.

The bare appointment of a public Commission to study a subject accomplishes nothing.

A year ago the Congress established a public Commission on the subject of internal security. As yet nothing has been forthcoming from that Commission except one form letter. A public Commission can be used as effectively to thwart action on a subject as to stimulate it.

Senator HENNINGS. May I interrupt you at this point, Mr. Biemiller, the Subcommittee on Constitutional Rights still has on its agenda the consideration of the establishment of a Commission. We have not rejected it by any means and indeed I am satisfied that we will not reject it but report it favorably but we wanted to hear some testimony upon this subject before we moved forward and upon that.

At any rate I just wanted to interpose if I might at that point to indicate that there has been a bill pending for some time. Here it is.

Yes, introduced February 1, 1955, report requested from Attorney General on March 22 of 1955, report received from Attorney General in September of 1955. And the Attorney General said that it was a question of policy and at that time he had no recommendation to make upon it.

Mr. BIEMILLER. In the meantime he has now, as we understand this, recommended such a Commission.

Senator HENNINGS. Yes.

Mr. BIEMILLER. Point 2 in the administration civil rights program is the establishment in the Department of Justice of an additional Assistant Attorney General. Though the bill does not say so, the administration states that this Assistant Attorney General would be in charge of a Civil Rights Division.

While we are in favor of this proposal, it does not strike us as earth-shaking. It seems more concerned with form than with substance.

We do not think it particularly important then what title is given the lawyer in the Department of Justice who is in charge of enforcement of the civil rights laws. We do think it important that an adequate number of attorneys be assigned to this work and that they have the full cooperation of all branches of the Department of Justice both in Washington and throughout the United States.

When Mr. Brownell became Attorney General, the civil rights section of the Department of Justice consisted of an attorney in charge and eight other attorneys. At the present time it consist of the attorney in charge and seven other attorneys. According to our arithmetic this adds up or subtracts down to a loss of one civil rights attorney in 3 years.

Senator HENNINGS. Do I understand that you favor the creation of a Civil Rights Division, Mr. Biemiller?

Mr. BIEMILLER. We favor the creation of an effective civil rights setup and we don't think the argument is in terms of what the title is but getting a sufficient force to operate.

Senator HENNINGS. I understand that the title of the officer in charge under both bills now under consideration would be an Assistant Attorney General?

Mr. BIEMILLER. Right.

Senator HENNINGS. Some of us have thought that it is very important to call it a Civil Rights Division to give it increased stature and permanent status.

Mr. BIEMILLER. We would have no objection to 902 or any reasonable facsimile thereof. I think it is obvious that after the committee goes into executive session and considers the various measures before the dealing with this question that you and your colleagues will report what you consider as the best possible bill with a chance of passage.

If Mr. Brownell is concerned with getting the job done on civil rights by his department we do not know of anything that now prevents his assigning additional attorneys to this work.

Part 3 of the adminstration proposal, we are pleased to see, has somewhat more substance. This proposal would do two things. First, it would authorize the Attorney General to bring civil actions to prevent or redress certain acts or practices which violate existing Civil Rights Acts.

The existing civil rights laws authorize injured persons to bring civil suits and also authorize criminal prosecutions by the United

States. As we understand it, the proposal the Department of Justice offers would not change the substantive provisions of the present law but would only provide for civil suit by the Attorney General.

We are strongly in favor of this proposal for three reasons:

1. The injured individuals are often not in a financial position to institute litigation to redress their own rights.

2. In criminal prosecutions instituted by the United States the trial must under the seventh amendment to the Constitution be before a jury drawn from the locality in which the crime was committed. Exeprience shows that in certain types of cases—not limited to those involving racial issues—the local juries simply will not convict regardless of the evidence.

3. The remedy of criminal prosecution is further undesirable because it tends to exacerbate the very community tensions which gave rise to the civil rights violation. From this standpoint a suit for an injunction before a Federal judge would be infinitely preferable.

The minority report of the House Judiciary Committee denounces this proposal as "new," "novel," and "absolutely shocking." Actually however most Federal regulatory statutes are enforceable by civil suits for injunction instituted by the United States. There is likewise nothing novel about authorizing the United States to maintain civil suits on behalf of injured private individuals. Such suits are authorized, for example, by the Fair Labor Standards Act, and by the laws according reemployment rights to veterans.

The second branch of part three of the Government proposal makes it clear that these civil proceedings to prevent or redress violations of civil rights may be brought in the Federal courts, without regard to whether the injured party "shall have exhausted any administrative or other remedies that may be provided by State law."

We are strongly in favor of this provision. To show why we are, let me describe to you a situation which has recently arisen in Dublin, Ga.

The workers in a lumber mill there decided to form a union. They asked the AFL–CIO to send an organizer, and we did. The city council, at the instance of local employers, thereupon passed an ordinance establishing an annual license fee for organizers of $2,500. The ordinance also provides that no person shall be granted a license who has not been a citizen of Dublin for 5 years, and that he must sign an oath that he is not a Communist and that "he does not believe in the overthow of municipal and State laws in regard to segregation." Violation of the ordinance is criminally punishable.

This ordinance is of course unconstitutional:

The Supreme Court has many time held such ordinances invalid, and has also held that they violate the civil rights laws. Probably even the ordinance's authors know that it is invalid.

When, however, we go into a Federal district court and seek to enjoin the enforcement of an ordinance like this we are always met with the contention that we must exhaust our remedies in the State courts. This means that our organizer must violate that ordinance, be arrested, go to jail, and take has chances on what will happen after that. These State court proceedings may take 2 or 3 years; and the momentum of the organizing campaign is of course lost during such a period.

It is not, I am advised, clear that this argument that we must exhaust State court remedies is well founded, but it is always advanced and we have had suits dismissed on the basis of its.

The fourth and last point of the administration proposal has to do with providing further protection for the right to vote. As we see it, the main effect of this proposal would be to authorize civil actions by the United States to redress or prevent unconstitutional deprivation of the right to vote. For the reasons we have just given, we are in favor of this proposal also.

In sum, thereof, we are in favor of the civil rights proposals advanced by the administration. We think they are a step in the right direction. In our view the most important of these proposals are those authorizing civil actions by the United States which are embodied in S. 903, introduced by Senator Humphrey. We strongly urge the enactment of that bill.

Senator Humphrey is also the author of S. 900 a Federal antilynching bill. The AFL–CIO convention resolution quoted above unequivocally commits our organization to the support of Federal antilynching legislation.

This is not a new subject. Our predecessor organizations and affiliated unions have testified on it many times over the years. I do not propose now to repeat that testimony. We simply urge that, to afford proper protection to our colored citizens and other minority groups, Congress now enact appropriate antilynching legislation.

We understand that this committee is also considering H. R. 5205, a bill to make it a Federal crime to kill a member of the Armed Forces "while engaged in the performance of his official duties, or on account of the performance of his official duties."

This bill has already passed the House.

Section 1114 of the Criminal Code (title 18) now makes it a Federal crime to kill a Federal judge, United States attorney, employee of the FBI. members of the Coast Guard, etc., while engaged in the performance of his official duties, or on account of the performance of his official duties. We see no reason why all members of the Armed Forces should not receive the same protection by Federal law.

In conclusion I would like to make it clear that we do not view the measures which we have discussed as constituting a complete or adequate civil rights program.

We favor, for example, the enactment of a Federal antipoll tax law, and a general revision and strengthening of the existing civil rights laws. On this occasion, however, we have confined our statement to the particular measures which we understand to be pending before this committee.

Thank you very much.

Senator HENNINGS. Thank you very much, Mr. Biemiller, for coming here and giving us the benefit of your view. Any statement to add, Mr. Shishkin?

Mr. SHISHKIN.. No, Mr. Chairman. I just would like to say that the positions given here by Mr. Biemiller have been the result not only of the mandated action by our constitutional convention in December 1955 but also the implementation of that action by the AFL–CIO in setting up a committee on civil rights, which is devoting a great deal of study to these proposals and is working very closely with Mr. Biemiller and our legislative committee to see that our recommendations

are thoroughly grounded on practical experience and presents the views of our AFL–CIO membership throughout the country.

Senator HENNINGS. Thank you, sir.

Our next witness, Mr. Young, is Mr. Patrick Malin, executive director of the American Civil Liberties Union.

We are glad to hear from you, sir, and you may proceed in any manner you wish.

STATEMENT OF PATRICK MURPHY MALIN, EXECUTIVE DIRECTOR, AMERICAN CIVIL LIBERTIES UNION

Mr. MALIN. Thank you, Mr. Chairman. For the record, my name is Patrick Murphy Malin. I am executive director of the American Civil Liberties Union whose office is at 170 Fifth Avenue, New York City.

The American Civil Liberties Union is grateful for the opportunity to add this statement of its own to the testimony already offered in favor of H. R. 627. Hereafter in my present testimony I shall refer only to the Senate bills.

We believe that this sort of proposed legislation has a special two-fold merit:

(1) It emphasizes one of the most simple and most basic and most urgent needs in promoting the equal protection of the laws—namely, the protection of the right to vote, against the threat to life or any other form of coercion.

(2) It provides for some new tension-reducing methods of dealing with one of our Nation's most disturbing problems, inherited chiefly from the long past of Negro slavery and intersectional war but now involving all parts of the country and more than one minority group.

Discrimination on grounds of race, creed, and national origin is not only a problem for the whole American Nation. It is an age old and worldwide human problem, and the people of all regions of the United States can indeed be proud of the progress recently made toward finally solving our part of it. But, both to increase the support which we need abroad for our leadership of the free nations and to advance justice for its own sake at home, we must rapidly complete our unfinished business.

If I may be pardoned a personal reference, I have since 1924 on spent a good portion of my working life abroad and most particularly as a member of the staff of the Intergovernmental Committee on Refugees by nomination of Secretary Hull, who to me is of sainted and honored memory. In that work I have had to live in flourishing democracies and decadent democracies, in fledgling terrains and in consolidated terrains, Russian, Italian, German, Spanish, and Latin American. Out of that experience in dealing with both the refugee and other problems, refugees from Nazi terror first, and refugees from Communist terror second, I have come to feel that the kind of problem facing us in this country is both representative and crucial in its handling.

Equability before the law does not mean that we are individually in fact equal in physique, in mentality, or in character, whether we belong to the same section, the same nationality or origin, the same race, the same creed, or whether we belong to different sections, national origins, races, and creeds. Equality before the law means that

where the law touches life in public matters, we are to be treated in terms of individual merit or demerit, not in terms of irrelevant membership in accidental groups.

It means that only reasonable and relevant classifications are admissible in law. This is our unfinished business, both at home and in respect of our leadership of the free nations abroad.

We must achieve equal treatment for Negroes in the North's public-housing developments, as well as in the South's public schools; we must achieve equal treatment by the police and the courts for Puerto Ricans in New York, Mexican-Americans in the southwest, and citizens of Asiatic extraction on the Pacific coast; we must achieve equal treatment for American Indians in their negotiations with the Department of the Interior, and for Jews in their access to medical schools and hotels.

To complete this unfinished business, in the spirit of recent fine decisions by the courts and executive agencies in the fields of education, transportation, and other public facilities, we need to use various methods and at various speeds.

Legislative, executive, and judicial actions, on local, State, and Federal levels, should be used severally or in one combination or another, depending on the specific job to be done and its particular circumstances; so should the manifold types of private effort, organized and unorganized, by which much of our past progress has been achieved. The most important thing is to move toward the goal as quickly and surely as we can, with an accurate sense of what each specific job requires at any given moment.

It is the view of the American Civil Liberties Union that the specific job of protecting the right to vote requires at this moment the new Federal legislation embodied in S. 3718 and S. 903. We are fully aware that civil liberties depend in great measure on observance of the principles of the 9th and 10th amendments safeguarding the residual rights of the States and the people against Federal power.

For my own comfort, Mr. Chairman, I should be happy if there were no larger economic enterprise than the Miner's Bank of Joplin, Mo., in which I grew up and I should be more comfortable if the Federal Government would be no more sizable than it was when I was a freshman at University of Pennsylvania when I came down here on March 4, 1951, for Inauguration Day. This is baying at the moon.

We are talking about a more complicated life and society than that which existed and might be more comfortable for me.

Not only are the 9th and 10th amendments in the Federal Constitution but the 15th amendment as in the Federal Constitution.

The right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Except for the first amendment rights to freedom of religion, speech, press, peaceable assembly, and petition, there is no right more basic to citizenship in a free society under a democratic government than the right to vote; indeed, it is practically indispensable to make the first amendment rights really effective.

And there is no worse denial or abridgment of that right either than interference with its exercise by threat to life or any other form of coercion.

Therefore, when a State widely and regularly denies or abridges that right—either directly, or indirectly through allowing such interference—it fails in an elementary responsibility to the people and the Federal Government, who are mentioned with such affection in the 9th and 10th amendments as the residual source of our power and our Government—must discharge that constitutional responsibility to them.

The more I have worked abroad, the more I have worked here, having come to think of the Bill of Rights as much more than an arid legal document which I used not to be able even to recite, the more I have come to feel that plain symbols are vitally significant. There is no plainer symbol by which people in a democracy, especially those on the rise from erstwhile underprivileged status, judge their society and their government, or by which outsiders, friends and enemies abroad judge sincerity and success, than the opportunity to vote without permanent danger. We cannot risk further delay in removing that danger.

It is also the view of the American Civil Liberties Union that new Federal legislation is required at this moment by the other specific job of reducing tension while continuing to remove discrimination.

I am not for peace at any price. I am for peace with justice. This is the hardest of all human problems to solve. We have to reduce tension while continuing to remove discrimination.

Man does not live by judicial decisions alone. The divided Supreme Court decision in 1857 in the Dred Scott case, giving slavery its most extreme sanction in legality, did not settle the question of slavery in fact. Nor will the unanimous Supreme Court decisions of 1954 and 1955 in the public school integration cases, admirable though we believe them to be in giving emancipation its most comprehensive sanction in legality, settle the whole question of discrimination in fact.

As a man who grew up on the southern edge of the border State of Missouri, and who still has spontaneous and intense compassion for everybody—white and Negro—on both sides of the most tragic line ever drawn in our history, I am confident that there will not be another intersectional war.

The South will not secede, the North will not send troops to enforce the law; the experience of common nationhood since 1856 has gone too deep. But even well short of war, there will be much bitter trouble; and we need some new techniques for reducing it, while completing our unfinished business—in all sections of the country.

I spent the summer of 1937 helping to start Quaker relief work on both sides of the Spanish Civil War. This was an outgrowth of the fact that I am half an English Quaker whose family came here in 1680 and half an Irish Catholic whose family came here from the famine and the terror, and in Spain in the summer of 1937, I became acquainted more than I ever had personally been before with what the adherents and the exponents of quick and final, extremist and authoritarian solutions on both sides of that conflict were doing to those caught between, the small-business men, the small farmers and the small professional class which was prevailingly attached to democratic government. I thought all over again in 1861 in this country when there were quick and final, extremist and authoritarian solutions offered on both sides of a conflict and in which were caught, Abraham Lincoln and Robert E. Lee and 600,000 dead and all of us in the recon-

struction period and all of us since. We have this inheritance to cope with, and there has always been great difficulty for people in a free society under a democratic government to realize that what democracy offers as opposed to quick and final and extremist and authoritarian solutions is simply the opportunity to go on working.

And what I plead for today is a new manifestation in Federal legislation of the opportunity to go on working through tension reducing methods which will nonetheless produce advances in the final removal of discrimination.

There is nothing magical about an investigation commission.

I don't want to shock you by news, but this is my conviction. There is nothing magical about an investigating commission.

It may be perverted into substitute for action, or into a louder than ever sounding board for irresponsible argument.

But those are risks worth taking for a new opportunity to make a sober assessment of practices, in any part of the country, which constitute a denial of equal protection of the laws; and to appraise the laws and policies of the Federal Government, with respect to that constitutional guaranty.

We are all inseparably together in having this unfinished business on our hands, and using the method of a specialized commission—steadily at work for 2 years—should teach us a lot about one another's hopes and problems, and about practical ways and means.

Accordingly we support S. 3605 and S. 907. I think it is correct to say that the next 50 years will show that the North is more nearly like the South in the problem of relations between Negro and white than it has been at any time since the Civil War, perhaps than at any time since 1908 when the international slave trade was stopped constitutionally, perhaps even that at any time since 1819 when the first slaves were introduced at Jamestown. There is Negro migration into the North. There are higher Negro birth rates than white birth rates in the big northern cities; and there is thus intensified competition between Negro groups and very recently arisen white minority groups in those big cities, competition for jobs and housing and schooling and recreational facilities.

I look for two keys to the problem. In great measure in the South, the problem of progress while reducing tension is in the hands of the white Protestant churches around which Southern society centers. In the North the contribution to the national solution of this national problem will be less by preachment and more by example in dealing with its own relations between white and Negro. In that spirit I support the device of an investigation commission.

Another method by which we may reduce tension while accelerating the achievement of equal protection of the laws is to make its enforcement proportionally more a matter of preventive civil action and proportionally less a matter of criminal punishment.

Accordingly we support S. 3717 and S. 905.

It's not astonishing that many local citizens, who compose even Federal grand and trial juries, regularly refuse to indict or convict their friends and neighbors—official or private—for offenses which they themselves at least condone. But no self-respecting government, constitutionally responsible for seeing that even its humbles citizens have equal protection of the laws, can let things rest there. Hence, it would seem to serve both wisdom and conscience to have the Federal

Government empowered to ask a Federal judge for the declaratory relief of an injunction against a threatened violation of a civil right.

If the injunction was disobeyed, the judge coud cite the violator for contempt of court, whose punishment while not severe, is real.

Measurable success in this method of making equal protection of the laws proportionally more a matter of preventive civil action, and proportionally less a matter of criminal punishment, will depend a good deal on the quantity and quality of the work which the Department of Justice can do.

Senator HENNINGS. I understood you to say you supported both S. 905 and S. 3717.

Mr. MALIN. That is right.

Senator HENNINGS. The bill that the Constitutional Rights Subcommittee has reported is S. 905.

Mr. MALIN. 905?

Senator HENNINGS. It provides alternative punishment.

Mr. MALIN. Right.

Senator HENNINGS. It amends and supplements existing law but provides additional criminal penalties, but it also gives the United States court concurrent jurisdiction with State courts to enforce civil action against violators.

Mr. MALIN. Right.

I want both. I prefer it to S. 3717. I want all this and Heaven too. I will take all this if I can't get Heaven.

Senator HENNINGS. I see your point, Mr. Malin. I think it is very well taken. We are just trying to explore here. You would prefer that there be no criminal provisions or you would prefer that there be alternative provisions relating to both civil action and criminal action if civil action is ineffective or otherwise inoperative?

Mr. MALIN. Both, but I know that the thing we have not had is the possibility of actions via civil preventive action.

Senator HENNINGS. Yes, 905 provides for both.

Mr. MALIN. That's right.

Senator HENNINGS. S. 3717 has no criminal provisions.

Mr. MALIN. Yes. I feel that way about the point you raised earlier in talking with Mr. Wilkins about the Civil Rights Division and the new Assistant Attorney General. I want a Civil Rights Division: I want a new Assistant Attorney General. I do not think—here I differ from an earlier witness—I do not think that the problem resides chiefly in the number of lawyers at work on this task.

The status of the top lawyer matters greatly. United States attorneys throughout the country are subject to Senate confirmaion. The head of the present section on civil rights in the Department of Justice, like the head of any other section merely is not subject to Senate confirmation.

Senator HENNINGS. That is true.

Mr. MALIN. And this difference in status matters in intradepartmental relations. So I want a new Assistant Attorney General. I want a new division. But I know that the meat of all of this will finally be what use the new Assistant Attorney General and the division make of their leadership in the handling of cases, district by district in cooperation with the district attorneys.

So it seems most logical to create a Civil Rights Division to be headed by an Assistant Attorney General. Accordingly, we support S. 3604 and S. 902.

All in all these proposals appear to the American Civil Liberties Union to be something practical which can be done now. It does not need lengthy hearings.

Senator HENNINGS. Thank you, sir.

I did not mean to say thank you, because you are finished. I mean thank you for your further elucidation on that point.

Mr. MALIN. I have not spent as long a life as I have in hearing and delivering talks not to realize that terminal facilities are one of the most important facilities.

Senator HENNINGS. For your information, our committee reported out four bills.

I called them up in Judiciary. It was then suggested by another Senator that there be hearings before the full committee.

This is presumably a hearing before the full Judiciary Committee.

Mr. MALIN. The quality is high.

Senator HENNINGS. I shall say that of the witnesses indeed.

I assure you that I am not one to advocate lengthy protracted hearings either. That is why we reported these out on the 6th of February. We want to get action.

Mr. MALIN. I will settle for prompt enactment by both Houses of Congress in nonpartisan if you will, fulfillment of the President's recommendation for the short-run and long-run good of us all.

Senator HENNINGS. Thank you very much, Mr. Malin.

Mr. Young, have you any comments to make?

Mr. YOUNG. No.

Senator HENNINGS. You made a great contribution to our deliberations. Thank you.

Now, our next witness seems to be Mr. David H. Scull, representing the Friends Committee on National Legislation.

Mr. Scull, will you come forward and be seated?

STATEMENT OF DAVID H. SCULL, FRIENDS COMMITTEE ON NATIONAL LEGISLATION

Senator HENNINGS. We will be very glad to have you proceed in your own manner. Do you have a prepared statement?

Mr. SCULL. I thought I would try to condense my written statement a little bit in order not to take up the time of this committee .

Senator HENNINGS. You are very considerate, sir. We do have some other duties this afternoon and evening. We will be very glad to hear from you, sir, in any manner that you are pleased to convey your thoughts.

Mr. SCULL. My name is David Scull. I am a businessman, from Annandale, Va., and am representing today the Friends Committee on National Legislation—not as an official spokesman for our Society, but trying to convey the idea that our religious belief has something to say on such vital questions of legislation as this.

I think on this legislation we are discussing today, the views we are presenting are widely shared by American Quakers, and indeed by religious-minded Americans generally.

We are supporting particularly the four bills, S. 3717, S. 3718, and S. 3604, and S. 3605, but I understand these bills embody some of the provisions previously included in the bills introduced by today's chairman, Mr. Hennings, and we are happy to have his support.

We do urge that this question be considered in the light of the highest morals and religious standards we know. This is pretty much in the tradition of our Society of Friends, although we know that even among our membership there are many, as in other churches, who are not always able to live out all of the beliefs that they profess.

Anyone approaching this task, whether in the Government or not, has to do so with a profound sense of humility, and with the recognition that these problems are not limited to any one area, or confined to relations between just two racial groups.

The South wrestles with its problems, but northern communities have their own difficulties, and there is no room for smugness or complacency or for pointing the finger of shame or blame at any area.

The southern legislator or leader of opinion whose conscience might lead him to differ with the white majority in his State has a special problem. He will often be tempted to compromise with his conscience lest, in the end, he lose influence to a more extreme leader. Yet, there is an irreducible minimum which he may not compromise, and I believe that, in the program endorsed by the administration and being discussed today, we have such a minimum program.

There are three points we would like to make, and I will try to keep this brief. There are three points in connection with the Commission, which is an idea we heartily endorse.

We would like to see, in addition to the three responsibilities given it in the bill, Mr. Chairman, a fourth responsibility, to study and to publicize ways in which communities are successfully increasing understanding, allaying tensions, and generally playing a constructive role.

Rather than giving it a merely defensive role, we feel that it should look on its duties, not as essentially punitive or coercive, but with the emphasis on persuasion education, providing a forum in which divergent views can be heard or discussed.

We would like to see the bill amended in that respect, or the committee's report cover that additional point.

I would like to point out especially the importance of the governmental policy, and even more of a Presidential appointment in this connection.

Now, ordinarily volunteer groups can be very successful in exploring new areas of social problems. But in much of the South today, even the prominent individual may face ostracism if he announces voluntarily that he is openminded on this question. But the same person, if he is offered an appointment to an official body, could often accept that, and not meet the same degree of opposition and criticism from his neighbors.

So that, it is not only the Commission itself which may be of value, but there is a provision for advisory committees in section 4 of 3605. We would like to have your committee's report show that you intend that provision to be, in fact, used, and advisory committees set up in order to give this status of official appointment to additional people, and bring more of them into this whole process.

On the point of the duration of the Commission, 2 years should be able to bring forth a valuable contribution. But if these constructive aspects are stressed, and leadership is shown, we feel that its continuation for a further period might very well prove to be in the national interest.

So that we would also like to see your committee's report take cognizance of the possibility of extending the life of the Commission, if at the end of 2 years it has proven to be useful, and mindful of the Attorney General's statement before your committee, that no agency now in the executive branch of the Government has the legal authority to exercise such powers as this Commission would possess in the study of matters relative to civil rights.

I think I need not go into detail to say that in regard to the voting provisions, or protection of voting rights, and so on, we endorse these other measures, 3717 and 3718, and 3604, to support the appointment or authorization of an additional Attorney General.

My previous experience leads me to believe that if the committee's report is perfectly explicit as to the purpose for which such an officer is authorized, that is pretty much binding on future executive officers in the Department of Justice, and that would, in fact, be used for the purpose you intend.

Just a closing word. We are fully aware that justice is not established nor laws enforced in a social vacuum. There are frequent predictions of dire results if the social pattern in the South of white dominance is too rapidly or too drastically changed as a result of Court decision or Federal law enforcement.

But where one group has had special advantages there are not going to be changes without some sacrifices being made. We hope that in the Senate and the House may be found the kind of wise leadership which realizes that that is necessary, but will see that it comes about through equity and with restraint, rather than another outburst of violence.

Some 200 years ago John Woolman, one of the greatest of American Quakers, said these words, in language which is a little old fashioned, but I think takes a meaning for us today:

> My mind is often led to consider the purity of the Divine Being and the justice of his judgments; and herein my soul is covered with awfulness. I cannot omit to hint of some cases where people have not been treated with the purity of justice, and the event hath been lamentable. Many slaves on this continent are oppressed, and their cries have reached the ears of the Most High. Such are the purity and certainty of His judgments that He cannot be partial in our favor. In infinite love and goodness He hath opened our understanding from one time to another concerning our duty toward this people, and it is not a time for delay. Should we now be sensible of what He requires of us, and through a respect to the private interest of some persons, or through a regard to some friendships which do not stand on an immutable foundation, neglect to do our duty in firmness and constancy, still waiting for some extraordinary means to bring about their deliverance, God may by terrible things in righteousness answer us in this matter.

Senator HENNINGS. Mr. Scull, we thank you very much for your exceedingly fine statement and your contribution to the deliberations of this committee. We appreciate your coming.

Mr. SCULL. Thank you, sir.

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(The prepared statement, in full, of Mr. Scull, is as follows:)

STATEMENT BY DAVID H. SCULL

FOR THE

FRIENDS COMMITTEE ON NATIONAL LEGISLATION

My name is David H. Scull. I am a businessman from Annandale, Va., and am chairman of the race relations subcommittee of the Friends committee on national legislation, which I am representing today. This organization is a working group of Quakers widely representative of the members of the Religious Society of Friends. We believe that religious belief is relevant to all life and must speak out on vital questions of legislation and Government policy.

The Friends committee on national legislation does not speak for all Friends since the democratic organization of our religious group does not lend itself to official spokesmen. On the particular civil-rights legislation we are discussing today I believe the views we are presenting are widely shared among American Quakers.

While Friends' traditional interest in this area is quite broad, I appear here today specifically in support of the legislation proposed in S. 3717, S. 3718, S. 3604, and S. 3605 which embody the administration's recommendations on civil rights.

I am speaking out of a very deep personal religious conviction as to the need to reestablish justice, complete and impartial, as the cornerstone of American life. I do not mean to preach; I acknowledge the sincerity of many who do not think in the same way; and I know that even within our own Society of Friends there are many who do not live out the beliefs they profess. Just the same, I would appeal to you to consider this question in the light of the highest moral and religious standards we know.

This testimony is in the tradition of Friends who have long felt that in the relations between different races the power of divine love would enable us to see a man as he really is, and that differences in the color of the skin or the shape of the nose would be recognized as without significance in God's sight. This is no less firmly embedded in our American heritage: all men, not just some of them, were believed to be created equal and endowed by their Creator with certain inalienable rights. This belief in the basic equality of all men led the members of the Society of Friends, under the leadership of several devoted individuals like John Woolman, to voluntarily give up the practice of holding slaves. This had been accomplished by the time of the American Revolution. More recently it has led to efforts to work for greater equality of opportunity in such fields as education, housing, and employment.

This is a tremendous task which is facing our country in the whole area of race relations: to change old patterns of thought and attitude in a field highly charged with emotion. Anyone approaching it, whether representing the Government or not, must do so with a profound sense of humility. We believe it is also important to recognize that these problems are not limited to one geographic area of the country, or confined to relations between only two racial groups. While the South wrestles with the problem of segregation in education, northern communities have their own difficulties with discrimination in employment, in community relations, and especially in housing. There is no room for smugness or complacency on the part of any individual or group, nor for pointing a finger of shame or blame at any area whose present problems are often the inescapable result of hundreds of years of history.

The southern legislator or leader of opinion whose conscience might lead him to differ with the white majority in his State has a special problem. He will often be tempted to compromise with his conscience lest in the end he lose influence to a more extreme leader. Yet there is an irreducible minimum which he may not compromise, and I believe that in the program endorsed by the administration and being discussed today we have such a minimum program.

1. CIVIL RIGHTS COMMISSION

There is a great need for increased public knowledge and information in the field of civil rights. We heartily endorse the proposal to establish the Civil Rights Commission provided in S. 3605. It is our view that the members of

the Commission should be persons of the utmost distinction, citizens who are highly regarded in all sections of the country and who will approach their task in a spirit of fairness and moderation. Though the provision for bi-partisan membership is proper, we would urge that the Commission be set up on a basis as far from political as possible.

It is proper that emphasis should be given to the Commission's functions in the area of protecting voting, economic, and other rights. However, it could be of tremendous value if a fourth responsibility were assigned to it: to study and to publicize ways in which communities are successfully increasing understanding, allaying tensions, and generally taking a constructive role in the matter of social adjustments. It seems to us that this positive, rather than merely defensive, role might contribute toward the national leadership so sorely needed. We are concerned that such a Commission not look upon its duties as essentially punitive or coercive, but that its emphasis should be on persuasion, education, and the providing of a forum in which divergent views can be heard and discussed.

I should like to point out especially the importance of a governmental, and especially of a Presidential, appointment in this connection. Ordinarily volunteer groups can be very successful in exploring new areas of understanding. However, in much of the South today, an individual even of some prominence faces ostracism if he so much as declares himself willing to discuss the question of desegregation or civil rights with an open mind. The same person, offered appointment to an official body, can accept without meeting the same degree of opposition and may often welcome the opportunity. For this reason, it is not only the Commission itself which may be of value, through holding hearings at various places including the South and through its report. We would like to have your committee's record show that the advisory committees, which are provided for in S. 3605, section 4, are in fact intended to be appointed and used in order to draw many more than six persons into this fact-finding process at the executive level.

We also feel that two years should be ample to bring forth a valuable and effective report. However, if the constructive aspects of the Commission's work are stressed and real leadership is shown, its continuation for a further or even an indefinite period may be in the national interest. Therefore we should also like to see your committee's report take cognizance of the possibility of extending the life of the Commission if it appears that this would be useful. We are mindful of Attorney General Brownell's statement before this committee on May 16: "No agency in the exeuctive branch of Government has the legal authority to exercise such ptwers [as this Commission would possess] in a study of matters relative to civil rights."

2. INSURING THE RIGHT TO VOTE

While the Constitution and congressional enactments provide that election laws shall not discriminate on account of race, color, religion, or national origin, present statutes do not appear to fully insure that these rights are secured to each individual.

The provisions in such bills as S. 3717 and S. 3718 would appear to embody sound proposals to help secure these rights. Thus it would appear desirable to emphasize civil rather than criminal remedies in this delicate field, to provide for action by the Attorney General as well as by individuals, to provide for relief before possible harmful acts are taken rather than waiting until the damage has been done, and to provide that the acts of private individuals as well as officials acting under color of law be subject to the provisions of the relevant statutes.

If the provisions of S. 3717 and S. 3718 are adopted it would appear advisable to add to the personnel in the Department of Justice, including an additional Assistant Attorney General as is provided in S. 3604.

We are fully aware that justice is not established, nor laws enforced, in a social vacuum. There are frequent predictions of dire results if the social pattern of southern white dominance is too rapidly or drastically changed as a result of Court decisions or Federal law enforcement. But where one group has had special advantages, change is not going to come about without sacrifice. It is our hope that in the Senate and the House may be found the kind of wise leadership which accepts that necessity but is determined to make sure that it comes about with equity and resistraint, rather than through another outburst of violence and terror. May I conclude with words which John Woolman spoke 200 years ago in the Philadelphia yearly meeting of Friends. His language is old-fashioned but his meaning is for us today:

"My mind is often led to consider the purity of the Divine Being and the justice of His judgments; and herein my soul is covered with awfulness. I cannot omit to hint of some cases where people have not been treated with the purity of justice, and the event hath been lamentable. Many slaves on this continent are oppressed, and their cries have reached the ears of the Most High. Such are the purity and certainty of His judgments that He cannot be partial in our favor. In infinite love and goodness He hath opened our understanding from one time to another concerning our duty toward this people, and it is not a time for delay. Should we now be sensible of what He requires of us, and though a respect to the private interest of some persons, or through a regard to some friendships which do not stand on an immutable foundation, neglect to do our duty in firmness and constancy, still waiting for some extraordinary means to bring about their deliverance, God may by terrible things in righteousness answer us in this matter."

Senator HENNINGS. Our next witness is Mr. George Washington Williams, Baltimore, Md.

STATEMENT OF GEORGE WASHINGTON WILLIAMS, BALTIMORE, MD.

Senator HENNINGS. Mr. Williams, I shall not lay any injunction whatsoever upon you, of course, any more than I did upon any other witness, as acting chairman of this committee and chairman of the subcommittee. I would adjure you, if I may, with respect, sir—not that I have any indication that you are going to do otherwise—but to bear in mind that at 5 o'clock some of us must go to the Senate floor.

Mr. WILLIAMS. I will be very glad to leave now and come back another time.

Senator HENNINGS. No, I won't impose upon you any time limit at all. If I have to leave, Mr. Young, our counsel, has been good enough to say that he will hear you further and beyond that time.

Mr. WILLIAMS. My address is 231 St. Paul Place, Baltimore, Md. I am a member of the Maryland bar, Baltimore, Md.; of the American Bar Association; and a member of one of the subcommittees of the American Bar Association.

I appear in my own behalf, and I think I express the sentiments in large measure of most of the people in my area, and I think of a great many people, not only in the South, but throughout the whole country.

Secondly, anything that I may say in connection with the Supreme Court is not an attack upon it as an institution. Any comment I shall make in connection with it, will have to do with the usurpation of functions of that Court by the present occupants, and those immediately preceding it.

Senator HENNINGS. I take it that your testimony will relate to this legislation?

Mr. WILLIAMS. Yes, sir, in broad lines, however.

Secondly, anything I may say will also not be understood as trying to make any invidious comparisons between races. My emphasis will be largely upon the State rights, as we used to call them—I am a States Rights Democrat, when the Democratic Party was a States Rights Party, and I am still a States rights believer.

I am also a believer in the preservation of the races as God created them, or as we understood He created them. I know the 26th verse, the 17th chapter of the Book of Acts said He made separate habitations for the races, and I feel very much that we are now being punished because we violated the fourth commandment, which said that the sins of the parents shall be visited upon the children even to the fourth generation.

God Almighty, as I see it, put the black people in Africa and the white people some other place.

Senator HENNINGS. That is the fourth commandment, sir, that the sins of the parents shall be visited upon the children even unto the fourth generation?

Mr. WILLIAMS. Yes.

So we have a problem which has been brought upon us, unfortunately, and we are now being victimized by the shift of status of the people who came here as property, virtually.

Personally, I am a Jeffersonian and a Lincolnian in my beliefs in that respect. Both Mr. Jefferson and Mr. Lincoln, contrary to public understanding, were not only for the separation of the races but were for deporting the colored race. Mr. Jefferson and Mr. Lincoln, unlike our own people today, had a sense of perspective, and saw that there were two problems involved there, not one.

Most people looked at the problem of the liberation of the colored race, but Mr. Jefferson and Mr. Lincoln—I will quote from them, if you want me to do it.

Senator HENNINGS. It won't be necessary.

Mr. WILLIAMS. Then you will accept my statement?

Senator HENNINGS. No, I don't necessarily accept your statement, but we will not take the time to quote it.

Mr. WILLIAMS. If you don't accept, then may I quote it?

Senator HENNINGS. Very well. Mr. Lincoln said a lot of things on the subject, and so did Mr. Jefferson. It depends entirely upon what you are quoting. Go ahead, sir, please.

Mr. WILLIAMS. I am giving you my basic position, sir.

Senator HENNINGS. Yes.

Mr. WILLIAMS. And not only did Mr. Lincoln say it, but his Cabinet also apparently was in favor of division.

I will take Mr. Lincoln's statement here as to the separation, rather than go into any broad dealings with his statements, and I have a number of them.

If you will permit me, I would like very much to file with your committee a 40–page discussion entitled "The Constitution, States Rights, and the Segregation Cases."

Senator HENNINGS. It may be accepted and made a part of the file.

(The document referred to is as follows:)

THE CONSTITUTION, STATES RIGHTS AND THE SEGREGATION CASES

A Speech Delivered Before the Baltimore City Association for States Rights, Inc. and the Maryland Petition Committee

by George Washington Williams

THE CONSTITUTION, STATES RIGHTS AND THE SEGREGATION CASES

A Speech Delivered Before the Baltimore City Association for States Rights, Inc. and the Maryland Petition Committee, by George Washington Williams.*

I approach this subject essentially from the States Rights angle, as I have always been a strong advocate of local self-government, and these Segregation Cases come fully within the ambit of the 10th Amendment, and the otherwise reserved powers of the States, as also contemplated by our long-cherished dual form of government. I look upon those Decisions as *carpetbag* in character, as they impose upon the States something that ought to be handled from the local viewpoint. Carpetbagging is *carpetbagging* whether the imposition is from the *inside* or the *outside,* and those decisions are as viciously carpetbagging as anything that that monstrous politician Thaddeus Stevens, as George Sokolsky called him, worked in the South. This is another *"On To Richmond" movement,* and is destructive of our dual system of government, one of the most fundamental of our Federal governmental institutions.

In view of the high authority of the Supreme Court, its exalted station, and the co-ordinate position that it occupies in our system of government, and its decision in the Segregation Cases, it is deemed meet and proper, indeed demanded, that some detailed reasons and justifications should be presented for disagreeing with the decision in the said cases, which I now shall proceed to do.

I. The Court, it is alleged, made statements of fact and inferences in its opinion in the *Bolling Case* which it is believed are not in accordance with the facts of history, such as the statement that the separation of the white and negro races is contrary to our "traditions." (*Bolling* vs. *Sharpe*, 347 U. S. 497).

II. And, again, the Court said that, "In the first cases in this Court construing the Fourteenth Amendment, decided shortly after its adoption, the Court interpreted it as proscribing all-State-imposed dis-

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* From "Who's Who in America":
WILLIAMS, George Washington, judge; b. Fredericktown, Cecil Co., Md., Dec. 12, 1885; LL.B., Baltimore Law Sch. (now dept. of U. of Md.), 1908. Practiced in Baltimore, 1907-21; police judge, 1912; asst. city solicitor, 1918; mem. Park Bd., 1915-19; legal adviser to Govt. of Virgin Islands, 1921-24, municipal judge, St. Thomas, 1921-24; U. S. Dist. judge of V. I., Aug. 14, 1924-30. Mem. Am., Md. & City Bar Assn., Colonial War Society, S.A.R., Soc. War of 1812, Eastern Shore Soc., 231 St. Paul Place, Baltimore, Md.

criminations against the Negro race," citing the *Slaughter House Cases,* 16 Wall 36, 67-72 (1873), and *Strauder* vs. *West Virginia,* 100 U. S. 303, 307-308 (1879), and in so doing, the Court ignored the cases directly discussing and disposing of the subject, and, it is believed and asserted, ignored the *substance* of even the cases referred to, as we shall see.

III. And, again, the Court discriminated, by ignoring the *psychological* and other effects on the white children of the country and the *social aspects of the problem,* and used in those respects the works of people whose interest, in the belief of many, lay in the direction of integration and amalgamation.

IV. The Court ignored the salutary principle of *stare decisis.*

These positions of the Supreme Court in the Instant Case supply the basis of the following allegations and refutations, to-wit:

I.

First, it is to be remembered that the Court called for a second argument of the Segregation Cases to be elightened as to the *intention* of the Congress in proposing, and the States in adopting, the XIV Amendment, and thereafter proceeded to ignore the best evidence on the subject, as will be herein shown.

Now, the opinion of the Court contains, in our judgment, several important false assumptions of fact, as well as false conclusions of law, and if their premises are in important parts false, their conclusion must likewise be false in important respects.

In the first place, *absolute* equality is not required, only substantially equal facilities. The Supreme Court has recently said, speaking through the late *Chief Justice Vinson,* that there are *no absolutes* in this world.[1] If there are *no absolutes* in this world, the adopters of the *XIV Amendment* cannot be said to have been thinking of *absolute equality* when those words, equal protection of the laws, were used. They were, perforce, speaking with *human* understanding, and in the *ordinary sense* of these words. That there were wise men before *Chief Justice Vinson* and his Court, we may assume.

From long before the establishment of the present Federal Government, and also of its predecessor, the Articles of Confederation, slavery had existed, and was, in fact, *virtually confirmed,* certainly recognized,

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[1] *Dennis* vs. *United States,* 341 U. S. 494, 508.

In *Capitol Greyhound Lines* vs. *Brice* 339 U. S. 560, Justice Frankfurter, dissenting, remarked, showing the devious methods of the Court, that "* * * the Court attempted to avoid difficulties through what seems to me to be an exercise in absolutes", something that we have seen the Court eschewed through Vinson, C. J. Reinforcing this view, he further said that, "*the Constitution does not require pure reason,* only '*practical reason*'." However, he seemed to overlook this sage criticism of the Court in the Segregations.

by the present Constitution, as the importation of slaves could not be prohibited until 1808, (Sec. 9, Art. I, Fed. Const.), and as fugitive slaves were required thereby to be returned (Sec. 2, Art. IV).

Slavery existed in the District of Columbia, which is under the "exclusive" jurisdiction of the Federal Government, and it existed right on down to the passage of the 13th Amendment. So, while the *Fifth Amendment,* with its Due Process Clause, existed from the *very foundation* of *this* Government, *no power was even thought to be in the Court* to abolish slavery, *ex propria vigore,* or in the *Constitution to interfere with the right, if any, of the Congress* to regulate education or separate the two races *in the District of Columbia.* It was, at most, as will hereinafter appear, p. 20, *up to Congress* to change and to protect rights, as they appear to it, whenever changes of a *lawful character* were required.

"Class legislation" is well recognized under the decisions of the courts. Cooley's Principles of Constitutional Law, p. 237.

That the Supreme Court's statement that the "exhaustive consideration of the Fourteenth Amendment in Congress, the ratification by the states, *then existing practices in racial segregation,* and the views of proponents of the Amendment", were inadequate to resolve the problem, but at best were inconclusive, (*Brown* vs. *Bd. of Education,* 347 U. S. 483, 489) *is directly challenged.*

The Court did admit, however, that they *"cast some light"* on the subject, but asserted that it was "not enough to resolve the problem with which" they were "faced" (p. 489). The Court, nevertheless, did not vouchsafe to *indicate in which direction* that "light" was cast. *It could not do so without contradicting its ultimate decision.*

The Court then further stated that what "the *state legislatures* had in mind cannot be determined with *any degree of certainty,"* but, as in the other instance, the Court did not vouchsafe to *indicate, even,* what the evidence indicated (p. 489).[2] With those statements the Court brushed aside the result of the "exhaustive consideration" of the subject of the "Reargument," (p. 489 et seq.) instead of giving *some indication* of what direction it gave. Obviously, the result would not support its conclusion, or it would have been used to bolster up its opinion.

Furthermore, the Court's statement, by which it assayed the position at that time against the present day development (p. 492), ignored one of the *basic reasons* for the segregation, which was well expressed by *Lincoln* (post, p. 10 et seq.) *namely,* the desire to prevent the *probability of miscegenation,* as indicated by his use of the word *"amalgamation,"* and implied by Jefferson (post, p. 8 *et seq.*).

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[2] All underscoring supplied, unless otherwise indicated.

The Court proceeded to *grope,* apparently, for some ground, as we see it, upon which to integrate the negroes in the public schools, *as it admitted that the schools were "equalized, or are being equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other 'tangible' factors,"* (p. 492, and note 9); therefore, the Court was driven to say that "We must look instead to the *"effect"* of segregation itself on public education." [3]

By this admission, the Court there was driven virtually into the field of metaphysics, and it has indicated time and time again that it was poorly equipped to deal with such problems, as in other like fields.[4] "Equality" means what here? It means such facilities as the Court detailed, as shown hereinabove. To argue otherwise is to argue that the whites are of some superior mould, or are possessed of something that the negroes did not have, which could be absorbed by the negroes, if allowed to intermingle with the white children. Could this be done without pulling the whites down? This the Court ignored. The *schools* are not, in such case, *unequal,* but the *children are,* in the Court's view, impliedly so, which is something that the Court would be, it is believed, reluctant to admit, however true.

It will be noted that the Court was *compelled to admit that the Supreme Court and litigants had generally accepted the doctrine of "separate but equal" rights* by saying that in *two of the six cases involving it, "the validity of the doctrine itself was not challenged."* In the others, where it was involved, the Court stood by the "separate but equal" established principle (Brown case supra, 491 et seq.). Therefore, the matter was closed, so far as it could be closed by the Court, until unsettled by the Second World War, which aroused, and set on foot the off-color nations of the world.

The Court ignored the fact that the school segregation applied equally to the white children, and that it would be only the poorer white children who would be affected, as others could be sent to private schools, *even as the members of the Court and others are able to segregate themselves from the poorer classes* by living in areas not frequented by even poorer white people, and thus insulate, to a degree, their children *from even the possibility of miscegenation.* With many others, *as with Lincoln,* that was an item of *paramount,* and even *controlling,* importance.

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[3] The types relied upon appear at post page 29.

[4] For instance, in connection with the development and regulation of the fishing industry in Oregon, the Court said: "It is argued that the project will preclude the carrying out of certain plans * * * which contemplate greatly enlarging the fish population * * * concentrating there other runs of fish not now using that river. While such an argument may properly be directed to the Federal Power Commission or to Congress, it is not one for us to answer upon the basis of existing legal rights." It must here be remembered that the Congress had actually legislated on the instant subject, as will hereinafter appear *re* the D. of C. *F. P. C.* vs. *Oregon,* 349 U. S. 435, 452.

So, if the *Great Emancipator* was for segregation, as will hereinafter appear, it can scarcely be a *crime,* or an *unsocial act,* for others to be for segregation, and the great host of people who do not want the *probable effects of propinquity* to work into their family system.[5]

Therefore, the *various grounds* upon which the Supreme Court pitched its decision in the *Brown Case, supra,* have been, and are challenged.

This ruling put the Court, in the Bolling Case, on the spot, in respect to the District of Columbia Case, as the *Fifth Amendment limited only the Federal Government,* hence, it was compelled to pass over what may be referred to as a *pons asinorum* in order to push the negro children into the District public schools, by saying that ". . . it would be *unthinkable* that the same Constitution would impose a lesser duty on the Federal Government." This in face of the fact that the Congress Acts in that area without regard to what any state may do. This, it is respectfully urged, was a plain *tour de force,* and a sort of *tertium quid* argument *in the extremity in which the Court found itself,* in trying to establish the *assumed premise,* that segregation of the races was *"contrary to our traditions,"* which is not true *in fact, but is flatly to the contrary,* as our *whole history shows* the "tradition" has been to act separate and apart from the negro, even to the point of holding him as a *slave,* for which purpose he was transported into this country, and principally by Yankee shipping people; that it has been, in fact, *"traditional" for the use of separate facilities, hotels and all the other public facilities and conveniences,*[6] in at least a large part of the country, if not the whole country, with relatively few and eccentric exceptions, until relatively recent years, and then largely under the impress and pressures of certain types of foreigners or immigrants and the *force of government,* as in the instant cases.[6]

That the Court's statement *re* our *race traditions* is false, is clearly indicated by the action of the Congress the day after the seizure of Fort Sumpter proposing an Amendment (March 2, 1861), as the Thirteenth Amendment, as follows:

"No amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any State, with the domestic institutions thereof, *including that of persons held to labor or service by the laws of said State."*

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[5] "Vice is a monster of such frightful mien, as to the hated needs but to be seen, yet seen too oft, familiar with its face. We first pity, then endure, then embrace," as Pope explains the results of propinquity.

[6] In *Durkee* vs. *Murphy,* (1942) 181 Md. 259, 29 A (2) 253, it was said: " 'Separation of the races is normal treatment in this State', *Williams* vs. *Zimmerman,* 172 Md. 563, 192 A. 353". In connection with recreation facilities death has actually occurred in Baltimore City. The same in connection with housing.

Therefore, when on the *threshold* of the War that ultimately abolished slavery, this subject was not thought by the Congress to be against our traditions. It would have been very interesting to see the Court attempt to support that statement, and not let it rest on its *ipse dixit.*

In the Peoria speech in October 16, 1854, *Lincoln* recognized the great opposition to amalgamation, where he, *inter alia,* said, "I *think* I would not hold one slave, at any rate; yet the point is not clear enough to me to denounce people upon it. What next? Free them, and make them *politically* and *socially* equals? *My own feelings* will not admit of this; and if mine would, we well *know that those of the great mass of white people will not.* * * * We cannot make them equals."

Therefore, it is alleged that these statements, made by Lincoln, and those to follow herein, and the other matter herein set forth, show clearly and indelibly, and therefore really *indisputably,* that *there never was any general intention of intermingling and amalgamating this country with the negro race,* but absolutely to the contrary; that, at best, *an agitating minority group* was for it, although there was a much larger group who were for abolition of slavery, such as Lincoln, after importations thereof were eliminated by the Federal Constitution *after 1808;* therefore, it is hereby alleged, *that even slavery was recognized by the Constitution* until the adoption of the *Thirteenth Amendment,* and therefore the statement of the Court is not supported by either the Constitution or by *facts* of history, but is refuted by the *commonly known law and the facts of history.*

And it is further alleged in justification hereof that segregation in such schools had *generally been maintained,* and even in such cities as Boston; that *there has never been a general condemnation of separate schools* in the United States, as admitted in *note 6* of the State Cases opinion, but, at most, *sectional opposition* thereto, which did not develop, at least substantially, until long after the importation of slaves was prohibited by *Section 9 of Article I* of the Federal Constitution, as aforesaid, and they existed, even as aforesaid, in the City of Boston, State of Massachusetts, until the 1850s, where the separate but equal doctrine had been established, and had been confirmed and sustained by the case of *Roberts* vs. *City of Boston,* 59 Mass. 1198 (1849), and, therefore, for these reasons, it is alleged that *there has never been a general policy or tradition in this country against segregation, but absolutely to the contrary.*

The great liberalist, *Thomas Jefferson,* held the same opinion on the subject of *amalgamation* as did *Lincoln,* as clearly shown by the following, from a letter to John Holmes, April 22, 1820:

> "* * * The cessation of that kind of property, for it is so misnamed, is a bagatelle which would not give me a second thought,

> if in that way a *general emancipation and expatriation* could be effected, and gradually with due sacrifice, I think it might be done * * *"

He anticipated the problem with which the country is now acutely confronted, and he also anticipated the part that the Judiciary would probably play in such matters, as shown by the following anticipatory and prophetic statement in a letter to *Charles Hammond*, August 18, 1821:

> "It has long, however, been my opinion and I have never shrunk from its expression (although I do not choose to put it into a newspaper nor, like a Priam in armor, offer myself its champion), that the germ of dissolution of our Federal Government is in the Constitution of the Federal judiciary. An irresponsibly body (for impeachment is scarcely a scarecrow) *working like gravity by night and by day, gaining a little today and a little tomorrow*, and advancing its noiseless step like a thief, *over the field of jurisdiction until all shall be usurped from the States and the government of all be consolidated into one.*
>
> "To this I am opposed, because whenever government, domestic and foreign, in little as in great things, shall be drawn to Washington as the center of all power, *it will render powerless the checks provided one government on another*, and will become as venal and oppressive as the government from which we separate. It will be as in Europe where every man must be either pike or gudgeon, hammer or anvil. Our functionaries, and theirs, are wares of the same wine shop, made of the same materials—and by the same hand. *If the States look with apathy on this silent descent of their government into the gulf which is to swallow all, we have only to weep over the human character formed uncontrollable but by a rod of iron, and the blasphemers of men as incapable of self-government, become his true historians."* [7]

It is here alleged that the "clock" has not in any way changed the problems as stated by both Lincoln and Jefferson, and the principal of which involves the subject of amalgamation. It merely shows that the Supreme Court is still "on the March."

Moreover, and as evidence of the fact that there has never been a *general policy* against segregation of the white and colored people, as stated by the Court, or a general desire of at least the "mass" of white

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[7] Cf. Solicitor General Sobeloff's Speech, post p. 21; *Int. Salt Co.* vs. *United States*, 322 U. S. 392, re *"creeping"* process; *United States* vs. *Rabinowitz*, 339 U. S. 68, re *"momentum"* of decision and "self-generating extension" thereof.

The truth of Justice Field's vitriolic remark in *Julliard* vs. *Greenman*, 110 U. S. 425, still grows: "What was once the medicine of the country has now become its daily food", and he went on to foretell the events of today.

population of the United States, to prohibit segregation, further reference is made to the views of the Great Emancipator, as he has been repeatedly misquoted in that respect, as follows:

(a) When a Delegation of *Negro Preachers* called upon him on August 14th, 1862, he, *inter alia,* stated that:

> "You and we are different races. We have between us a broader difference than exists between almost any other two races. Whether it is right or wrong, I need not discuss; but this *physical difference* is a great disadvantage to us both, *as I think.*
>
> "Your race suffers very greatly, many of them, by living among us, *while ours suffers from your presence.* In a word, we suffer on each side. If this is admitted it affords a reason, at least, *why we should be separated.* * * * See our present condition— the country engaged in war—our white men cutting one another's throats—not knowing how far it will extend—and then consider what we know to be the truth. *But for your race among us, there could not be war.* * * *" (Acts 17:26)

(b) The *Great Emancipator* had previously made the following declarations in a Speech at Ottawa, Illinois, in the Douglas-Lincoln Debates, on August 21, 1858:

> "Now, gentlemen, I don't want to *read* at any great length; but this is the true complexion of all I have ever said in regard to the institution of slavery and the black race. This is the whole of it; and anybody that argues me into his idea of perfect *social and political equality* with the negro is but *a specious and fantastic arrangement of words,* by which a man can prove a horse-chestnut to be a chestnut horse. I will say here, while upon the subject, that I have no purpose either *directly or indirectly,* to interfere with the institution of slavery in the States where it exists. I believe I have no right to do so, and I have no inclination to do so. I have no purpose to introduce *political and social equality* between the white and the black races. There is a *physical difference* between the two, which, *in my judgement,* will *probably forever forbid their living together upon the footing of perfect equality;* and, inasmuch as it becomes a necessity that there must be a difference, I, as much as Judge Douglas, am in favor of the race to which I belong having the *superior position. I have never said anything to the contrary* * * *"; so, therefore he must have been full of race hatred, according to today's views.

(c) Again, in a letter to *J. U. Brown,* October 18, 1858, he reiterated the same sentiments, as follows:

> "I do not perceive how I can express myself more plainly than I have done in the foregoing extracts. In four of them I have

expressly disclaimed all *intention* to bring about *social and political equality* between the white and black races and in all the rest I have done the same thing by clear implication."

(d) In a speech at Springfield, on December 12, 1857, re amalgamation, he said that:

"A *separation of the races* is the only perfect prevention of amalgamation, but as an immediate separation is impossible, then *the next best thing is to keep them apart where they are not already together.*"

(e) In the Diary of *Secretary Gideon Welles,* Secretary of Navy in Lincoln's Cabinet, these comments on Lincoln's attitude on the subject, as well as the position of the cabinet thereon, appear in part as follows:

"At several meetings of late *the subject of deporting the colored race* has been discussed. Indeed for months, almost from the commencement of this administration, it has been at times considered.

* * *

"The President was earnest in the matter wishing to send the negroes out of the country.

"On Tuesday last (Sept. 26/62) the President brought forward the subject and desired the members of the cabinet to each take it into consideration.

"Thought it essential to provide asylum for a race which we emancipated but which could never be recognized or admitted to be our equals." (1 Vol. pp. 150-53)

And he further noted that "Mr. Bates, Lincoln's Attorney General, (October 1) desired that *deportation, by force if necessary,* should go with emancipation" (p. 158).

When "race hatred" is used as an argument against segregation, the fact is ignored that race hatred will be much worse, if whites are forced to have social relations against the will, or what is equivalent to social relations. The desire to avoid social intermingling is, furthermore, not in the least based on *race hatred,* but either because of a lack of congeniality or because many believe it would be the occasion of mixed marriages, something that even Lincoln was for avoiding, as he and all intelligent people know the probable results of propinquity of a continuing nature. That is what many of the colored are expecting, and for what they are working. *This dragging of "race hatred into the picture is nothing more than dragging the proverbial red herring across the trail of the matter.* I do not believe that this can be honestly denied, unless Lincoln is to be likewise charged with race hatred, too. More *feeling* has developed as a result of the late Decision than has

existed for many years, and in people where it did not exist before. Many people feel that they should not be forced to associate in such a way if they do not want to, and that no other people should feel differently, if they have a sufficient degree of self-respect. *Psychological* factors apply to whites as well as colored, though the court affected to ignore this fact. It has now come to the point of where the major race is feeling the effects of discrimination, in even the business world. In order that trouble may be avoided by those employing people, other races have been employed where the same qualifications may not exist.

Now, even *Roosevelt,* before he got into the maelstrom of Federal Office, said, with a great deal of emphasis, in the *Spring of 1932*:

> The Constitution gave the Congress no power to legislate on a great number of vital problems, "such as * * * *insurance, of business, of agriculture, of education, of social welfare and of a dozen over important features,*" and, "*We are safe from the danger of any department from the principles upon which this country was founded only so long as independent home rule of the states is scrupulously preserved * * * and fought for* whenever *it runs in danger.*" March 3, 1932.

We are now asking that the Rights of the States be "scrupulously *fought for*" in accordance with his admonition and his above quoted formula, and in doing so, can we be classified as *anti-social* or *some sort of* moral or religious *criminals?*

As further evidence of the necessity of leaving what has been considered by the Courts, which were contemporaries of the Constitution, to be local matters, in local hands, the *Speech of President Eisenhower,* at the dedication of the *McNary Dam,* is referred to, where he, *inter alia,* said:

> "It is not properly a Federal responsibility to try to supply all the power needs of our people. The Federal Government *should no more attempt* to do so *than it should assume responsibility for supplying all their drinking water, their food, their housing* and their transportation.
>
> "To attempt such a *centralization of authority* and responsibility always starts a *deadly cycle.*
>
> "* * * Thus *still more* Federal intervention *becomes necessary,* and such a *conversion of local regions into Federal satellites poses a threat deadly to our liberties.* The administration in Washington —and the present leadership in Congress—*are unalterably opposed to such malignant growth of bureaucracy.*
>
> "* * * these *advocates of centralized government shut their eyes* to the remarkable development of this Nation during past decades. They must wonder how such prosperity came about *when communities and citizens were free to look after themselves*

—including their own protection against the so-called local 'interests'."[8]

He was standing then and there for *States Rights,* which was the *burden of his Speech,* and for the *restoration of those rights to the States,* as reserved under the Tenth Amendment. His speech was a clear echo from the voices of the Founding Fathers,[9] which has come down to their descendants unbroken, until recent years, when some of them have turned a deaf ear in this period of false gods,[10] and this proceeding is an effort to harken back to the teachings, and to respect the warning of, the founding and subsequent fathers, that we may not go *The Way of All Flesh,* and thus exemplify the *dictum* of the great Poet Byron, "That history with all her volumes vast, hath but one page."

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[8] See Report of the Commission on Intergovernmental Relations, 1955.

In *Kansas* vs. *Colorado,* 206 U. S. p. 80, the Court remarked "This amendment—discloses the wide-spread fear that the national government might under the pressure of a supposed general welfare attempt to exercise powers which had not been granted. With equal determination the framers intended that no such assumption should ever find justification in the organic act, and that if in the future other powers seemed necessary they should be granted by the people in the manner they provided for amending that act * * *"

Says Justice *Brandeis,* "The doctrine of the separation of powers was adopted by the Constitution of 1787, not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was, not to avoid friction, but, by means of the inevitable friction incident to the distribution of the Governmental powers among the three departments, to save the people from autocracy." Brandeis, is quoted by C. Herman Pritchett Civil Liberties and the Vinson Court. *Brandeis* also reminds us that "the greatest menace to freedom is an inert people."

Montesqueu tells us that, "The corruption of any government begins with the corruption of the principle, and the duration of any given form depends upon the persistence in any given society of the particular principle, which is characteristic of that form."

West, Ancient World, 493, reminds us that: "Statesmen come to disregard all checks of the Constitution in order to carry a point."

It was Wilson who said: "The history of liberty is a history of limitations of government power, not the increase of it.

But Hegel tells us that, "We learn nothing from history except we learn nothing from history. 139.

Plato re Limitations on Power. The wise old *John of Salisbury* also tells us, "* * * only that power is secure in the *long run* which places boundaries on its exercise."

[9] Cf. His position on the Segregation Cases.

Jefferson said: "When we are directed from Washington when to sow and when to reap, we would soon want bread. When government, in little as in great things, shall be drawn to Washington as the center of all power, it will become *venal* and oppressive."

Cf. Roosevelt's statement Supra p. 12, with the present time.

Cf. Washington's Farewell Address, Cong. Record, Feb. 22, 1955, p. 1591-1593.

[10] "*Property rights* must be subordinated to the political rights as in substance to coalesce and unite in the national sovereignty." Douglas, J.
Cf. Henderson statement and demand, post p. 39.

The Court further ignored the history on the subject of segregation, it is alleged, because it ignored the fact that one of the principal opponents of segregation in the Congress that proposed the Fourteenth Amendment, *Charles Sumner,* supported the appellant in the said *Boston Case,* that considered an *equal protection clause* comparable to that in question, and he, therefore, had an understanding of the law on the subject, at least that of the abolitionist State of Massachusetts, and did not, therefore, understand, or *have the right to understand, that it would have any broader scope in the Amendment than the scope given to it by the Boston Court.*

That this *whole problem* is well within the *police power* of the States, it is believed and therefore alleged, is indelibly revealed by the fact that *the Supreme Court has handled the matter with such delicate and delaying care,* and as further appears from the *fact* that that Court has recognized the *fact* that, *notwithstanding the Fifth Amendment's existence,* and also of the *Fourteenth Amendment, segregation has existed all over the United States during their existence,* by saying, *inter alia,* in connection with *Roberts* vs. *Boston,* that the principle of segregation *had not only existed there, "But elsewhere in the North segregation in public education has persisted until recent years. It is apparent",* the Court continues, *"that such segregation has long been a nation-wide problem, not merely one of sectional concern."* Where, then, stands the Court's *dictum* re *"traditional policy"*? Perhaps this was a *lapsus linguae* in a desperate effort to cooperate with the Executive Department.

That Court, therefore, must also have known that more than half the States had such a general policy at the time of the promulgation of the Fourteenth Amendment, as well as after, and that this was the fact as to the District of Columbia, as well, over which the Congress has "exclusive" control, of which fact the court seems to have been oblivious, or else blind-spotted, as it completely ignored the existence of legislative history in regard to the said District.[11]

It ought to be obvious that the words "nation-wide problem" took into consideration international pressures and problems,[12] though written in *milk* in the opinions, which it is believed is further indicated by the unanimity of the opinions, something that has now become almost phenomenal.

Therefore, as the Supreme Court itself has considered the race problem to involve *sociology,* it thereby *inferentially admitted* that it

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[11] See Post p. 28.

[12] *United States* vs. *Louisiana* (Tidewater Case) 339 U. S. 699: "National interests, national responsibilities, national concerns are involved." It seems not to occur to the Court that amendment is the lawful answer and not usurpation of that function by the Court.

was a matter for the Congress to handle by action or nonaction, and the Court must have known that this whole colored race problem had been before the Congress on many occasions, and that the *Congress has refused to do what the Court has,* by what is believed to be a *tour de force, improvidently done,* and that, therefore, in order to effect their purpose of amalgamation, and *in the face of the refusals of the Congress,* the amalgamation elements took recourse to the Judiciary, and have been able to *by-pass the Congress,* by the Court taking jurisdiction of a subject which they were, at least, *ill-fitted* to handle.

The Court, furthermore, pitched a considerable part of its opinion on books written by a number of so-called sociologists, as we have seen, which it *is believed could not have been introduced in evidence, apart from the appearance and examination of the authors.* Considering the fact that these people were so conditioned and environed as to make their bias almost inevitable, the Court should not have used them to bolster up a course of decision that actually runs counter to the *feelings* of the bulk of the people, whatever the subdued appearance. Now, that many of the people seem to acquiesce in this action of the Court presents a false situation, as it is obvious that the bulk of the people are bowing to *major force,* the force of two governments, and would not submit otherwise. In some areas where the problem does not exist, and where, therefore, no personal reactions can exist from *proximity as in other areas,* the people are unqualified to express any opinions on the instant subject.

Such people are like witnesses who did not see an accident being called to testify. It is obvious that people who are not in any way affected by *extraneous conditions* or pressures are in no position to express an opinion on the instant subject. Such people would be expressing an opinion in a vacuum. We do not live in vacuums. We live and have our being among hard and stubborn factual conditions. Useful, honest and legally worthy opinions cannot be given, however honest a person may be, aside from some experience gained by propinquity. *Abstract* opinions and *feelings* ought not to be allowed to prevail over those emanating from *environmental conditions* under which people actually exist. Yet, that is allowed to prevail in this field, when the Court acts on political and extraneous pressures. The feelings of the whites are as important, though it does not seem so to the Court, as those of the negro element. As long as *substantially* equal conditions prevail, the Court is not justified in requiring what its former Chief Justice Vinson, speaking for the Court, said did not exist in this mundane world. So, here, therefore, the Court acted in the *face* of that statement—which, apparently was made to serve the hour, if its present holding is to stand. The two cannot fairly stand together.

The Court, in so saying, failed to recognize that we were not living in Utopia but in the travels of Gulliver, where all kinds of conditions prevail and have to be met on a *local* basis. There is, therefore, no justice in allowing a foreign type of State, such as New York, to force down the throats of such as South Carolina or Delaware such distasteful morsels as the Court is permitting it to do, acting in conjunction with other States that do not have the problem in the acute form, if at all, found there.[13]

The Founding Fathers never intended the Constitution to be a Procrustes Bed maker. They never intended to *force* all States to have the same set of feelings, habits, or even morals within limits, as Hamilton has told us, Post p. 19; yet the Supreme Court in recent years is a personification of Procrustes. We are here the victims of *force*, a sort of distilled product, resulting in the crushing of the above local characteristics. It is a case, as Samuel Butler puts it, of

> Compound for sins we are inclined to,
> By damning those we have no mind to,

and probably by not having a "mind to" due to not having to resist the things not "inclined to," by being protected, either through insulation or lack of contacts, where the pinch comes. Such a use of force is, in our view, at least as vicious as the practices condemned. When the feelings of the negroes are weighed against possible, if not probable, mongrelization of the white race, in balancing of "evils," their demands are overbalanced thereby. We conclude this view by saying that at least most of those who write such books look at the matter from an subjective viewpoint when objective elements are what is involved.

The *Steel Case* has considerable pertinence here: The Court, *inter alia*, said that "policy" was for the Congress. "The power of Congress to adopt such public policies as proclaimed by the order is beyond question;" hence, as Congress had acted, both the Executive and Judiciary were bound by it.

While recognizing that *"The Founders of this Nation intrusted the lawmaking power to the Congress alone in both good and bad times,"* the Court has seen fit to expand its power to the point where it has, in the Segregation Cases, *stricken down the Acts of the Congress relating to the District of Columbia*, over which it has exclusive jurisdiction, and when it had previously acted not, therefore, waiting for Congressional action in recognition of any relevant change in *times* or *conditions*.

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[18] In referring to the *Kansas Case*, the Court has accepted the opinion of the Court only, and therefore, without knowing upon what evidence, if any, the Court was basing its remark. Furthermore, the Supreme Court does not always accept the findings of the lower courts.

Now, recognizing this, *Justice Frankfurter,* in his concurring opinion, remarked:

> *"The Framers, however, did not make the judiciary the overseer of our government.* They were familiar with the *revisionary functions* entrusted to judges in a few of the States *and* refused to lodge such power in this Court."

The Court, however, in the Instant Cases, did not hesitate to enter the field of policy, even to the point of metaphysics, and based its Decision on books of sociologists, as aforesaid, books that would not have been received in evidence, even in a Magistrate's Court. Such books are different from statistics upon which business acts, as used by Justice Brandeis, which would seem to be wrong unless the writers were at least subject to cross-examination. The Court ignored the environmental conditions of the writer of these books, which were definitely calculated to cause bias.

In the *Segregation Cases* the Court ignored what Justice Frankfurter said in the *Steel Case,* as to the President's power, as follows: "We, must therefore put to one side consideration of what powers the President would have *if there had been no legislation whatever* bearing on the authority asserted by the seizure, *or* if the seizure had been only for a short, explicitly temporary period, to be terminated automatically unless Congressional approval were given."

Now, we find the Segregation Cases coming exactly under the first part of that formula, *as the Congress had, not only once, but a number of times,* legislated on the subject for the District, and refused to pass integration laws on many more occasions.

Justice Frankfurter's further statement is particularly pertinent:

> "In any event, nothing can be plainer than *that Congress made a conscious choice* in *a field full of perplexity and peculiarly within legislative responsibility for choice,"*

as the various cases herein referred to and quoted from, clearly reveal. Again, we say with him, that

> *"Congress acted with full consciousness of what it was doing* and *in the light of much history,"*

in refusing to integrate the D. C. Schools, which the Justice seemed to overlook.

Again, he with others, as late as April 28, 1952, said:

> "Only those lacking *responsible humility* will have a confident solution for *problems as intractable* as *the frictions attributable to differences of race, color, religion. * * * Certainly the due-process clause does not require the legislature to be in the van-*

> *guard of science*—especially sciences as young as *human sociology* and *cultural anthropology.* * * *
>
> "It is not *within our competence to confirm or deny claims of social scientists* as to the dependence of the individual on the position of *his racial or religious group* in the community,"

and yet that seems not to have deterred him from going along with his associates, nor to have deterred three of his living associates, (Burton, Minton and Clark, the fifth, Vinson, having died in the interim,) from joing the California Justice who ought to have been familiar with the legislation on the West Coast in the racial and color field.

"Responsible humility", does not seem to have rested long in the minds of those Justices.

Again, in *Welburn* vs. *Fireman's Ins. Co.*, 348 U. S. 310, 320, the Court said:

> "Thus there are a numer of other possible rules from which the Court could fashion one for admiralty. But such a choice involves vast policy considerations and it is obviously one which Congress is peculiarly suited to make. And we decline to undertake the task."

Whereupon the Court concluded thus:

> "We, like Congress, leave the regulation of marine insurance where it has been—with the States." p. 321.

That case merely involved insurance and admiralty considerations, and yet the Court in the Segregation Cases went out of its way to make—manufacture policy to meet extraneous pressures.[14]

The injection of the Federal Government *into the areas reserved to the States* is *equivalent to carpetbag government*, the viciousness of which type of government is generally recognized, and a type that the founding Fathers never expected to exist under the Federal Constitution, which clearly appears from the following items from the *Federalist* papers, to-wit:

> (1) "The powers delegated by the proposed constitution to the *federal* government are *few and defined.*" (sic) "Those which are to remain in the State governments are numerous and indefinite. The former will be exercised on *external objects*, as war, peace, negotiation, and foreign commerce; * * * The powers reserved to the States will extend to *all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties* of the people, and the *internal order*, improvement, and prosperity of the State." Federalist, Art. 45, Madison.

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[14] If this is an attack, I, like Cyrano, ask, "Am I attacking people who turn with every breeze?" Cyrano de Bergerac, end of Scene Seven.

(2) "* * * should an unwarrantable measure of the federal government be unpopular in particular states which would seldom fail to be the case, or even a warrantable measure be so, which sometimes may be the case, the means of opposition to it are powerful and at hand. The disquietude of the people; their repugnance *and, perhaps, refusal to co-operate with the officers of the Union;* the frown of the executive magistracy of the State; the embarrassment *created by legislative devices,* which would often be added on such occasions, would oppose, in any State, difficulties not to be despised; *would form, in a large State, very serious impediments;* and where the sentiment of several adjoining States happen to be in unison would present obstructions which the federal government *would hardly be willing to encounter.*

"But *ambitious encroachments* of the federal government, on the authority of the State governments, would not excite the opposition of a single state, or of a few states only. They would be signals of alarm. Every government would espouse the common cause. A correspondence would be opened. *Plans of resistance would be concerted.* One spirit would animate and conduct the whole. The same combinations, in short, would result from an *apprehension of the federal, as was produced by the dread of a foreign yoke:* and unless the projected innovations should be voluntarily renounced, the same appeal to a *trial of force* would be made in the one case as was made in the other.[15] *But what degree of madness could ever drive the federal government to such an extremity.*" Federalist, Art. 46, Madison.

These statements, to induce the people to ratify the Constitution, were made in the light of the previous statement, that

> "In the first place it is to be *remembered* that the general government is not to be charged with the whole power of making and administrating laws. Its jurisdiction is limited to *certain enumerated objects.* * * *" Federalist, Art. 13, Hamilton.

To prevent combinations, acting under the federal government, from acting in a harmful way to the reserved Rights of the States, the Founding Fathers, speaking through *Hamilton,* reminded the public that

> "There is sufficient diversity in the state of property, in the genius, *manners, and habits of the people of the different parts of the Union,* to occasion a material diversity of disposition in their representatives *towards the different ranks and conditions of society.* And though an intimate intercourse under the same government will promote a gradual assimilation *in some of these respects,* yet there are causes, *as well physical* as moral, which may,

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[15] e.g., Civil War, as was actually the case, and is it prophetic of another? Note India and Pakistan.

in a greater or less degree, permanently nourish different propensities and inclinations in this respect." Federalist, Art. 60.

As one means of protection to the States, *Madison* noted that,

"The number of employed under the Constitution of the United States will be much smaller than the number employed under the particular States." Federalist, Arts. 45 and 46, Madison.

He then compared the inherently smaller army of the federal government to the large militia of the States. These two safeguards have now about disappeared.

In this period, combinations have been, at times, effected, which have acted oppressively upon the well established habits, manners and feelings of large sections of our people, and interferred with age-old customs and practices thereof, and thereby the reserved rights of the States have been abrogated and nullified.

Here are several indications, among others, of the *fact* that this subject belongs to the field of local police power, namely:

(1)

"SEGREGATION WINS IN POLL

98% of 5,600 in Delaware
Oppose School Integration

"Dover, Del., Nov. 22 (AP)—An informal public-opinion poll taken during the week end by groups in five Delaware towns, showed today that about 98 per cent of the 5,600 persons who voted were against Negro and white students attending public school classes together.

"The vote was taken in Milford, Georgetown, Harrington, Houston and Greenwood, areas where integration was tried but halted after school boycotts and action by the National Association for the Advancement of White People.

"* * * The total vote showed 5,529 opposed to integration and 68 in favor.

"The vote in the five towns (their population in parenthesis):

Town	Against	For
Georgetown (1,923)	1,387	11
Harrington (2,241)	1,106	11
Milford (5,179)	2,332	25
Houston (332)	245	11
Greenwood (749)	459	10
Totals (10,401)	5,529	68"

(2)

"200 HIT ASSIGNING OF WHITE PUPILS TO FORMER NEGRO SCHOOL

"Philippi, W. Va., Aug. 18.—Police were called to restore order last night, when the Barbour County School Board assigned a white teacher and a dozen white students to what has been an all-Negro school.

"Chief of Police James Paugh estimated 200 angry white parents jammed the board's meeting room and the hallway of the building. Others stood outside on the street.

"* * * The board retained E. E. Adams, Jr., a Negro, as principal at Hanging Rock and appointed Mrs. Patricia M. True, a white teacher, to the staff."

(3)

"ALL-NEGRO SCHOOL CLOSED FOR LACK OF WHITE PUPILS

"Trenton, N. J., Dec. 18—The *New Jersey* Board of Education has decided to close the all-Negro State Manual Training School at Bordentown on June 30, 1955.

"Gov. Robert B. Mayner told a news conference yesterday that despite efforts made by the board to integrate the institution, it remained a 'segregated school in its practical operation.' "

Strong opposition has existed most everywhere that there is a large colored population, except in some of the larger cities where there is a large foreign population, and powerful police forces, such as New York City, where, in some sections, a policeman must be so stationed as to be able to see his whole beat.

As to the scope of the power claimed by the Court, *Solicitor General Sobeloff's Speech* at Baltimore, as reported in the *Baltimore Sun* of December 14, 1954, is enlightening on this point, which reads, in this respect, after saying that *"the law is not merely something written in the books,"* as follows:

> "The Supreme Court, he said, *is not only the adjudicator of legal questions,* but 'in many instances is the final formulator of *national policy.'*
>
> "The example he offered of the court's policy-making function was the decision last May in which the court ruled school segregation unconstitutional.
>
> "Like Congress, or any *other policy-making body,* the court *chooses the appropriate time* to decide important questions, he said.

"'For example, for several years before taking the school segregation cases the court *repeatedly turned away opportunities to decide questions in that area.* * * *'

"And lately, the court *declined to review a ruling on segregation in public housing,* 'perhaps' Mr. Sobeloff said, '*because the court thought it best, after deciding the school cases, not to say more about other aspects of segregation at this time.*'

"The *question of timing,* especially in cases involving political controversy, 'can be of supreme importance' to the court."

These statements reveal a clear usurpation by the Court of legislative functions.[16]

If *time* is one of the controlling factors in such cases, it is alleged that this is a most inopportune time, as the whole country seems to be under the influence of a bad case of *War psychosis,* during which objectionable things may be imposed upon masses of people, which could not be brought about in anything like normal times. In times of distress, minorities force things on majorities which make trouble for the future. This is a great evil, as the feelings thus repressed, and suppressed, when in the grip of such a psychosis, are apt to explode when that psychosis passes off. This appears to be one of those cases.

Social intermixing is something that should come voluntarily, if it is to come at all, but this decision goes in the face of that axiom.

If it is contended that a state of flux is the way of the world, and if it is admitted to be true, still it is important that the fluxes work in time. The machinery of the country's works must synchronize as those of the mechanical world. Failure shows an ineptitude for public affairs.

So far as the speaker is concerned, there are at least a few absolutes and verities, and one of them is the obligation to preserve the white race.

There is a good deal of dissatisfaction with some phases of the judiciary's activities, one of which is the judiciary usurping the functions of the other departments of government, and another is the seeming fact that the judiciary is fast becoming one of men instead of law.

In this latter regard, attention may be called to the speech made by the Solicitor General Sobeloff, and appearing in the March number

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[16] Note, in this respect, the views of Jefferson, ante p. 9, and the "creeping"" process by which the Court acts. Ante page 9. "The tendency is a creeping one rather than one that proceeds at full gallop." 343 U. S. 924.

"To see how far the Court has *'stretched'* here, it is only necessary to compare today's majority opinion with *Patterson* vs. *Alabama,* 294 U. S. 600, the decision relied upon to support the Court's remand." *Williams* vs. *Georgia,* 349 U. S. 375, 393, Clark Dis. See also note 7.

of the American Bar Journal, at page 230, in which he, *inter alia,* was speaking of what we refer to as "hard cases." He there said that "a government lawyer was telling him (me) with a show of shock and dismay that in a certain case Judge Parker declared from the Bench, '*Well, if that is the law, any judge worth his salt will find some way to overcome it.*'" (emphasis supplied.)[17]

Now, that statement leads me to speculate how far Judge Parker has extended that doctrine in cases such as the recent *Recreation Cases,* in which Judge Thomson, *Lonesome* vs. *Baltimore,* 123 Fed. Supp. 193, was reversed in his holding that the *Segregation Cases* did not apply to such as Swimming Beaches. It makes one wonder if Judge Parker's Court was not using some such doctrine in going beyond the *Segregation Decision,* as it must be admitted that his Court did.

In the Segregation Cases, it is our view that it was done by what somewhat resembles a *tour de force,* and that is the name I give the doctrine thus announced by Judge Parker. We all know that cases are not always decided according to the law as it *is,* as there is a school that acts on the principle, or lack of principle, that the decision should be made, not on the law as it *is,* but as the law in the making *ought* to be.[18]

Now, if that is to be the principle upon which the Courts may work, why may not those opposed to a "rotten decision" do what they can to "*overcome it,*" or circumvent it, without being outlawed.[19] Is the one illegal action any worse than the other? We are not sure that the judges are not becoming a law unto themselves. Maybe they have been for sometime.[20] At any rate, two ought to be able to play at that game, and that that it is permissible is presaged by Madison in No. 46 of the Federalist.

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[17] Cf. Bassanio's plea to Portia, to which *she* did not listen:

"And I beseech you, Wrest once the law to your authority: To do a great right, do a little wrong." Merchant of Venice, Act IV, Sc. 1, l. 210.

"There is no vice so simple but assumes some mark of virtue on its outer parts." Act. III, Sc. 2, l. 83.

And yet we are a government of *law* and not of men!

[18] This argument was successfully used in the case of *Henderson* vs. *United States,* 339 U. S. 816, and in the Tidewater Cases, and nearly done in the Steel Cases.

[19] See pp. 18 and 19.

[20] Justice Frankfurter, speaking before the American Philosophical Society recently, tells us "* * * it would be pretense to deny that in the self-righteous exercise of this role obscurantist and *even unjustifiable decisions are sometimes rendered.*" If this is true, and it is, then we have a right and duty to try to see that they are corrected, hence the various movements throughout the country.

II

It is alleged that the general statements by the Court in reference to the early cases, above cited, as to the intention of the Congress, and as to there existing any national policy, are not supported by those cases, and that, therefore, the Court misconstrued at least the first case appearing in that Court, the *Slaughter House Case,* and for the following reasons:

First, the Court recognized the fact that there are two types of citizenships in the United States, *namely,* citizens of the United States and citizens of the States, by saying that, "It is quite clear, then, that there is a citizenship of the United States, and a citizenship of the State, which are distinct from each other, and which depend upon different characteristics or circumstances in the individuals" (p. 74).

The Court *there* expounded at great length their views as to the privileges and immunities clause and proceeded to say,

> "But when, as in the case before us, these consequences are so serious, so far reaching and pervading, *so great a departure from the structure and spirit of our institutions; when the effect is to fetter and degrade the State governments by subjecting them to the control of Congress,* in the exercise of powers *heretofore universally conceded to them* of the most ordinary and fundamental character; *when in fact it radically changes the whole theory of the relations of the State and Federal governments* to each other and of both of these governments to the people; the argument is irresistible, in the absence of language which expresses such a purpose *too clearly to admit of doubt.*
>
> "We are convinced that no such results were INTENDED BY THE CONGRESS WHICH PROPOSED THESE AMENDMENTS, *nor by the legislatures* of the States which ratified them" (p. 78).

The Court then took up the "due process" and "equal protection" clauses, and in the light of what had been theretofore said, concluded that the only action of a State that could be reached by the long arm of the Federal government would be in cases of *total* race discriminations, which has not existed in the State of Maryland for at least upwards of a century; that there is no discrimination against the negro race that *is not equal in character against the white race,* and hence there is no more discrimination against the negroes than against the whites; therefore, the State action, in having separate schools for both races, operates equally, and consequently, both have the equal protection of the laws, and in this respect the Court *there,* wisely and lawfully states, that

> "* * * as it is a *State* that is to be dealt with, and not alone the validity of its laws, we may safely leave the matter *until Congress shall have exercised its power,* or some case of State oppression, *by denying equal justice in the courts,* shall have claimed a decision at our hand" (p. 81).

There is no claim here that negroes have not had "equal justice in the courts" of the State of Maryland.

Secondly, (a) In further justification of this proceeding, it is alleged that the Court *either overlooked or ignored* the case of *Barbier* vs. *Connally,* 113 U. S. 31, speaking through Mr. Justice Field, and which particularly referred to education, as follows:

> "*Neither the Amendment—broad and comprehensive as it is—nor any Amendment,* was *designed* to *interfere* with the power of the State—sometimes termed its *police power*—to *regulate* and promote the health, peace, morals, *education,* and *good order* of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and prosperity." (1885).

(b) The Court, speaking through *Mr. Justice Miller,* in an earlier case, *Davidson* vs. *New Orleans,* 96 U. S. 103,[20a] after having discussed the history of "due process of law," proceeded to rather petulantly say:

> "It is not a little remarkable, that while this provision has been in the Constitution of the United States, as a restraint upon the authority of the Federal government, *for nearly a century,* and while, during all that time, the manner in which the powers of that government have been exercised has been watched with *jealousy,* and *subjected to the most rigid criticism* in all its branches, this *special limitation* upon its powers has rarely been invoked in the judicial forum or the more enlarged theatre of public discussion. But while it has been a part of the Constitution, as a restraint upon the power of the States, only a very few years, the docket of this Court is crowded with cases in which we are asked to hold that State courts and State legislatures have deprived their own citizens of life, liberty, or property without due process of law. *There is here abundant evidence that there exists some strange misconception of the scope of this provision as found in the fourteenth amendment.* In fact, it would seem, from the character of many of the cases before us, and the arguments made in them, that the clause under consideration is looked upon as a means of bringing to the test of the decision of this court the abstract opinions of every unsuccessful litigant in a State court of the justice of the decision against him, and of the merits of the legislation on which such a decision may be founded. If, therefore, it were possible to define what it is for a State to deprive a

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[20a] Which the Court likewise either ignored or overlooked.

person of life, liberty, or property without due process of law, in terms which would cover every exercise of power thus forbidden to the State, and exclude those which are not, no more useful construction could be furnished by this or any other court to any part of the fundamental law.

"* * * It may possibly violate some of those principles of general constitutional law, of which we could take jurisdiction if we were sitting in review of a Circuit Court of the United States, as we were in *Loan Association* vs. *Topeka* (20 Wall. 655). But however this may be, or under whatever other clause of the Federal Constitution we may review the case, *it is not possible to hold that a party has, without due process of law, been deprived of his property when, as regards the issues affecting it, he has, by the laws of the State, a fair trial* in a *court of justice,* according to *the modes of proceeding applicable to such a case.* This was clearly stated by this court, speaking by the Chief Justice, in *Kennard* vs. *Morgan* (92 U. S. 480), and in substance, repeated at the present term, in *McMillan* vs. *Anderson* (92 id. 37)."

(c) In *Mo. Pac. Ry.* vs. *Humes,* 115 U. S. 520,[21] after quoting the above, Mr. *Justice Field* critically stated that:

"This language was used in 1877, and now *after the lapse of eight years,* it may be *repeated* with an *increased surprise at the continued misconception of the purpose of the provision.*"

(d) Mr. *Justice Brown,* in *Plessy* vs. *Ferguson,* 163 U. S. 544, after reviewing the decision in the *Slaughter House Cases,* comprehensively declared that:

"The *object of the amendment* was *undoubtedly* to enforce the absolute equality of the two races before the law, *but in the nature of things* it could not have been *intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, or a comingling of the two races upon terms unsatisfactory to either.* Laws permitting, *or even requiring,* their separation in places *where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, but not universally, recognized as within the competency of the State legislatures in the exercise of their police power.* The most *common instance* of this is connected with the *establishment of separate schools* for white and colored children, which has been held to be a *valid exercise of the legislative power even by courts of States where the political rights of the colored race have been longest and most earnestly enforced.* * * * *Laws forbidding the intermarriage of the two races* may be said in a technical sense to interfere with the freedom of contract, and yet have been *universally recognized* as within the police power of the State. * * *

[21] Likewise ignored by the Court.

"The distinction between laws interfering with the political equality of the Negro and those requiring the separation of the two races in schools, theaters, and railway carriages has been frequently drawn by this Court. * * * So far, then, as a conflict with the 14th Amendment is concerned, the case reduces itself to the question whether the statute of Louisiana is reasonable regulation, and with respect to this there must necessarily be a large discretion on the part of the legislature. In determining the question of reasonableness *it is at liberty to act with reference to the established usages, customs and traditions of the people,* and with a view to the promotion of their comfort, and the preservation of the public peace and good order. Gaged by this standard, **we cannot say that a law which authorizes or even requires the separation of the two races in public conveyances is unreasonable, or more obnoxious to the 14th amendment than the acts of Congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of State legislatures.**

"* * * If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a natural appreciation of each other's merit and a voluntary consent of individuals. As was said by the Court of Appeals of New York in *People* vs. *Gallagher*: * * * 'This end can neither be accomplished nor promoted by laws which conflict with the general sentiment of the community upon whom they are designed to operate. When the Government, therefore, has secured to each of its citizens equal rights before the law *and equal opportunities for improvement and progress,* it has accomplished the ends of which it was organized and performed all of the functions respecting social advantages with which it is endowed.' Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon *physical differences,* and the attempt to do so can only result in accentuating the difficulties of the present situation. *If the civil and political rights of both races be equal one cannot be inferior to the other, civilly or politically.* If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane." [22]

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[22] Which the Court seemed to ignore. *Basically,* the meaning of the Amendment does not change. We are told in Holy Writ that the Ethiopian cannot change his skin, which was the major point made by *Lincoln,* and evidently by Jefferson.

In *United States* vs. *Burnison,* 339 U. S. 87, 95, the Court, in deciding that a State may lawfully prohibit property owners from willing property to the United States Government was not unconstitutionally discriminatory, the Court, *inter alia,* said:

"But such differences and distinctions, *even when applied to persons* clearly protected by the Fourteenth Amendment *are not in themselves unconstitutional.* It is only when the variations are *arbitrary* and *without reasonable legal basis* that an unconstitutional discrimination occurs. A *long line* of decisions has

These early expressions were made by *contemporaries* of the Fourteenth Amendment who were well acquainted with the *subject* and the *purpose* of that Amendment, and therefore knew at first hand what the "intent" of the Congress was. Nevertheless, the Court has by what appears to be equivalent to an *ipse dixit* or *ukase,* and at one fell blow, declared that those well-informed Justices were ignorant of the "intent" of the Congress and of contemporary history on the subject.[23]

Thirdly, (a) The Court, most significantly, and to me most inexcusably, also ignored, in its opinion, the effect of the action of the same Congress, that, on *June 16, 1866,* adopted the Resolution that submitted the Fourteenth Amendment for consideration, *when it passed a law providing for segregation in the District.* 14 Stat. 343; 14 Stat. 216, (1866).

The Court *further ignored,* and again inexcusably, the effect of the *later action of the Congress in passing other segregation laws in* 1874, for the District of Columbia, Sections 281, 282, Revised Statutes of the District, which was long after the "*adoption*" [24] of the Amendment. Sections 31-1110, 1111, 1112, 1113, District Code, 1951.

(b) Furthermore, and most significantly, as an evidence of the *intention* of the Congress, *it refused to include schools in the Civil Rights legislation,* Cong. Globe, 42nd Cong., 2nd Session, pp. 3734, 3735; 3 Cong. Rec., 43rd Cong., 2nd Session, pp. 997, 1010, 1011 (1875).

(c) Moreover, and again most significantly, *these Acts of the Congress* were passed even though the *Fifth Amendment contains the same worded Due Process Clause as was employed by the present Court,* by the way of the strange *"unthinkable" interpolation* as a *new means* of Constitutional *construction,* but really legislation in so doing.

(d) *That it* appears *both from the terms of the Amendment and the action* of *the Congress* it was the intention that the Congress would have control of the enforcement of the Fourteenth Amendment, as Section 5 thereof provides that the Congress shall have "power to

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molded this judicial concept." Segregaton is not an "arbitrary" act, thinks Lincoln.

We have seen that even *Lincoln* considered *"physical" differences* to be adequate ground for a desire to deport the freed slaves, or at least separation. See p. 8 *et seq. supra,* and *Hamilton's* statement *supra* p. 19. To most people, I submit, they are as good authorities as any other in the country, present or past. However, the Biblical injunction—destroy not the ancient landmarks—is little respected on this day of the utmost *pressure* politics and swing-voting power of minority groups.

[23] Slaughter House Cases, Supra, pp. 68, 71.

[24] In promulgating the 14th, three States which *had withdrawn their approval* were counted—*Ohio, New Jersey and Oregon*—hence adoption is used in quotes, as the Amendment was never *legally* proclaimed.

enforce by appropriate legislation the provisions of the Amendment," but the Court has seen fit *to enter the sovereign States and interdict their functioning under their police powers,* the result of which has been considerable confusion and expense to some of the areas where integration has been forced in housing matters as well as schools. Therefore, the Supreme Court has entered the field of psychology, which was, in any circumstance, left to the Congress by this Amendment, a field in which Courts are not ordinarily supposed to have the necessary degree of competence to "legislate" upon, even in any area over which the Federal Government had undoubtedly jurisdiction, and yet, the Court essayed into that field to invade the rights reserved to the States. This view is supported by the *Slaughter House Cases,* to which the Supreme Court itself referred, at page 81.

(e) *That* Court further said, after referring to the divergent views as to the division of the powers of government, "* * * we do not see in these amendments *any purpose to destroy the main features of the general system,*" one of which is that the *police powers* belong to the State. Maybe the Court put its "blind spot" on this pertinent statement, as it seemed to pick and choose to suit its *purpose*.

(f) The movement of the Supreme Court in the direction of *amalgamation* has been aptly characterized, in another matter and involving another subject, by one of their number, *Justice Douglas,* in this way:

> "The practices they have sanctioned today acquire a *momentum that is so ominous* I cannot remain silent and bow to the precedents that sanction them." *Schwartz* vs. *Seven-Up Co.,* 344 U. S. 344, 353.

but he did remain silent in the Instant Cases, when the 14th Amendment and so many cases were being destroyed.

And in connection with the *crystallized* and *settled law* of these Cases before this *creeping process* began, what was said in *United States* vs. *I. C. C.,* 337 U. S. 426, 444, by Justices Frankfurter, Jackson and Burton, is most apposite:

> One would suppose that *four uniform decisions* of the Court, rendered after thorough consideration of the *statutory scheme,* constituted such a *body of law* as not to be overruled, * * *" by a *tour de force,*[25]

in connection with which may be read the case of *Gong Lum* vs. *Rice,* 275 U. S. 78, and also *Barbier* vs. *Connally,* 113 U. S. 31, a very

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[25] So, iconoclasm has now become a regular practice, based on changes in the personnel of the Court, and, one may ask, does this not make the Court one of *men* rather than of *law.* Cf. *United States* vs. *Gerlack Livestock Co.* 339 U. S. 725, 738, *re* "strained interpretation of the power over navigation."

pertinent case, which the court completely ignored, and even the *Slaughter House Cases,* to which the Court itself referred, but misconstrued by the use of a *general reference.* The law of these Cases was considered and clearly stated in the *Gong Lum Case* by the Supreme Court, composed of such notable Judges as C. J. Taft, who wrote the opinion, Brandeis, Holmes, Stone, Van Devanter, Sutherland, Butler, McReynolds, and Sanford. Some pertinent parts of the opinion are here given, as follows:

> "Under the circumstances disclosed, we cannot say that this action of the State court was, *within the meaning of the fourteenth amendment,* a denial by the State to the plaintiffs and to those associated with them of the equal protection of the laws, or of any privileges belonging to them *as citizens of the United States.* We may add that while all admit that the benefits and burdens of public taxation must be shared by citizens without discrimination against any class on account of their race, the *education of the people in schools maintained by State taxation is a matter belonging to the respective states, and any interference on the part of Federal authority with the management of such schools canot be justified* except in the case of a *clear and unmistakable disregard* of rights secured by the supreme law of the land." [26]

> *"Were this a new question,* it would call for very full argument and consideration, but we think that it is the *same question which has been many times decided to be within the constitutional power of the State Legislature to settle without intervention of the Federal courts under the Federal Constituion."* [27]

But since then, the Court has diverged and started a "momentum" [27] that is *expected by the movers to result in an amalgamation of the races,* as it has been proclaimed by such as those in the *NAACP organization* to be crystallized by the Centenary of the *Emancipation Proclamation,* and these decisions are only milestones in their program. The opposition to intermingling in such ways between the races is rooted in the desire of the white race to preserve itself *from a like "creeping" process,*[28] and this does not, at least does not necessarily, as the Court said, involve any question of cacogenics,[28] but an effort that any *self-respecting colored people* ought to be willing to join for a like purpose, to assure as far as possible their own race.

The understanding of the contemporary Court as to the meaning of Due Process is in accordance with common sense and meaning, a matter of procedure, and which is sometimes referred to as adjective

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[26] Which was long after the *Plessy Case,* 162 to 275 U. S.

[27] Cf. *Justice Douglas'* comment, note 4 p. 13 and p. 29, supra.

[28] Plessy Case, supra.

law. The Court, in the *Slaughter House Cases*, in one sentence, says exactly that, in this language:

> "* * * as it is a State that is to be dealing with, and not alone the validity of its laws, *we may safely leave that matter until congress shall have exercised its power*, or some cause of State oppression, *by denying equal justice in its courts*, shall have claimed a decision at our hands." [29] Cf. Section 5, 14th Amendment.

Due process, lexicographically speaking, means *method*, *system* and all synonyms thereof. It refers to the *way* in which something is done, not the *substance* of the movement, or the *thing operated upon*. Here, what is *done*, and not the *method* by which it is done, is the subject involved. The *fact* of segregation, not *how* the segregation takes place, is the point at issue. This ought to be too clear to require more, and if it is true, then Due Process is not involved. The Court has said, peremptorily, that segregation may not be engaged in, in any way, shape or form; so, *on its face*, method is eliminated as an issue. It is a *substantive act*, so, therefore, and for the other reasons, it is believed, and therefore alleged, that the Court illegally used the Due Process clause in the District Case.

III

The reasoning of the Supreme Court, based on the retarded state of education at the time, is challenged, on the ground that the low estate of the schools has no legal or other bearing on the subject of segregation, in the view of the fact that the negroes would get the same education in any public schools as did the white children, or they would have a right to enter the schools used by whites. There were public schools more than a hundred years ago, at least in Boston, as appears from the Court's own *note 6* in the *Brown Case*, and to *repeat*, the Court there refutes the argument of the present Supreme Court, and it was a strong anti-slavery locality.

That it is the belief of the speaker, and it is here alleged, that it is not a *constitutional crime* or other public offense for either of the races to desire to preserve itself, and to work to that end,[30] as long as the methods do not exclude unreasonably the other race from any benefits enjoyed by the moving race, and in this respect the maxim *lex de minimus* has equal application here as elsewhere in the law.

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[29] See the concurring opinions of Justices' Frankfurter and Douglas, 609, 633, in the Steel cases, and the opinion p. 587.

[30] William Allen White, from Kansas, in *The Old Order Changeth*, states: "* * * But this blood will remain clean, Aryan blood * * * and by instinctive race revulsion to cross-breeding that marks the American wherever he is found."—1910.

Cf. Chief Justice Vinson's statement, re absolutes. In this effort, at race preservation, cacogenics are not "necessarily" involved, *Cummings Case,* 175 U. S. 528, the opinion being by *Justice Harlan,* who dissented in the *Plessy Case,* supra, although we have Theognis deploring the amalgamation with "inferior" stock that he believed would have degenerating effects upon the Greeks. In this respect reference may be made to *Disraeli's* Tancred, p. 148, Book II, and to his Endymion, p. 245,[31] but which is not considered here, as part of my argument. There is, however, a decided objection on the part of many to *amalgamation* and the same privilege is freely accorded the other race. The effect of propinquity is well known.[32] In some instances, friction results. In others, the falling into an amalgamating mould. If those who are fostering this movement understand that, *as Lincoln did,* there may be expected to be a *"creeping" amalgamation process* to take place, and with their blood to be involved, then they are understandable, but it is believed that there are *relatively few white people* who would be willing to personally accept the probable results of their handiwork, when it *comes home to them,* as it has already come home to some,[33] with distressing results to them. Some of the Negro organizations have recently announced, as aforesaid, that by the *Centenary of the Emancipation Proclamation,* they will *accomplish completely the principle of complete amalgamation,* and every type of social intercourse, and the opinion of the Supreme Court in the Segregation Cases is one of the *biggest milestones* towards the amalgamation goal, which Lincoln opposed, and it is against that act that this argument is presented.

That the Court has considered this as a sociological problem, but from one angle only, is quite clear by referring to sociologists on the subject, and by the delays incident to the formulation of the decrees, which has been also recognized by both the President and the Attorney General of the United States.

While the Court was basing its decision on discrimination alleged to have been made against negroes, and the psychological and other

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[31] 17 Ch. V. 26 Book of Acts: "And hath made of one blood all nations of men for to dwell on the face of the earth and hath determined the times before appointed and the *Bounds of their habitation.*"

Deuteronomy 32 Ch. 8 ver. "When the Most High divided the nations their inheritance, when he SEPARATED the sons of Adam He set the *bounds* of the people according to the number of the children of Israel."

The present State of Israel prohibits non-Semitic marriages, the Press informs us.

Justice Frankfurter tells us in *Dennis vs. United States* 339 U. S. 162, 181., "It was a wise man who said that there is no greater inequality than the equal treatment of unequals."

[32] See note p. 4.

[33] Case of Marshall Field's daughter.

effects on the negroes, it *completely ignored the effects on the white children*, and on their parents feelings, and thus discriminated against them in the disposition of the said Cases. The consideration of one group's feelings and ignoring those of the other group is, in itself, *rank discrimination*, but that is what the Supreme Court did, and used several colored and several so-called sociologists of the left wing type, including one foreigner, to bolster up its opinion in the direction of amalgamation.

The following gives an indication of the type and connections of those referred to, and apparently largely relied upon:

"The Court cited, first, Prof. Theodore Brameld, author of one of the books. Professor Brameld was a scholar with the Institute of Pacific Relations. The Institute of Pacific Relations was investigated by the Subcommittee on Internal Security of the Senate Committee on the Judiciary for many months, and it was found to be a Communist-run and Communist-directed organization which engineered the betrayal of China to communism.

"Professor Brameld is the author of a book entitled 'The Philosophic Approach of Communism.' As I have said, Professor Brameld is a scholar who was associated with the Institute of Pacific Relations, which was a Communist-front organization.

"The next person is Edward Franklin Frazier, a *professor of sociology at Howard University*, a socialistic Negro college in the Nation's Capital.

"Another author cited is Kenneth Bancroft Clark, who received his A. B. degree at *Howard University*, and is now professor of psychology at *Hampton Institute*, a Negro college at Hampton, Va.

"Clark was a *Rosenwald* fellow in 1940 and 1941. In 1944 and 1945, he was a research associate of the commission on community interrelations of the American Jewish Congress.

"The next is Gunnar Myrdal. He is the author of one of the textbooks cited by the Supreme Court. He is a Swedish Socialist politician, and a sociologist who has spent several years studying the Negro in America under the auspices of the Carnegie Foundation, which was recently under investigation by the House of Representatives because of radical control.[84]

"Dr. Keith Kotinsky was another person who was cited. Dr. Kotinsky was a leading member of the Progressive Education Association, and is a well-known anti-segregationist. I think that that association is suspect.

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[84] "In the course of this 'monumental work' Myrdal described the adoption of the United States Constitution as nearly a plot against the common people.'" *Sat. Ev. Post.* cited in Cong. Record May 26, 1955. Note thereat also the connections of the helpers listed, same being supplied by the Carnegie Foundation, with which Hiss was later connected.

"Max Deutscher and Miss Witmer, who collaborated with Dr. Isidor Chein and Dr. Ruth Kotinsky appear to be more obscure as far as biographical dictionaries are concerned." (Senator Eastland, Cong. Rec. July 23, 1954, p. 11119 et seq.)[35] Such books could not have been admitted in evidence in even a Magistrate's Court, aside from cross-examination being permitted, yet the Supreme Court used them at a crucial point in the decision.

It would seem that it would be hard to find, or conceive of, a more conglomerate group and one more calculated to be biased than this group. (Cong. Record, July 23, 1954, pp. 11121-11122).

The Court, *furthermore,* at the same time ignored the fact that one of the reasons for the continued existence of the State was the desire to respect the "*prejudices*" and "*habits*" and the various local "*customs*" and "manners" and conditions of the peoples of the new Republic. *Hamilton,* supra, and *Madison* and the Madison Debates and the Federalist, *passim.*

IV

Now, as *stare decisis* is in so little regard and repute in this age, and as evidenced by the Instant Cases, contrary holdings ought not to foreclose the represenation of this point here, and it is accordingly presented, with all permissible emphasis. In recent years, many cases have been either overruled or modified after a short duration, such as *Thompson* vs. *Erie R.R.*

As further evidence of there being no "*national policy*", as stated by the Court in this field, and that the subject belongs to the States, the following appears in the opinion of the Supreme Court, directly in point, in the case of *FCC* vs. *RCA Communications, Inc.,* 346 U. S. 86, 92:

> "Prohibitory legislation like the Sherman Law, defining the area within which 'competition' may have full play, of course loses its effectiveness as the practical limitations increase; as such limitations severally limit the number of private enterprises that can efficiently, or conveniently, exist, the need for careful qualification of the scope of competition becomes manifest. *Surely it cannot be said in these situations that competition is of itself a national policy.*"

So, it is believed, and therefore alleged, that unless there is to be *two different yardsticks* of measurement *as to what constitutes "national policy,"* there was, and is, *no more* of a *public policy* in the *race area* than in the *area of competition,* and particularly is this true, as more than half the States at the time of the adoption of the Amendment had some sort of regulatory measures, and *including the District*

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[35] See p. 15, supra.

of Columbia, by act of contemporaneous Congresses, and in many States have continued to this day, including the District of Columbia.

So, from a comparison of these cases, it appears that the Court has *various measuring rods* for cases as the *momentary bent* or exigency may call for, thus creating such a confusion in the administration of the law as to jeopardize all the rights of the people, as nothing can scarcely be called a *right* in such a fluid and amorphous state of decision, as *now exists.*

There is another rule of construction, one that seems to have been overlooked, *namely,* that expressed in the latin maxim which translated says: "That which is expressed excludes that which is implied." When we turn to the Fifteenth Amendment, we find it clearly stated, and beyond doubt, when *absolutely* no discrimination is to be permitted as to race or color, because we find it there declared that the right to vote shall not be "denied or abridged . . . on account of *race, color* or previous condition of servitude," There is no doubt about the meaning of that Amendment, and it is difficult to see why there should have been an intention to mean the "same" individual thing, when they only said "equal" thing.

The Negroes could, however, be excluded along with white for other reasons. Therefore, it would surely appear that if the *same* bed and board rights had been intended the word *same* would have been used instead of the word *equal.* The framers of the Fourteenth Amendment knew how to be absolute and particular when they meant to be. Could a hotel guest, for instance, demand a particular room, if a negro or otherwise? Assuming that hotels had to accept negroes as guests, would not the Constitutional requirement be fully met if a like room were given? This argument is supported by *Marshall's* opinion in *Barron* vs. *Baltimore,* 7 Peters 250, when he said: *

> "Had the framers of these First Amendments intended them to be limitations on the powers of the State governments, they would have imitated the framers of the original Constitution, and have expressed that intention," giving examples.

So, we repeat, and say that the framers of the Fourteenth Amendment would have been as definite in *it* as they were afterwards in the Fifteenth. The word *school* was originally included in the *Sumner Civil Rights Bill,* but was voted out of it.

It should be here explained that the radicals had so far lost out in the *early 1870* elections that schools were eliminated from his repeatedly offered *Civil Rights Bill* by a House vote of *128 to 48,* the House being more reflective of the change than the Senate, in view of their two years elections, *Cong. Rec.,* 43 Cong. 2nd Session, p. 1010, and was

accepted by the Senate.[36] So, therefore, the Court has done *what the Congress refused to do,* particularly after second and sober thought.[37] It was frequently asserted that the radicals were working for political ends in much of the post-Civil War legislation. From a reading of the historical records, it is believed that no laws or Constitutional Amendments could have been passed expressly including such a provision and others of like character.

In this state of flux and meandering, it is impossible for any lawyer to advise his client with any degree of certainty, which, in itself, is a legal vice, and hence the courts are full of cases on the basis of belief that any case has a chance.

"Reliance upon this Court's opinions becomes", as said by Justice Minton, dis., in *Mitchell* vs. *Vollmer,* 349 U. S. 427, 434, a hazardous business for lawyers and judges, not to mention contractors, who are not familiar with the vintage test."

The Court has, in many cases, in late years, ignored the salutary principle of *stare decisis,* which ought to mean, in such cases as the instant case, that if a change is to be made in situations where crystalization, at least, has taken place, such change should be primarily effected by the political departments of governments entrusted with the legislative powers, as those departments are charged with the knowledge of *social, political and economic matters,* and the policies needed or desired to deal with them. This Court has repeatedly declared that it is not equipped by "experience" or "facilities" to primarily handle cases in those areas, and that they must be dealt with first by some admistrative or other competent agency. (Cf. *Far East Conference, et al.* vs. *United States,* 342 U. S. 570, 573; among many others Baldwinn, The American Judiciary, pp. 54, 55.)

It has been said by legal authorities that it is virtually as important that the law be settled as it is that the decisions are right in law. This, it appears now, the Court has repeatedly ignored, until the law and rights of all kinds are in a constant and distressing state of flux, and that the Court has been using a *"creeping"* process[38] to accomplish the

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[36] The *Sun Theater Corp.* vs. *RKO Radio Pictures,* 213 F. (2) 284: "* * * but we may not, under the guise of interpretation, usurp the powers of the legislature." p. 286.

[37] The hearing on the McCarran Act reveals the complexities and difficulties of an attempt to unify insurance law on a nation wide basis, even by Congress. *Wilburn Boat Co.* vs. *Fireman's Ins. Co.,* 248 U. S. 310, 319, and further therein: "in this very case * * * we would at once be faced with the difficulty of determining what should be the *consequences of breaches,*" but this was ignored in these more important Segregation Cases.

[38] In *United States* vs. *Gerlock Livestock Co.* 339 U. S. 725, 738, Justice Jackson asserts that the course of decision today is well exposed by the following: "These cases do not justify today's decision. They merely prove how a *hint* becomes a suggestion, is loosely turned into doctrine, and finally elevated to a decision." *United States* vs. *Rabinowitz,* 339 U. S. 68 dis. Note also Solicitor General Sobeloff's views, supra, p. 22.

purpose of amalgamation, a process by which the Constitution has been perverted in so many areas during this century, notably in the commerce, the so-called welfare fields,[39] and in the international areas, is too patent to require citations. These actions have been taken in many instances by ignoring the doctrine of *stare decisis* and responding, it is believed, and however unconsciously, to external social and political pressures. (*Tidewater Cases,* 339 U. S. 699 and 707, as well as the instant cases; *United States* vs. *Belmont,* 301 U. S. 324, are typical.)

The functioning of the Court in these cases and those of similar character has caused legal writers to ask: "Has the Court succumbed to the flexible logic of the Pragmatists, using legal concepts and precedents *only as support for desired ends?*"

Again, "But if the role of the Court is to interpret the Constitution and statutes in terms of estimates of the consequences, then its task becomes largely that of the politician and the prophet." [40]

The following statement of the Court in *Nat. Bank* vs. *Republic of China,* 348 U. S. 356, 360, is quite pertinent here:

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[39] What the Court (Black) said in respect to admiralty and insurance could have been as appropriately said of the Segregation Cases, "The whole *judicial* and *legislative history* of insurance regulation in the United States warns us against the *judicial creation* of admiralty rules to govern marine *policy terms* and warranties." *Wilburn Boat Co.* vs. *Fireman's Ins. Co.,* 348 U. S. 310, 316, 317, 324 and 325.

Justice Douglas, concurring in *Bisso* vs. *Inland Waterways Corp.,* 349 U. S. 85, 95, said "I join in the opinion of the Court. I do not think we know enough about the economics and organization of this business to change the *established rule* of *The Steamer Syracuse.* 12 Wall. 167, 171 * * * that a tug may not contract against her own negligence."

He therein further said that "It may be that the rule of The Syracuse is outmoded and should be changed." * * * I would continue to enforce the *established rule* of The Syracuse *that has its roots* deep in history and experience, until and unless *Congress* adopts another one." p. 98.

In the opinion by Justice Frankfurter, in *Teamsters Union* vs. *Hanke,* 339 U. S., 470, 478, it is said, *re* the State's power in respect to picketing, and the various elements involved: "They seldom are in this field, so deceptive and opaque are the elements of these problems. That is precisely what is meant by recognizing that they are within the domain of a State's public policy. Because there is lack of agreement as to the relevant factors and divergent interpretations of their meaning, as well as assessing what is the short and what is the long view, *the clash of fact and opinion should be resolved by the democratic process and not by the judicial sword,*" and, moreover, said he, *"Invalidation here would mean denial of power to the Congress as well as to the forty-eight States."*

When dealing with what had been thought, even by their Court, to be a crystalized and well established law they were not as scrupulous, and in an area as enigmatical as any referred to by them. They have deprived "the Congress and the forty-eight States" of policy powers here.

[40] Prof. Bischoff in *Supreme Court and Supreme Law,* p. 79 and 67, Harvard Law Review. Furthermore, as George Sokolsky says, "The United States finds itself in the curious situation that every domestic matter is affected by foreign affairs," Times-Herald, May 22, 1952, and, *mirabile dictu,* such arguments have been actually made in the Supreme Court.

"More immediately touching the *evolution of legal doctrines* regarding a foreign sovereign's immunity is the restrictive policy that our State Department has taken toward the claim of immunity. As the responsible agency for the conduct of foreign affairs, the State Department is the normal means of suggesting to the courts that a sovereign be granted immunity from a particular suit, *Ex parte Republic of Peru*, 318 U. S. '78, 581. Its failure or refusal to suggest such immunity *has been accorded significant weight* by this Court. * * *"

May not one ask with propriety what suggestion was made by some department, in connection with the bearing on foreign affairs, the Segregation Cases would have, as the Court, in its own words, in said Decision, says that it accords "significant weight" to foreign affairs, for do we need not read further: "And this for the reason that a *major consideration* for the rule enunciated in *The Schooner Exchange* is the *embarrassing consequences which judicial rejection of a claim of sovereign immunity may have on diplomatic relations.*" So, we find that the Court in diplomatic relations matters is a sort of tail to that Department's kite. Is anyone naive enough to think that such considerations did not receive "significant weight" in the Instant Case?

The Government argued in the Tidewater cases that *"World conditions have made immediate and additional development of oil reserves vital. The successful defense of the nation from foreign invasion may depend upon it.* The States have been carrying on their campaign of attacking these resources for years. Hence, millions of dollars of these resources have already been taken without federal consent."

It is our contention that that is exactly what the Court has done in the *Instant Cases*, whether consciously or unconsciously. It has quoted only the parts of the cases which fitted in with the "desired ends." The Court, we contend, ignored the history of the particular subject, schools and education, and also what the preceding and contemporary Courts have said in particular reference thereto, such as *Barbier* vs. *Connally*, supra; *Cummings*, 175 U. S. 528, *Gong Lum, supra*, and the *Slaughter House Cases*, supra, and has accepted, at least in part, partisan studies, which *per se*, are not legally admissible books, as above stated.

Those cases do not strike down the States, but recognize their proper functions and specifically recognize and proclaim their right to control their school systems, and the Court declared in the *Plessy Case* that:

> "* * * in the *nature of things* it could not have been *intended* to *abolish distinctions based on color*, or to *enforce social, as distinguished from political*, equality, or to *enforce the commingling of the two races* upon terms unsatisfactory to *either*."

The Court then proceeded to take notice of and to dispose of the inferiority argument, by saying that,

> "Laws permitting and *even requiring* their separation in places where they *are liable to* be brought into contact do not necessarily imply the inferiority of either race to the other, and have been *generally*, if not *universally*, recognized as within the competency of State legislatures in the exercise of their police power. The most *common instance* of this is connected with the *establishment of separate school* for white and colored children, *which has been held to be a valid exercise of the legislative power—even by courts of States where the political rights of the colored race have been longest and most earnestly enforced.*"

This is a definite and conclusive refutation of the present Court's *a postiori* and belated pronouncement.

Finally, our purpose is to try to force respect for our Constitution and give it new vigor, to the end that the Court may become again, in public cases, a Court of Law and not a Court of Men,[41] and eschew the principle enunciated by such as E. B. Henderson, colored, and which this Court has seemingly adopted, namely, *"What we seek is not justice under the law as it is. What we seek is justice to which the law, in its making, should conform,"* supra, note 38 and that the *law should be made by the Supreme Court when it cannot be made through the Congress*, the Constitutional law-making body of the Federal Government, as in the instant case.[42]

Therefore, it is alleged that it is the function of the Congress to say at what *hour* the "clock" stands, and not the courts, in the instant subject; therefore, the Segregation and Property Covenant Cases, among others, should be reversed, and it is prayed that the Supreme Court will again consider this case in the light of the actual facts, the historical and controlling facts, and the well established law, and withdraw from the functions reposing in other branches of the Federal Government and various other governments.

Further, to the above end, to eliminate carpetbag government, the presentation of the attached draft of a Constitutional Amendment is proposed, and its support is hoped for, as *Jefferson* tells us that, "In questions of power, let no more be said of confidence in man, but bind him down from mischief by the chains of the Constitution."

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[41] Cf. Harrington's *Oceana* Works, London ed. 35: 42, 224, and Mass. Const. 1780.

[42] "What was in 1862 called the medicine of the Constitution *has now become its daily bread*", said Justice Field in the Greenback Cases, supra, thus justifying Woodrow Wilson's characterization: The Supreme Court is "a sort of Constitutional Convention in continuous session."

Now, turning the clock too far ahead may prove worse than turning it back to 1895. The Court conveniently ignored the fact that this doctrine was *recognized* as late as the Housing Case, where certiorari was denied.

JOINT RESOLUTION

Proposing an amendment of the Constitution of the United States to prevent interference with, and to eliminate limitations upon, the power of the States to regulate health, morals, education, domestic relations, transportation wholly within their borders, all property rights, the election laws, with the limitations contained in this proposed Amendment, and good order therein, to authorize the various States to change any action taken in respect to the proposed ratification of amendments thereto, until final action has been taken thereon, and to authorize the various States to contest the validity of any law or treaty made, or which shall be made by or under the authority of the United States or this Constitution, and the validity of the adoption, ratification or promulgation of any amendment thereto, as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), that the following article is proposed as an Amendment to the Constitution of the United States, and shall be valid to all intents and purposes as a part of the Constitution when ratified by the legislatures of three-fourths of the several States:

ARTICLE

Section 1. There shall be no interference with or limitation upon the power of any State to regulate health, morals, education, domestic relations, transportation wholly within its borders, all property rights, elections, except as to the time of holding Federal elections, and the voters thereat shall be those entitled to vote in State elections, and the good order in the State; and exclusive jurisdiction thereof is reserved to the States, without limiting in any way the X Amendment.

Section 2. The various States may revoke or otherwise change any action that may be taken in respect to the proposal or ratification of amendments to this Constitution, until final action has been legally taken thereon by the continued approval of three-fourths of the States, and until the constitutional number has been attained.

Section 3. The various States may contest the validity of any law or treatly made, or which shall be made, and the validity of the proposal, ratification or promulgation, of any amendment to the Constitution, and any action in connection with the adoption thereof, and any other act done by the United States or under the authority of this Constitution.

Section 4. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislature of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.[48]

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[48] Appearing in Congress as H. J. R. 282, 1955.

Mr. WILLIAMS. I will skip the quotations, except for this part. But Lincoln said himself—and he said this in the war period; some people think he said it when he was a young man. I want to scotch that here and now. He didn't make these statements when he was a young man.

Senator HENNINGS. He said:

If I could save the Union by freeing all the slaves, I would do that; if I could save the Union by freeing none of them, I would do that; if I could save the Union by freeing some and not freeing others, I would do that.

Mr. WILLIAMS. No. On December 12, 1857, he said:

A separation of the races is the only perfect prevention of amalgamation, but as an immediate separation is impossible, then the next best thing is to keep them apart where they are not already together.

And that is what I would like to see. This is from his Springfield speech on December 12, 1857.

Now, Gideon Welles was the Secretary of the Navy——

Senator HENNINGS. From Connecticut.

Mr. WILLIAMS. In his diary——

Senator HENNINGS. I have it.

Mr. WILLIAMS. And I quote. He said:

At several meetings of late, the subject of deporting the colored race has been discussed. Indeed, for months, almost from the commencement of this administration, it has been at times considered.

And then, further on:

The President was earnest in the matter wishing to send the Negroes out of the country.

On Tuesday last (September 26, 1862) the President brought forward the subject and desired the members of the Cabinet to each take it into consideration.

Thought it essential to provide asylum for a race which we emancipated but which could never be recognized or admitted to be our equals.

That is volume 1, pages 150–153.

Therefore, I want to say I consider myself in good company.

Senator HENNINGS. Mr. Lincoln was very frank when he said, during the war:

If I could save the Union by freeing all the slaves, I would do that; if I could save the Union by freeing none of them, I would do that; if I could save the Union by freeing some and not freeing others, I would do that—

And he said a lot of things.

Mr. WILLIAMS. Yes. But at least I am in good company on that point. And he said that within a few years of his death. And his whole statement on the subject was made in the Douglas debates at Ottawa on August 21, 1858. And there he said he was not in favor of social or political equality of the colored people.

So I am saying that that gentleman had a perspective that we don't seem to have too much of today.

You see, he tried to avoid this situation, he recognized that in the colored persons we had what you might call an ethyl quality—I understand in gasoline that is the kind that doesn't mix—he knew that, and so did Jefferson. And Jefferson was going to provide for it.

So therefore, we have got a problem here that is like the ethyl in gasoline. It seems to be insoluble in a sense, and yet, we have got them right here with us.

My principal complaint is that we are going too fast. If this amalgamation process is going to be brought about it should not be brought about too fast. I am against these bills primarily on that ground. I do not believe that we should start a sort of a gestapo in the States. I think we had better put up with a few things, to answer Hamlet, than to fly to other unknowns. I don't think we should high pressure these States. And the South is not the only area involved, the pressure is getting serious; I know in Chicago they tried to integrate a 425-apartment place, and they have 325 policemen, and had 1,300 at one time. So the Government isn't asking them to meddle with its business. And I know my State is the same way.

One great emphasis is that we are going too fast. They have got the cart before the horse in some cases. I think the Supreme Court made a vicious decision in the property covenant case, and compounded a vicious one in the segregation cases, absolutely unjustifiable, there isn't a scintilla of legal justification for it. And if you give me time I will show you from the history of it that it is a vicous and political decision.

Senator HENNINGS. Sir, I would like very much to have you file your brief, but unfortunately—I appreciate your philosophical point of view which you have expressed, and I don't want to cut you short, but we are concerned more now, sir, with these specific bills. I take it you are against all of them.

Mr. WILLIAMS. I am giving my reasons for it. So far they are very general.

Senator HENNINGS. We are glad to have your reasons——

Mr. WILLIAMS. I appreciate that. And I am talking on them in the sense—I am merely saying that those factors are involved in States where you have a great many colored people. For instance, as you can see very readily, if they don't want mixed schools, and they say it is done illegally nationally—Federally, I don't like that word "nationally" at all—Federally—then if the controls got out of hand down there you are going to fight it by local means, which, of course, would be unnatural.

If my State chooses to mongrelize the people I have no answer to that. And of course, those people down there where they have such great numbers, they see it in the offing, and that is perspective. And therefore, there are many factors which make them feel they should resist the present pressures. And I say, let this thing settle, don't jam too much down their throats at one time. But if you give people a chance, when these pressures are on—and especially when we are under a war psychosis—I think the less we do in major changing while we are in a state of war psychosis the better.

A lot of people are going too fast. And you find now the criticism of the Supreme Court coming from the papers in connection with these 3 or 4 cases, but there are papers who didn't raise their voices, and people who didn't raise their voices. And I would like to refer too, if

I had time, to a speech of Senator Morse, in which he berates the ICC, I think it is, because they amended the law. He didn't open his mouth when the Supreme Court amended the Constitution, however, it is only when somebody's individual ox is gored when he opens his mouth.

Senator HENNINGS. Maybe he was out of town that day.

Mr. WILLIAMS. Maybe he was, I will accept that as a proper apology for him.

Senator HENNINGS. I really don't know.

Mr. WILLIAMS. Of course, I appreciate that was all in fun, of course. Mine is in the same spirit, of course.

So I say, we are going too fast. And I think we ought not to pass these bills and press this situation any harder than the South has already been pressed. And I am saying, as this gentleman here a while ago remarked, there is a lot of feeling elsewhere being developed about this thing, not only in the South, there is feeling all through the country, as I understand it.

And I don't think you ought to press them too hard. I understand you can explode concrete if you press it too hard. I think it is going too fast. And time is very important.

I would like, if I were permitted, to quote the present Solicitor General on that matter when he said to the Supreme Court that it was making policy, mind you, not deciding law cases, and if you will take the trouble to look in the newspaper sometime you will see the background.

Senator HENNINGS. Was that to Mr. Sobeloff?

Mr. WILLIAMS. Yes.

Senator HENNINGS. The remarks relating to timing?

Mr. WILLIAMS. Yes, speaking about the Supreme Court as a policy-making body.

Senator HENNINGS. I happen to be on the subcommittee relating to his confirmation, and that matter has been gone into in connection with that, too, about the Supreme Court choosing an appropriate time to enunciate certain points.

Mr. WILLIAMS. Also, the Court now is stretching itself to quite a great latitude. Solicitor General Sobeloff said that a Government lawyer was telling him with a show of shock and dismay that in a certain case Judge Parker declared from the bench, "Well, if that is the law, any judge with salt will find some way to overcome it."

I am not willing to put in this Federal Government or the Supreme Court any power I can avoid putting. I am opposed to extending any power that they can extend or twist. And I can quote you from a case where they say they will stretch things to maintain the constitutionality. And I can quote you a case on that . I have all of that here. It will take quite a long time to elaborate on that subject.

So I say that I am not willing to see these bills, which talk about attempted coercion and attempted this and that passed and this power placed in the hands of the Supreme Court of the United States as now constituted, nor am I willing to see any more powers in this Federal Government than there are already.

I think there is going to be pressure—and this is so steep in politics, as everybody knows, that political pressures may be used in those cases.

Now, to justify myself in making this remark, about the choosing of cases and the people to prosecute, I suppose you are perfectly familiar with the statement of Justice Jackson.

Senator HENNINGS. I don't know which statement you are going to read, sir. I knew Justice Jackson in his lifetime.

Mr. WILLIAMS. I mean in respect to my arguments. I will read it to you out of the Congressional Record. You will find this in the Congressional Record of April 10, 1951, page A–1989:

> The following is an excerpt from newspapers published on February 10, 1951:
> "At a recent New York Bar Association meeting Supreme Court Justice Jackson stated that for some years antitrust suits had been started against business firms on a political basis.
> "Jackson added that he saw no reason for not being candid about it. After all, they had to take on some basis."

Whereupon it said that the audience laughed.

There is no joking about it with me, I assure you that. So if that is the case, it can be the case in the future. Politics is so rife—one man may be for them and another man may go against them on the ground of political action, and announcements of the press about new laws, and all that, in connection with legislation. All that business shows the politics involved here, and catering to the colored folks is very rife in the parties today, right on top of the presidential election.

That is too apparent to need any proof.

So I say, with the political factors involved—and the Supreme Court, in my opinion, responding to international pressures—I can quote you a case on that—and the State Department in matters of that sort—I wonder who to listen to in connection with the international phases of the segregation cases. I assume the same group.

I am not going to take your time further. As I say, my phase of it, if time permitted, would run into a considerable length of time. But I don't care to take your time further than to say that I think that we are going too fast.

Senator HENNINGS. I want to assure you that it is not my purpose to cut you off at any time.

Mr. WILLIAMS. I appreciate that. But at the same time, I know that time is running, and I know that you have other things to do.

And I do want to say this. I cannot understand how any respectable lawyer who knows anything about the problem can support a poll tax repeal bill, or anything that has to do with the qualification of the voter. I know a lot about that. And I don't know what the committee was, or where, but I went into considerable length on that subject.

Now, they would say poll tax is not a qualification. If you will read the debates, as you probably have done, you will see where at one time is was proposed that the President should be a man holding $100,000 of property and the Supreme Court of $50,000, and the others in proportion. Liberia has a property qualification. And everywhere in the world where voting power was involved, or the action of the people individually involved, they have had qualifications of that kind.

Senator HENNINGS. Mr. Hamilton thought there should be a property qualification, Mr. Jefferson did not.

Mr. WILLIAMS. Well, Madison did definitely because he said the time would come when the Have-Nots would vote everything away from the Hads. Of course, they may have shifted their position with political pressure from time to time, you know that takes place.

So I say, as far as that goes, I don't see how even with this Supreme Court we can have a poll tax bill. And I doubt very much—well, an antilynching bill, it probably would—but the poll tax bill is probably indefensible.

Senator HENNINGS. That is not before the committee at this time.

Mr. WILLIAMS. Reference was made, as we went along.

Senator HENNINGS. It is before the Subcommittee on Constitutional Rights, it has been proposed by Senator Kefauver—no, it was proposed by Senator Holland, of Florida, and Senator——

Mr. WILLIAMS. Now you are talking about a constitutional amendment. I am not talking about that, but the one I have here.

Mr. YOUNG. That is before rules, we don't have the legislative one here.

Mr. WILLIAMS. I have the one which I thought was here.

Senator HENNINGS. We have not reported it out of this subcommittee, Mr. Williams.

Mr. WILLIAMS. It is Senate joint resolution 29.

Senator HENNINGS. It doubtless has been introduced.

Mr. WILLIAMS. That was by Senator Holland, too.

Senator HENNINGS. Holland, Smathers, George, Long, Ellender, McClellan, Fulbright, Ervin, Scott and——

Mr. WILLIAMS. That is a constitutional amendment. But there is a suggestion that you take up that problem of voting. I know that is a constitutional amendment they proposed.

Senator HENNINGS. Mr. Williams, we appreciate you coming here.

Mr. WILLIAMS. As I said, I would like to have put my views in an orderly fashion, but it will take too long.

Senator HENNINGS. Anything that you have for the record we will be glad to have you put into the record and made a part thereof.

Mr. WILLIAMS. As I say, I would like to submit that article of mine.

Senator HENNINGS. The article will be made a part of the files.

Mr. WILLIAMS. Thank you, sir.

Senator HENNINGS. Unfortunately, I must leave town, and none of the other members of the subcommittee have appeared today except Senator Dirksen, and Senator Jenner was here earlier. I don't say that in criticism of anybody, but I say it only in terms of there being so many of us—I think I am on nine subcommittees of this Committee of the Judiciary alone. And we have conflicts and cannot be everywhere at the same time. I don't mean to imply any criticism, except that these were hearings before the full committee.

Mr. WILLIAMS. I think if the Congress would tend to its own business the Federal Government would have more time to tend to it, because they are meddling in State problems too much. And I would also, if I had time, like to read Madison's definition of our Government, or at least defining the two functions. I intended to do that.

I also intended to read Roosevelt's definition of the functions. But I will ask that anybody interested in that subject read the speech that I have in pamphlet form the way Madison defined the Federal Government's function. You would have plenty of time to tend to your work here, but the reason you haven't is because you have got over into the area of the States.

Senator HENNINGS. I say that is only one of many problems. If you could tell me how to cut down on long days and nights and Saturdays and Sundays, I would indeed be very grateful, to you, as would many others.

Mr. WILLIAMS. I would say, throw out some of these bills that do not belong.

Senator HENNINGS. Most of our problems are not the States, there are a lot of other things. There are too few men to do the work.

Thank you very much.

Mr. Young has offered, and this will be printed as part of the record. It is a comparative analysis of all of the bills relating to the institution of a commission, S. 906, S. 907, S. 3605, S. 3425, and H. R. 267.

(The document referred to is as follows:)

	S. 906—Mr. Humphrey, et al.	S. 907—Mr. Humphrey, et al. (omnibus bill)	S. 3605—Mr. Dirksen	S. 3415—Mr. Dirksen, Federal Commission	H. R. 627—Mr. Celler
Title	Commission on Civil Rights Act of 1955.	Omnibus Human Rights Act of 1955.	Commission on Civil Rights.	Civil Rights and Privileges Act of 1956.	Civil Rights Act of 1956.
Findings	Constitutional freedoms made United States growth, yet civil rights still abridged. Executive and legislative branches must be kept informed of these denials.	Executive and legislative branches shall be informed of abridgment of civil rights guaranteed by the Constitution.	None.	Observe constitutional freedoms; discrimination in employment obstructs commerce; United States policy to eliminate such discrimination.	None.
					PART I
Creation—Commission (Executive).	----------	Executive branch.	----------	----------	Executive branch.
Members	5	5	6 (bipartisan)	5	6 (bipartisan).
Senate consent	Yes	Yes	Yes	Yes; staggered terms beginning at 1 to 5 years.	Yes.
Chairman and Vice Chairman.	Yes	Yes	Yes	Chairman only	Chairman and Vice Chairman.
Vacancies	Filled in same manner in which original appointment was made.	Filled in same manner in which original appointment was made.	Shall not affect its powers; filled in same manner as original appointment.	Only for unexpired term of the member whom he shall succeed.	Shall not affect its powers; filled in same manner as original appointment.
Quorum	3	3	4	3 (Commission shall have seal).	4.
Pay	$50 per day	$50 per day	$50 per day	$12,000 per year (principal office in District of Columbia).	$50 per day (if not in the service of the U. S. Government).
Travel and subsistence.	$10 per day	$10 per day	$12 per day	----------	$12 per day (for actual travel).
Duties:					
(1) Gather information.	Economic, social, legal	Economic, social, legal	Same as S. 906; also allegations of deprival of civil rights.	Encourage and promote civil rights and eliminate discrimination in employment by: (1) Studies throughout the country. (2) Formulate plans. (3) Publish and disseminate reports. (4) Work with private and public agencies, employers and unions. (5) Investigate complaints. (6) Recommendations.	Economic, social, legal, investigate: (1) Right to vote. (2) Economic pressures.
(2) Appraisal	United States policy; appraise local level policies.	United States policy; appraise local level policies.	Laws and policies of the Federal Government.	Civil rights in the Federal Government.	Laws and policies of the Federal Government.

(3) Assist Government and groups in studies.	To protect civil rights.....	To protect civil rights.....	----------	----------	
(4) Recommendations	Propose legislation to the Congress.	Propose legislation to the Congress.	----------	To the President and the Congress.	
(5) Reports.....	Annual report to the President and Congress.	Annual report to the President and Congress.	Interim report and final report within 2 years from commencement of commission (shall cease 60 days after submission of its report).	Annual report to the President and the Congress.	Interim report and final report within 2 years from commencement of commission (shall cease 60 days after submission of its report).
Advisory committees.	To consult with State and local governments.	To consult with State and local governments.	To consult with State and local governments.	(Make such study available to interested government and nongovernmental agencies.)	
Government agencies.....	Utilize services, facilities, information of Government agencies.	Utilize services, facilities, information of Government agencies.	Utilize services, facilities, information of Government agencies.	Utilize services, facilities, information of Government agencies (alter rules to more effectively carry out the act).	
Personnel and expenses....	Full-time staff director; printing and binding.	Full-time staff director, printing and binding.	Full-time staff director, may accept voluntary services ($12 per diem in travel).	Appoint officers and employees (pay witnesses).	Full-time staff director and necessary personnel. $50 per day maximum for individual services; to utilize volunteer services at $12 per day travel expense. Constitute advisory committees; cooperate with Federal agencies.
Powers:					
Subpenas.....	Yes ----------	Yes----------	Yes ----------	Yes ----------	Yes (conduct hearings).
Oaths.....	Yes ----------	Yes----------	----------	Yes (serve process, examine or copy evidence).	
Court aid	U. S. district court, upon application of the Commission may order such person to appear.	U. S. district court, upon application of the Commission may order such person to appear.	U. S. district court, upon request of the Attorney General shall order such person to appear before the Commission.	U. S. district court upon request of the Commission shall order such person to appear before the Commission. Witness subject to perjury but not to prosecution or penalty as a result of his having to testify. (Willful interference with Commission subject to $5,000 fine or 1 year imprisonment.)	U. S. district court, upon request of the Attorney General shall order such person to appear before the Commission.
	S. 906 and S. 907 are identical to here.			Grants: (1) To States to promote civil rights provided: (a) State has established agency similar to Commission.	Appropriation: So much as may be necessary to carry out the provisions of this act.
		CIVIL RIGHTS DIVISION OF THE DEPARTMENT OF JUSTICE			PART II
		(1) Additional Assistant Attorney General, appointed by President with advice and consent of the Senate.			One more Assistant Attorney General, appointed by President, with advice and consent of the Senate.
		(2) Additional F. B. I. personnel with appropriate training.			

	S. 906—Mr. Humphrey, et al.	S. 907—Mr. Humphrey, et al. (omnibus bill)	S. 3605—Mr. Dirksen	S. 3415—Mr. Dirksen, Federal Commission	H. R. 627—Mr. Celler
		JOINT COMMITTEE ON CIVIL RIGHTS 14 members (7 by President of the Senate and 7 by Speaker of the House) based on party representation to: (1) Study civil rights; (2) advise with congressional committees. Chairman and vice chairman: Vacancies filled in same manner as original appointments. Powers: Hearings. Subpenas. Contempt citations. Staff: Such experts, consultants, technicians, clerical. Printing and binding. Consult other Government agencies. Amend title 18, United States Code, section 241, conspiracy against rights of citizens, add 2 new sections: (b) penalty imposed for intimidation, oppression, threats (c) civil liability title 8, United States Code, section 47 covers (a) but this is needed to cover (b).		Grants—Con. (b) Local level agencies. (c) Such agencies' policies follow those of the Commission. Funds: (a) (b) Based on population of such State to total population of all the States. (c) Need and scope. Appropriation: $1,000,000 each fiscal year. State includes District of Columbia, Alaska, Hawaii.	PART III Amend title 42, United States Code, section 1985, which is conspiracy to interfere with civil rights, by adding paragraphs (4) and (5). (4) Attorney General institute civil action. (5) U. S. district courts have jurisdiction. Amend title 28, United States Code, section 1343, re jurisdiction. Add paragraph (4) anticipatory relief. PART IV Amend title 42, United States Code, section 1971 (right to vote): Add 3 new subsections. (b) Interference with the right to vote. (c) Attorney General may institute civil action. (d) U. S. district courts shall have jurisdiction.

		Amend title 18, United States Code, section 242: Add: fine of $10,000 if death or maiming results from suppressing civil rights. Add new sec. 242A, enumeration of rights, privileges and immunities. Title 18, United States Code, section 594, "Intimidation of voters" is amended to include "general, special, or primary elections." Title 42, United States Code, section 1971, right to vote is amended. Add new statute: Civil remedies against violations of civil rights. Attorney General can enjoin declaratory judgments. District courts have jurisdiction. Amend title 18, United States Code, section 1581, 1583, 1584, peonage. Transportation: Full and equal enjoyment. Fine of $1,000 for each offense and subject to civil damages.		

Senator HENNINGS. Now, have we any more witnesses for other hearings, or do you think this may conclude our hearings on this subject?

Mr. YOUNG. We have a great many more witnesses. We have approximately 12 attorneys general from the Southern States in opposition. The opposition witnesses have not appeared, yet. We have approximately 8 Senators, and approximately 15 Congressmen.

Senator HENNINGS. I presume, then, that the committee will now rise, and it will be subject to the further call of the Chair.

(Whereupon, at 5 p. m., the committee adjourned, subject to the call of the Chair.)

CIVIL RIGHTS PROPOSALS

FRIDAY, JUNE 1, 1956

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

The committee met, pursuant to notice, at 2:35 p. m., in room 424, Senate Office Building, Hon. James Eastland (chairman), presiding.

Present: Senators Eastland and Langer.

Also present: Robert B. Young, counsel, and Richard F. Wambach, assistant to counsel.

The CHAIRMAN. You may proceed, Mr. Rodman.

STATEMENT OF HON. WILLIAM B. RODMAN, JR., ATTORNEY GENERAL, STATE OF NORTH CAROLINA

Mr. RODMAN. Mr. Chairman and gentlemen of the committee, my name is William B. Rodman. I am the attorney general of the State of North Carolina. I wish to take this opportunity of expressing appreciation for the privilege of appearing before your committee and expressing my views on the pending legislation.

I refer to Senate bills 900, 902, 903, 904, 905, 906, 907, Senate 1089 and its companion act, H. R. 5205, Senate 3604, 3605, 3415, 3717, 3718, Senate Joint Resolution 29, and Senate Concurrent Resolution 8.

Mr. Chairman and gentlemen, while the views here given are necessarily my own, I believe they represent the thoughts and the feeling of the vast majority of the citizens of the State of North Carolina.

I respectfully urge this committee to report each of these several bills and the resolutions unfavorably. I do so because I am firmly convinced that the legislation is unsound and is not warranted in fact.

Instead of producing beneficial results, I am convinced that it will, if enacted into law, have exactly the opposite result.

The proposed legislation is bad because it proceeds on the thesis that the States and local governments are unable or unwilling to enforce their laws relating to and prohibiting crime, to punish those guilty of crime, and to adequately protect the constitutional rights of their citizens or those who may be visiting within the local area.

We feel very, very keenly that this legislation is a totally unjustified reflection on our area.

The legislation definitely implies that a condition exists for which there is no foundation in fact. Certainly there is no foundation in fact for it in my State of North Carolina.

My State is proud of its record of law enforcement. It is proud of its record of enforcing the law with equality, impartiality and justice to all concerned. I challenge anyone to point the accusing finger

at North Carolina and produce any evidence to show that any person within the State has been deprived of his rights because of his race, color, religion, or national origin.

I know from the experience of a trial lawyer running back more than 40 years and in an area with a substantial Negro population, one in which the Negroes vary from about 20 percent to more than 50 percent, that when the Negro met the white man in court the Negro got fair play.

I have seen instance after instance in the courts in which white and Negroes were on opposite sides of litigation. I am yet to hear a Negro say that he was not accorded fair treatment because he was a Negro. I have seen numerous instances, particularly in civil cases, where the Negro won when, if the litigation had been between two white people, the results would assuredly have been different.

Mr. Chairman, we are seriously and tremendously disturbed about the concept that seems to be so prevalent today that only the United States of America and its officers are competent to solve any problem.

It is a philosophy that I believe will ultimately seriously weaken our great Nation. A strong nation can only be built from strong states. Strong states can only be built from strong local communities, and strong local communities can only be built from rugged individuals. That condition arises when each has a measure of responsibility and a duty to perform.

These bills, if passed will ultimately result in the Federal courts taking jurisdiction of every local crime. Every lawyer worthy of his salt, representing a defendant charged with crime, will seek to balance Federal jurisdiction against State jurisdiction and assert that that court has jurisdiction where the punishment, if his client should be convicted, is apt to be the least.

If the power resides in Congress to enact these bills declaring crime which Congress can prescribe the punishment for, it will assuredly be asserted that the Federal Government is supreme in the field and that if it undertakes to act anything that it does will exclude State jurisdiction.

I would call the committee's attention to what seems to me fair criticism of the specific bills.

Senate bill 900, to be known as the Federal Antilynching Act.

In my opinion, there is no justification for the proposed legislation. Its enactment, instead of proving beneficial, would be detrimental.

The proposal that Congress should undertake to deal with lynching is not new. But Congress has steadfastly refused to assert any such power or authority. Presumably it has recognized that any such attempt would not be effective and would probably adversely affect progress which is being made in the complete elimination of such lawlessness.

There were no lynchings in 1952, 1953, or 1954 (I use as my authority World Almanac and Book of Facts, p. 307). No later statistics are available to me.

The 1952 Negro Year Book shows total lynchings by decades, as follows: 1885–94, 1,603; 1895–1904, 1,205; 1905–14, 679; 1915–24, 539; 1925–34, 169; 1935–44, 65; 1945–54, 16.

(Totals for the last decade are ascertained from the 1952 Negro Year Book and the World Almanac.)

This bill would import an entirely new definition on the word lynching. The Ohio Court of Appeals, in *Zmunt* v. *Lexa* (175 N. E. 458), said:

> The word lynching as we find it in popular use and also as the legislature intended to use it involves a situation wherein a group of persons usurp into themselves the ordinary power of government and thereby exercise correctional or disciplinary authority over others.

The Supreme Court of South Carolina, in *Kirkland* v. *Allendale County* (128 S. C. 541), said:

> It has been said that the word lynching has no technical meaning but is merely descriptive phrase which is universally understood to signify the illegal infliction of punishment by a combination of persons for an alleged crime. *State* v. *Lewis* (142 N. C. 626). It has been defined by a legal lexicographer as, "a term descriptive of the action of unofficial persons, organized bands or mobs who seize persons charged with or suspected of crimes or take them out of custody of the law and inflict summary punishment on them without a legal trial and without warrant or authority of law." Black's Law Dictionary.

The Illinois courts have given recognition to the foregoing definitions. *Barnes* v. *City of Chicago* (237 Ill. App. 464). In view of the declared findings and policy that "lynching is mob violence; it is violence which injures or kills its immediate victim," it can well be asserted that any affray or mob action is covered by this bill. Would it not include the riotous conduct described in *Zmunt* v. *Lexa;* certainly it would seem that the race riots occurring in Michigan in 1943 would constitute lynchings.

I pause to say that I read in yesterday's paper of a situation occurring on a boat at Buffalo I believe it was in New York, in which there was mob action. So apparently there under this bill you would have mob action.

Gangster wars which have occurred in many of our larger cities could plausibly be asserted to be within its scope.

To couple this definition of lynching with the duty which Congress would seek to impose on the States "to refrain from depriving any person of life, liberty or property, without due process of law," is, to my mind, such a perversion of the power and rights of Congress under the Constitution as to leave me mystified as to what power is to be left to the States.

I am mystified as to what justifies the implied reflection on the States of this Union.

The bill speaks of the States refraining from depriving people of their fundamental rights just as if there were positive and deliberate action on the part of the States to commit a crime.

The constitution of my State contains, in its bill of rights, this provision:

> No person is to be taken, imprisoned, or disseized of his freehold liberties or privileges or outlawed or exiled or in any manner deprived of his life, liberty or property but by the law of the land.

The quoted provision has been a part of the fundamental law of my State since 1776. It is an honored and cherished provision of the law of my State. The courts of my State have been alert to apply it for the protection of all of the people within its borders.

The statute law of my State makes it the duty of the State solicitor to investigate any crime of lynching, at the earliest possible moment, and at once institute proceedings for the investigation of the crime.

While North Carolina is charged with one lynching in the past 20 years, it requires a new definition of lynching to be so classified.

It was a murder, and the State acted promptly to punish those guilty.

I said earlier in my statement that we had had no lynchings in North Carolina in more than a decade. This statement was based on the records which have been kept by various agencies reporting lynchings. It is correct in that there have been no deaths. It is not entirely accurate, however, if lynching is to be construed as mob violence, which asserts the right to punish for crime or asserted crime.

In 1951, an organization grew up, located principally in Horry County, adjoins Columbus County in North Carolina. By the fall of 1951, this organization had gained membership in North Carolina. Our State bureau of investigation, which is a part of the Department of Justice of the State of North Carolina, learned that the Ku Klux Klan was gathering and beginning to operate in North Carolina.

It promptly started an investigation. Its work necessarily took some time.

Mobs held meetings, invaded the homes of citizens, and floggings took place. In some instances, citizens were taken across the State line and flogged. This, of course, constituted a crime under Federal statutes. The Federal Bureau of Investigation, informed of these occurrences, began an investigation. Our State bureau of investigation worked in complete harmony and accord with the Federal Bureau of Investigation and, I think I am justified in saying that, because of the information which our bureau had gathered and the work which it had done, the work of the Federal Bureau was simplified.

Early in 1952, the Federal Bureau of Investigation, with a representative of the State bureau of investigation present and cooperating, made arrests of some 10 people charged with interstate kidnapping.

Our State bureau of investigation also promptly arrested some 70 people and charged them with the commission of 13 offenses. Not all of the 70 of course were charged with the commission of each offense, but there was mob action in each instance. Convictions were secured—in fact, there were pleas of guilty by 63.

One who denied his guilt was tried and promptly convicted. Of the 13 floggings and assaults with which these parties were charged, in only 2 instances were the victims Negroes. One was a Negro man charged with having sexual relations with a white woman. The other was a Negro woman alleged to be pregnant by a white man. The remaining were all whites. The crimes which they were asserted to have committed were fornication and adultery, bigamy, nonsupport of the family, and similar crimes. The head of this organization, Early Brooks, who was a resident of Columbus County, N. C., and head of the Columbus County Klan, was sentenced to 5 years in prison. Thomas L. Hamilton, grand dragon and head of all the klans, was likewise sentenced by our courts to 4 years in prison.

This incident seems to me to illustrate as clearly as anything could the lack of need for S. 900, and the unfortunate results which I think would certainly result if it were enacted into law. In 11 instances, it could by no stretch of the imagination be asserted that race, religion or creed, national origin, or any of the factors enumerated in the bill, were the basis for the criminal action.

I suppose it might be asserted that because, in two instances, the victims were Negroes, their color was the basis for action. Such as-

sertion would have no foundation in fact. It just so happened that they were Negroes. Their conduct was comparable to the conduct of the whites and there was no distinction because of color.

Another notable factor, in my opinion, is the righteous indignation which the local people felt about the commission of these crimes, the insistence that the kind of conduct should not be tolerated, the promptness with which State officials acted, and the assurance that similar prompt action would be taken should any such occasion arise in the future.

Our State acted promptly and passed a law prohibiting the use of masks and hoods in secret organizations, and requiring the filing of a list of the officers of such organizations with the secretary of State (G. S. 14–12.1 et seq.).

Comparatively recently, there were indications that the Ku Klux Klan might again come to life and assert some power or authority.

Hon. John Ben Shepperd, the Attorney General of the State of Texas, and president of the National Association of Attorneys General, promptly declared that lawless conduct would not be tolerated. There had been no evidence in North Carolina that the organization migh be resurrected, but I wired Mr. Shepperd that North Carolina did not want the Klan or kindred organizations, and that we would adequately protect the rights of all people in this State.

All of this, of course, relates only to the necessity and advisability of the bill. I do not deem it necessary to cite decisions to the effect that Congress does not have the power to provide punishment for the ordinary crimes of murder or assault.

Such rights as it has to punish those crimes are, as I understand the law, limited to those areas over which it has jurisdiction.

I suppose the asserted authority of Congress to enact this legislation is predicated upon the 14th amendment. I had not understood that the 14th amendment gave Congress the power to define the crime of murder and to punish murder in general. History records, I think, that it was never contemplated when the 14th amendment was adopted that the States were to be deprived of the power of local self-government.

One of the most important powers of local self-government is, of course, protection of the life, liberty, and property of its citizens.

This bill would apply the theory of principal and agent to the State and the outlaw or criminal who violates its laws. In the civil law, a principal cannot be held liable for the act of its agent done contrary to the orders and direction of the principal and outside of the scope of his agency. This bill adopts the opposite theory.

I had been taught to believe that this was an indissolvable Nation composed of indestructible States. I had always understood that, as a sovereign State, it had the right to say whether it would or would not permit suits to be brought against it for torts committed by its officers or agents. This bill declares a contrary principle and would undertake to impose liability in a civil action against the State for what it had declared to be a crime and which it would seek to punish as a crime if permitted to enforce its own laws.

If the provisions of this bill can seriously be said to conform to the 11th amendment to the Constitution of the United States, it can only be, I think, by torturing the language of the amendment and what

the people of this Nation have understood to be the law since its adoption.

I respectfully urge this committee to report this bill unfavorably. I repeat that it cannot, in my opinion, do any possible good but, if enacted into law, would do irreparable harm.

Senate bill 902 authorizes the appointment of an additional Assistant Attorney General to 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. It also provides for an expansion of the Federal Bureau of Investigation. Senate bill 3604 likewise provides for the appointment of an additional Assistant Attorney General, and I am informed he is intended to accomplish the same purpose as 902.

There is no need to repeat what I have said with respect to Senate bill 900 relating to the right and duty of the States to protect their citizens. I am not aware of any condition which indicates such need and certainly there is nothing in my State of North Carolina which points to that fact.

I cannot refrain from reiterating that the people of my State deeply resent the imputation implied in legislation of this character that they are not law-abiding people; that they are not going to protect the rights of the people; or that they are incompetent to do so.

It is a fact that outside influence, outside condemnation, and outside criticism besides bring resentment and create difficulties in the enforcement of the laws. I am particularly proud of the record made by our State bureau of investigation.

It is composed of 28 officers. The headquarters are in Raleigh, our State capital. It has agents situated in strategic points in the State. It has been a policy with our bureau to act in close cooperation with the local agencies. We never go into an area unless invited there by some law-enforcement officer, a sheriff, police officer, prosecuting attorney, or a judge.

The adoption of that policy has, in my judgment, been of tremendous help in the prosecution of crime. The local officers feel their responsibility. The local citizens look to and demand the protection from the local officers. The citizens of North Carolina believe in the integrity of public officials and, because of that belief, they have consistently put in office honest people who enforce the law.

Senate bill 903 deals with elective franchise and the right to vote. Of course, the right to vote for Federal officers is a right guaranteed by the Federal Constitution.

That there shall be no discrimination because of race or color or previous condition of servitude is amply protected by the 15th amendment.

The States are, in fact, in the best position to protect their citizens in the exercise of their rights. North Carolina has, we feel, done so fairly and honestly. In 1931, we adopted a Corrupt Practices Act, detailed and full, which, with other provisions of our criminal law, amply protect the citizens in their right to vote. It is by statute made the duty of the Attorney General, the solicitors of the several judicial districts, and all prosecuting attorneys, to make due inquiry and investigation of violations of that act. No complaint has come to my office that anyone has been illegally denied the right to vote. So far as I am aware, no complaint has been made to any prosecuting officer.

Senate bill 904. The present statute makes peonage a crime. This bill makes an attempt criminal also. It also makes an attempt to kidnap and hold in servitude criminal. It may be that some such acts have been committed somewhere in the United States which justify the introduction of this bill and its passage by Congress. If such a condition exists, it has not been brought to my attention.

I read Senate bill 905 shortly after I read the case of *Pennsylvania* v. *Nelson*. Do you wonder that I am startled at the legislation which is here proposed? Is it seriously intended to divest State courts of the right to prosecute the criminal acts so broadly defined in the proposed new section 242–A?

I am bound to read this bill in connection with Senate bill No. 900, which has the same sponsors. I am obliged to read the bill as a direct reflection on the courts of every State of this Union. If Congress has the power to pass this bill, and does pass it, and thereby occupies that field to the exclusion of the States, as the Supreme Court of the United States recently declared in the Nelson case, what is it that the State can do?

Mr. Chairman, I had not intended to make any reference in this hearing to the segregation cases decided by the Supreme Court of the United States in 1954. We in North Carolina felt that the Court committed a grievous error by those decisions. We felt that it was usurping a power that it did not have.

But, notwithstanding our feeling in that respect, we are respectful to the Court. Governor Hodges, acting on a resolution of the 1955 legislature, appointed a commission to study the problems created by the segregation decisions and how we might adequately continue to provide the best education possible for the children of our State.

The commission so appointed has just recently filed its report. I would like to quote from that report, because it evidences deep feeling, but a respect for the Court.

The commission said:

> The decision of the Supreme Court of the United States, however much we dislike it, is the declared law and is binding upon us. We think that the decision was erroneous; that it was a reversal of established law upon an unprecedented base of psychology and sociology; that it could cause more harm within the United States than anything that has happened in 50 years; but we must in honesty recognize that, because the Supreme Court is the court of last resort in this country, what it has said must stand until there is a correcting constitutional amendment or until the Court corrects its own error. We must live and act now under that decision of that Court.

Now, I would like to add Mr. Chairman, the people of my State feel that Congress also should respect the decisions of the Court which have said as I read them, in the civil rights cases that it is behind the power of Congress to pass the legislation here before it.

No. 906, providing for the appointment of a Commission as a part of the executive branch of the Government, to study and make reports.

I can only say that I would assume that Congress itself would exercise its functions of legislation and act upon the knowledge which it has or which it may gain upon its own investigations.

Mr. Chairman, if there is any merit in what I have said about preceding bills, it will certainly not be necessary for me to discuss 907.

I think every objection which has been made to the bills previously discussed applies with equal force to this.

I have heard much recently about the duty to recognize the decisions of the Supreme Court of the United States as the law of the land, which ought to have universal respect. Senate bill 3415 is, I think a clear attempt to overrule the Supreme Court of the United States.

I refer, of course, to the civil rights case, decided nearly three-quarters of a century ago, cited with approval many times since. I think it appropriate to quote the language of Justice Bradley as applicable to this bill.

He said:

> If this legislation is appropriate for enforcing the prohibitions of the amendment, it is difficult to see where it is to stop. Why may not Congress, with equal show of authority, enact a code of laws for the enforcement and vindication of all rights of life, liberty, and property. If it is supposable that the States may deprive people 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 rights in inns, public places, 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 the 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 action or legislation. The assumption is clearly unsound. It is repugnant to the 10th amendment of the Constitution, which declares that powers not delegated to the United States by the Constitution or prohibited by it to the States are reserved to the States, respectively, or to the people.

There can be no doubt about the fact, I think, that if this bill should pass and the Commission should be created, the Commission will seek to enforce and impose its views on civil rights and social relations on the citizens and States, contrary to any constitutional authority to do so.

I submit there is no need or justification for it. It is not going to help matters. It is impossible to legislate friendship and where legislation seeks to force on people social, economic, or religious views, disastrous results are certain to ensue. The people of all races in my State have gotten along well. There is a friendship that exists between the white man and the colored man. But this friendship is being put under terrific strains by those totally unfamiliar with existing conditions.

There is no religious intolerance.

Senate bill 1089 and House 5205 are companion bills. They would amend section 1114 of title 18 of the United States Code by deleting the words "man of the Coast Guard" and inserting in lieu thereof the words "uniformed members of the Army, Navy, Air Force, Marine Corps, or Coast Guard."

Section 1114 provides that—

> whoever kills * * * (those specified) while engaged in the performance of his official duties or on account of the performance of his official duties shall be punished * * * (as prescribed by statute).

The statute in its present form should, I think, be amended to delete the words "while engaged in the performance of his official duties."

One would be guilty if the statute were so amended for killing one of the named Federal officials "on account of the performance of his official duties."

As the statute now reads, it would seem to comprehend a killing totally unrelated to the performance of his duty and in no way related to the fact that he was engaged in the performance of his duty. The language would seem broad enough to cover a case of negligent killing—manslaughter. Punishment of crimes of that character, totally unrelated to the fact of Federal office or the performance of Federal duties, ought to be left to the States.

If enacted into law, one who kills a member of the Armed Forces while engaged in his official duties would be guilty of the crime of murder.

Is it desirable then for Congress to provide by statute that an enemy soldier who, in time of war, kills a member of our Armed Forces, shall be guilty of murder and shall suffer the death penalty?

Is such a provision in conformity with the law of nations? Is it desirable? Is it not almost certain to bring reprisals against members of our Armed Forces who seek to destroy the enemy?

Would it not mean that every prisoner of war could properly be put on trial and charged with the crime of murder?

That may make the United States conform to the "laws of some nations" as S. 900 declares it to be so important. I do not believe that such a result would bring an increased world respect for the United States. Whether the amendment should be adopted is, I think, appropriately a matter of national policy that I am certain Congress will carefully consider.

It would in no way, as I see it, affect the relationship between the States and the Federal Government, and it is that relationship and some of the thoughts and views that have been expressed with respect thereto that so seriously disturbs me and the people of my State.

Mr. Chairman, the thought there which is expressed is not a new one. Last fall I was called upon to address the law enforcement officers in Southern Pines in my State. I would like, if I may, to supplement that statement by quoting from a speech I made then.

I said:

> I should like to remind you that in 1950 and 1951 a United States Senate committee made widely publicized investigations of crime, and in particularly organized crime in the United States. It is probably correct to say that this was one of the most extensive inquiries into organized crime ever undertaken in this country.

Another way that I would describe the activities of that Senate committee is to say that it was the most extensive inquiry into law enforcement ever undertaken in this country.

The work of the Senate committee was evaluated and reported upon by a special study commission appointed by the American Bar Association. The American Bar Association report was published in 1952, and I think that it would be a good idea for your association to give some careful study to some of the basic and fundamental conclusions reached in the American Bar Association report.

I think that report is a balanced and independent evaluation of law enforcement in the United States, in the light of the evidence produced by the Senate of the United States.

I do not refer at this time to the many aspects of that report which deal specifically with organized criminal gangs, the fact that these gangs and syndicates are firmly entrenched in our large cities, mostly

outside the Southland; nor the fact that individual criminal gangs in particular cities are often merely local representatives of national crime syndicates.

The point in that report which I wish to emphasize today is not the problem of organized crime, but the problem of law enforcement. This report is most emphatic and clear on what the distinguished lawyers of the American Bar Association who made that study concluded on the matter of Federal-State-local responsibility in law enforcement.

Let me quote some of the language in the report of the American Bar Association:

> The Senate committee recognized that while Federal laws and Federal Government agencies might be strengthened in dealing with organized crime, the basic responsibility * * * rests upon the individual States. The crisis in law enforcement is basically a State and a local one. * * * It is upon State and local prosecuting agencies, police and courts that hte major responsibility for the detection, apprehension, prosecution, and punishment of offenders rests.

And I quote further:

> In many counties, police, prosecuting agencies, and the courts are efficient and cooperative. As a result the State laws are enforced effectively and organized crime does not exist. But where the police, prosecuting agencies or the courts have become non-cooperative with one another or inefficient, organized crime has invariably appeared in one form or another. In no instance where local enforcement has become ineffective has outside assistance or cooperation from State or Federal agencies been successful in preventing the appearance and growth of racketeering in organized crimes. These facts emphasize that it is efficiency and coordination in law enforcement at the local level that is the key to the problem of organized crime and that cooperation by and with State and Federal agencies is of secondary importance and no avail without it.

Mr. Chairman, I thank you very much for the opportunity of appearing.

Mr. YOUNG. Do you have a copy of S. 900. I direct your attention, gentlemen, to the first page of that bill. I would like to go through a few points if I may.

Mr. RODMAN. Yes, sir.

Mr. YOUNG. That bill is given a short title in line 3, called the Federal Antilynching Act. In the definition of the bill, half of the definition is directed to property damage.

Mr. RODMAN. Right, sir.

Mr. YOUNG. And over half of the sections other than that are directed to such things as the Lindbergh law, civil suits and various miscellaneous items.

Mr. RODMAN. Quite correct.

Mr. YOUNG. Would you say it would be a better name for this bill to call it an antidiscrimination act?

Mr. RODMAN. The name I would have preferred to use was destructive of local self-government. I think that is what it will accomplish.

Mr. YOUNG. I direct your attention to line 8. I will give you some background. The first five pages of this bill as you are aware are statements of findings and policies. They do not enact any law.

Mr. RODMAN. Correct.

Mr. YOUNG. They make certain assertions which may or may not be correct.

Mr. RODMAN. And I am wondering where the information was obtained. Certainly it isn't a correct estimate of conditions in North Carolina.

Mr. YOUNG. Line 8 now, the first sentence there, says "Lynching is mob violence". Do you find anywhere in this bill statements covering gang wars?

Mr. RODMAN. Unless that be mob violence, and unless you reply subsequently in your definition of race and color, it does not. I suppose sir, that if there happened to be one Negro or perhaps, similarly an Episcopalian and a minority group, it might be asserted that because there was an Episcopalian in the group, that might constitute mob violence and lynching.

Mr. YOUNG. Do you find anywhere in the bill penal sanctions against race riots in northern cities?

Mr. RODMAN. No: I do not.

Mr. YOUNG. Do you find anywhere in the bill penal sanctions against the right to work, a fundamental right?

Mr. RODMAN. I do not.

Mr. YOUNG. Do you find anywhere in the bill penal sanctions against labor picketing in an unlawful manner?

Mr. RODMAN. I do not. And where one is injured it seems to me wrongfully assaulted that the reason for the assault is immaterial. It is the disturbance of the peace and the damage done to the individual whether he be white or black, Protestant or what not.

Mr. YOUNG. Is it not true that of these four bills, gang wars, race riots in cities, right to work and labor picketing are phenomena of the North, mainly.

Mr. RODMAN. I do not want to get drawn into sectional problems about this.

Mr. YOUNG. Would you say——

The CHAIRMAN. That is a fact, isn't it, Mr. Rodman?

Mr. RODMAN. It is a fact as the Senate committee has well pointed out and as the American Bar Association has pointed out. It is a fact.

Mr. YOUNG. Would you say that this bill by omitting those categories or phenomena in the North would thus make southerners feel that the bills are directed against the South?

Mr. RODMAN. One can't read this bill or these bills and not feel deep resentment—that is one who lives in the South. It is an implication and reflection that is totally unjustified.

Sir, I think it comes from this. Those who are responsible for the bill must not have had contact with the good law enforcement officers that we in the South provide.

Mr. YOUNG. Is it a fair statement in your opinion to say that the tenor of these bills are that the States are malefactors and the Federal Government is a fairy godmother?

Mr. RODMAN. Quite correct.

Mr. YOUNG. Yet, has the Federal Government got a very good record in the civil rights field? You know we have statutes on the books.

Mr. RODMAN. I had not thought the record was as good as the local governments.

Mr. YOUNG. The bill devotes one entire category against Federal officers. Would you say that perhaps they have some worry of their own officers as against State officers?

Mr. RODMAN. You refer to which section, sir?

Mr. YOUNG. The bill has a paragraph here adjuring the Attorney General to do his duty, on page 8.

Is that necessary under the law for an Attorney General to be told to do his duty by statute?

Mr. RODMAN. I had not thought so, sir.

Mr. YOUNG. Do you have a statute in North Carolina that adjures you to do your duty?

Mr. RODMAN. No, sir.

Mr. YOUNG. Do you know of many such statutes in States?

Mr. RODMAN. I do not. The Federal Government has permitted itself to be sued in tort. If it assumes this responsibility and a lynching occurs, can we sue under the Federal Tort Act the United States of America under this bill?

Mr. YOUNG. This bill is called an antilynching bill and that is one section, which contains sanctions against lynching. As you understand lynching is that a crime against the State sovereignty?

Mr. RODMAN. Lynching is mob violence which seeks to assert the right of the Government to punish, as I understand.

Mr. YOUNG. Do you have laws against that in North Carolina?

Mr. RODMAN. We not only have laws but a specific law that makes it and has been rigidly enforced makes it the duty to immediately investigate and prosecute anyone guilty of any such conduct.

Mr. YOUNG. Do you think it is necessary to have the Federal Government prosecute with you?

Mr. RODMAN. I think if the Government undertakes to do so, there. it will materially impair the right of the State. I think it will render the situation impossible. I think it will destroy our effectiveness.

Mr. YOUNG. Skipping over these findings and policies I direct your attention to page 4 of the bill, stating the purposes: It starts on section 3. It is divided into four paragraphs, A, B, C, and D. And you will notice from reading these paragraphs that it is an attempt by the drafters of the bill to give the Supreme Court a beacon light upon which to direct its course for possible channels of unconstitutionality.

I would like to go through these quickly with you.

Mr. RODMAN. Yes, sir.

Mr. YOUNG. A satisfactory recitation of the 14th Amendment as a possible ground of constitutionality of this bill, when one individual commits a crime against another individual is that covered by the 14th amendment?

Mr. RODMAN. I had not understood so.

Mr. YOUNG. Do you know of any cases in the United States which says that the 14th amendment encompasses that action?

Mr. RODMAN. I had understood the Supreme Court of the United States had said exactly to the contrary.

The CHAIRMAN. In fact every case has held to the contrary.

Mr. RODMAN. Yes, sir.

Mr. YOUNG. Isn't it true we have an unbroken line of cases running over 60 years where the Supreme Court has specifically said that the 14th amendment does not encompass individuals actions against individuals?

Mr. RODMAN. That is the way I have read the decisions of the court and understood them.

Mr. YOUNG. Then you would say as far as individual action is concerned under the present laws as they exist today the 14th amendment is not a basis for putting constitutionality into this bill?

Mr. RODMAN. Quite correct, sir.

Mr. YOUNG. But as a recitation of possible constitutionality of the bill, of the republican form of government clause found in our Constitution, is it is not true that the cases that have touched on the republican form of government clause in the Constitution have invariably said that it is a political question and the Court will not go into them?

Mr. RODMAN. That is the way I read them. Let me add there further, that language there is taken as an affront, taken as a slap that is totally unjustified. It is taken as an indication in my State that we are not law-abiding citizens and we no not supervise and we do do so, sir.

Mr. YOUNG. Do you know of any cases which would hold this bill constitutional based upon a Republican form of government clause of the United States Constitution?

Mr. RODMAN. I have found none.

The CHAIRMAN. What does that section mean? What does the 11th amendment mean?

Mr. YOUNG. I will have it in a moment. I direct your attention to the top of page 5, the third basis for constitutionality as the U. N. Charter.

In the Constitution, to go back, Mr. Chairman, section 4, in article 4 reads as follows:

The United States shall guarantee to every State in this Union a Republican form of government.

The 11th amendment states as follows:

The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State or by citizens or subjects of any foreign state.

That would throw a grave question of constitutionality over the power of the Federal Government to sue in civil action the political subdivisions of a State.

To get back to the U. N. Charter, as the basis of holding this bill constitutional, have you read sections 55 and 56 of the charter?

Mr. RODMAN. I am not familiar with the U. N. Charter as I should be.

Mr. YOUNG. If you will permit me——

Mr. RODMAN. It has been my understanding, sir, that they did, the charter did not in any way, sir, circumscribe the right of each State to govern its internal affairs.

Mr. YOUNG. I will read you if I may section 55 (c) of the charter, chapter 9, it says:

The U. N. shall promote (c) universal respect for and observance for human rights and fundamental freedoms for all without discrimination as to race, section, language or religion.

On top of page 5 when they quote the U. N. Charter as a basis of constitutionality of these bills, they are using that provision in the *case of Missouri* v. *Holland* to say that when we ratified the charter we gave not only the United Staes but foreign nations the right to enter the country and usurp the States police powers or exercise the States police powers.

In that regard I call your attention to article 2, subsection 7 of the charter:

> Nothing contained in the present charter shall authorize the U. N. to intervene in matters which are essential within the domestic jurisdiction of any State or shall require the members to submit such matters to settlement under the present charter, but this principle shall not prejudice the application of enforcement measures under chapter 7.

When the U. N. Charter was ratified by the Senate of the United States; was it your understanding that that gave foreign nations the right to usurp the police powers of the States of the United States?

Mr. RODMAN. It certainly was not and on the contrary it was my understanding that no such right existed.

Mr. YOUNG. I direct your attention——

Mr. RODMAN. I understand that other nations have so asserted. other nations that are members of the U. N. have so asserted.

Mr. YOUNG. I direct your attention to page 5 (d) which says that this bill is constitutional under the law of nations provisions of the Constitution.

The provision that says the Federal Government has the power to define and punish offenses against the law of nations.

I ask you generally do you know what is the law of nations?

Mr. RODMAN. Well, it is interesting to note that the Constitution capitalizes "Law of Nations" and it isn't so done yet.

My understanding of the "Law of Nations" as law was international law—piracy, things of that character, and had no relationship to internal affairs of any nation.

Mr. YOUNG. Do you know of any listing in any law books of specific items of powers in the "Law of Nations"? Isn't it a nebulous phrase that has not been ascertainable?

Mr. RODMAN. I know of none, sir. I know of none. But I have never understood it to be asserted that that power gave to Congress the right to interfere with local affairs of the States.

Mr. YOUNG. I direct your attention now to the "definitions" section. page 5, section 5, the first half of that is the historic definition of lynching, as you read it from your dictionary, and as you understand it—the other half of that definition is the one that I would like to direct your attention to, that is, subsection B on line 3, page 6. I would like to read that.

It says:

> Whenever two or more persons shall knowingly in concert—exercise or attempt to exercise, by violence against person or property, any power of correction or punishment over any person or persons in the custody of any governmental officer or employee or suspected of, charged with, or convicted of the commission of any criminal offense, with the purpose or consequence of preventing the apprehension or trial of * * *

shall be a member of a lynch mob and so on.

The word "property" is a very interesting word in a lynching law. don't you think it is?

Mr. RODMAN. I have never known it to be so injected before. I had always understood that it referred to persons.

Mr. YOUNG. Now, you are an Episcopalian—I am, too. If we under——

Mr. RODMAN. I am glad to hear two of us, at least, are. Go ahead, sir.

Mr. YOUNG. If we under this provision, in concert on the way home tonight kicked a picket off a Baptist man's fence, it is a lynching under this definition?

Mr. RODMAN. Yes, sir.

Mr. YOUNG. Is that your concept of a lynching?

Mr. RODMAN. It has not been, until I read this bill.

Mr. YOUNG. Or——

Mr. RODMAN. This bill so describes it—so defines it.

Mr. YOUNG. If on our way home tonight we pass a Baptist picket fence and we are Episcopalians and you try to kick a picket off and miss, it is a lynching under "an attempt" in this bill, is it not?

Mr. RODMAN. Right, sir.

Mr. YOUNG. Is that your definition, in your mind, of a lynching?

Mr. RODMAN. Of course, it is not. It is a perversion of what has been the concept of a lynching for so long.

Mr. YOUNG. Now, I will direct your attention to section A of that definition which contains a very interesting word, "language." Under that definition, if you and I, on our way home tonight—let us presume we are not Episcopalians now—let us presume we are walking home and we pass a local bar and we hear profane language and we spot the man and we kick a picket off his fence because of his bad language, it is a lynching under this bill, is it not? Is that your conception of lynching?

Mr. RODMAN. Well, that whole definition is a perversion of what has been regarded as lynching. "A" there—relying on, color, race—is not a part of the definition of lynching. And there is nothing in that definition that fits what has been defined by lexicographers, the courts, in legal definitions.

Mr. YOUNG. Can you definitely say that "language" is swear words only?

Mr. RODMAN. No.

Mr. YOUNG. Can you definitely say "language" is inflection only?

Mr. RODMAN. No.

Mr. YOUNG. Accent only?

Mr. RODMAN. It is just inconceivable that one could be by a court under this section.

Mr. YOUNG. We have a due-process clause, do we not, in the Constitution and it requires that a man in order to be held guilty of a crime under due process must know precisely what the crime is which he has committed, otherwise he cannot be convicted.

Mr. RODMAN. That is right.

Mr. YOUNG. Would you, after the passage of this bill, feel precisely what your rights were as to lynching?

Mr. RODMAN. I just cannot conceive that anybody can say that this meets the test that has been laid down as to definiteness of a crime.

Mr. YOUNG. It would be unconstitutional; wouldn't it?

Mr. RODMAN. I would certainly think so. I think one is entitled to know specifically and definitely; and that the statute itself must with definiteness describe what is the crime.

Mr. YOUNG. I will direct your attention to page 9 of the bill, section 9, "Amendment to the anti-kidnapping act." I will read. It says:

The crime defined in and punishable under the Act of June 22, 1932—

and for your information that is the Lindbergh law.

Mr. RODMAN. Yes, sir.

Mr. YOUNG (continuing):

shall include knowingly transporting in interstate or foreign commerce, any person unlawfully abducted and held because of his race, color, religion, national origin, ancestry, language, or religion—they have it twice this time—
or for purposes of punishment, conviction, or intimidation.

Were you acquainted with the reasons for passing the Lindbergh law, the hysteria of the times?

Mr. RODMAN. Yes; yes.

Mr. YOUNG. Does this seem to fit into the need that was serviced by that law?

Mr. RODMAN. It does not, sir. It does not.

Mr. YOUNG. Can you tell me why?

Mr. RODMAN. It has no real relationship to it.

Mr. YOUNG. Would you say that the Lindbergh law, of course, is based on the commerce clause in the Constitution?

Mr. RODMAN. That is right.

Mr. YOUNG. For its constitutionality?

Mr. RODMAN. That is right.

Mr. YOUNG. And are they adding an appendage on something they know is constitutional to buttress up a bill that has grave doubts of its constitutionality?

Mr. RODMAN. I just can not conceive of any situation for which that can be constitutional under any of the constitutional provisions.

Mr. YOUNG. You have noticed this bill has a severability clause on page 11?

Mr. RODMAN. I do.

Mr. YOUNG. It has 5 pages of purposes and possible bases of constitutionality?

Mr. RODMAN. Yes.

Mr. YOUNG. Would it be presumptuous of you and I to guess that the drafters of the bill had grave doubts?

Mr. RODMAN. I, certainly, think that those who drafted this legislation, either had not read the Constitution and the decision, or did not care about it.

Mr. YOUNG. Would you be surprised——

Mr. RODMAN. I mean to be respectful, Mr. Chairman, but I feel deeply about it.

Mr. YOUNG. Would you be surprised to learn that the 80th Congress—a Republican Congress—had this same bill, and had another lynching bill, that specifically denied this bill and acted on one along lines that was constitutional?

Mr. RODMAN. I had understood so. I had not compared, but an earlier Congress had considered and rejected it in part because of its unconstitutionality. But I had hoped, also, they had rejected it because it was bad legislation.

Mr. YOUNG. I direct your attention to page 9, section 10, "Civil actions for damages."

Mr. RODMAN. As interesting a situation as has ever been written into a law.

Mr. YOUNG. Now, remembering our definitions of "lynching" and the picket fence, when we miss the picket on one man's fence, the man then sues through the offices of the Federal Government and gets a judgment against the political subdivision of the State. How is he going to collect that judgment?

Mr. RODMAN. I suppose that they would undertake to send a Federal force to levy on property of the State capitol and put it up and sell it at public auction.

Mr. YOUNG. Would not that create chaos in the State, one picket for a State capitol?

Mr. RODMAN. You do not need to concern yourself about chaos. If this thing is enacted chaos will reign supreme.

Mr. YOUNG. Well now, under the "civil actions" can't you start the FBI and the Attorney General by just filing an information?

Mr. RODMAN. Yes.

Mr. YOUNG. That puts the Federal forces in the locality?

Mr. RODMAN. That is all that is needed.

Mr. YOUNG. Could it be used, if you had an unfavorable Attorney General, for purposes of intimidating the whole of the country?

Mr. RODMAN. There are so many evil purposes to which this legislation could be put, I'd hate to limit it to any particular purpose.

Mr. YOUNG. Is not the Attorney General of the United States an appointive officer?

Mr. RODMAN. Yes.

Mr. YOUNG. Is he not persuasive to political influences?

Mr. RODMAN. I would hope, sir, that no Attorney General would permit himself to do violence to the Constitution by using any such. Yet I recognize that if Congress passes it he would have to comply with the law until the courts had declared it unconstitutional.

Mr. YOUNG. Isn't it true that the Attorney General during Reconstruction Days acted differently than the Attorney General does today?

Mr. RODMAN. I am hoping—I am hoping that the Nation will come to recognize—we have talked about minority groups and minorities and all—that the South has been a minority in this Nation. And when we talk about sufferings of minorities, the South has suffered because of a total failure to understand the South's situation and to respect the integrity of the South.

Mr. YOUNG. Well, to get back to section 10 again, isn't it true that the 11th amendment of the Constitution is specifically designed to stop this?

Mr. RODMAN. I do not suppose that when the 11th amendment was submitted and adopted anyone could possibly have dreamed that any such situation as this would ever be even submitted. And certainly, to understand such an act as this, is a torturing of language, if it is to be declared to meet the test of the 11th amendment.

Mr. YOUNG. That is all of the questions I have, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Rodman. That will be all.

The committee will stand in recess.

(Whereupon, at 3:40 p. m., the committee adjourned.)

CIVIL RIGHTS PROPOSALS

TUESDAY, JUNE 12, 1956

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

The committee met, pursuant to call, at 4 p. m., in room 424 Senate Office Building, Senator James O. Eastland (chairman) presiding.

Present: Senators Eastland, Kefauver, McClellan, Langer, Jenner, Watkins, and Dirksen.

Also present: Robert B. Young, professional staff member, and Richard F. Wambach, assistant to counsel.

The CHAIRMAN. Let us have order.

Senator KEFAUVER. Mr. Chairman and gentlemen of the committee, General McCanless is the attorney general of the State of Tennessee, a distinguished lawyer, who has been very successful in private practice, and has been the attorney general of Tennessee for a year and a half.

Prior to that time he was the commissioner of finance and taxation of Tennessee for a number of years.

Mr. MCCANLESS. I had the honor to succeed Senator Kefauver in that office.

Senator KEFAUVER. I do not know, of course, what his statement is, but I know that General McCanless has well considered his statement, and I am proud to introduce him to the committee.

Mr. MCCANLESS. Thank you, Senator.

The CHAIRMAN. Proceed, General McCanless.

Senator KEFAUVER. Mr. Chairman, what bill is this testimony on?

The CHAIRMAN. All of them.

Mr. MCCANLESS. Shall I proceed, Mr. Chairman?

The CHAIRMAN. Proceed, yes, sir.

STATEMENT OF GEORGE F. McCANLESS, ATTORNEY GENERAL OF THE STATE OF TENNESSEE

Mr. MCCANLESS. Mr. Chairman and gentlemen of the committee, my name is George F. McCanless. I am attorney general of Tennessee, and am here this afternoon in response to the chairman's invitation to express my views about the legislation now under consideration, referred to as the civil-rights bills, and designated S. 900, S. 901, S. 902, S. 903, S. 904, S. 905, S. 906, S. 907, S. 3604, and S. 3605.

I am most grateful for the opportunity to appear before you.

The CHAIRMAN. Mr. McCanless, are you here in your personal capacity, or do you represent the State administration in Tennessee?

Mr. MCCANLESS. I am here, Mr. Chairman, at your invitation.

The CHAIRMAN. Yes, sir.

Mr. MCCANLESS. And I have no authority to speak for anybody other than myself.

The CHAIRMAN. I see. You do not speak for the administration.

Mr. MCCANLESS. I am a member of the judicial branch of the government, elected by the supreme court.

The CHAIRMAN. I see.

Mr. MCCANLESS. The Governor has not, or had not at the time I left Nashville, seen this statement.

The CHAIRMAN. All right. Yes.

Mr. MCCANLESS. These bills, I think, have to be considered together and in relation to recent and current happenings in our country in order that their purpose and effect may be fully understood.

When so considered, the conclusion cannot be escaped that if the Congress enacts them it will, by so doing, not only express its lack of confidence in State government, but also will perpetuate an unwarranted invasion of the sovereignty of all the States of the Union.

Federal power already has encroached too far upon the sovereignty of the States; further encroachments should not be allowed.

S. 900 is the antilynching bill. It is objectionable, in the first place, because it is based on the false premise that lynching is an existing or threatened evil that requires the enactment of Federal legislation for its suppression.

The simple fact is that whereas years ago lynchings did take place from time to time and in various parts of the United States, they no longer occur. Now that lynchings are no longer taking place anywhere in the country and the practice was put down by State action and the development of a public antipathy for it, without the aid of Federal legislation on the subject, why is it now necessary for lynching to be made a Federal offense?

An examination of the bill supplies the answer: Although lynching is made a crime by the bill providing the motive is the "race, creed, color, national origin, ancestry, language, or religion" of the victim, the scope of it is so broad that it encompasses any assault or damage to property by as few as two persons acting in concert and actuated by such motives.

The bill is antilynching only incidentally; primarily it undertakes to make homicide, assault, and malicious damage to property offenses against the United States.

The bill defines a "lynch mob" as two or more persons who shall act "knowingly in concert" to do one of the forbidden acts, and the basis of Federal jurisdiction is laid in the legislative determination that a "lynch mob" frustrates the republican form of government that is guaranteed the States by article 4, section 4, of the Constitution of the United States; and that a State by "permitting or condoning" a lynching, as defined, makes the act of the "lynch mob" its own act and thereby deprives the victim of life, liberty, or property under color of authority and without due process of law.

Section 10B authorizes civil suits for damages against "the State or governmental subdivision thereof."

I suggest that the principles just mentioned are violative of present concepts of American constitutional law. If a lynching, as defined by the act, suspends the republican form of government of a State, so also does the commission of every other crime, however sporadic.

Every State of the Union, the recitals of S. 900 notwithstanding, enjoys the republican form of government that is guaranteed it by the Constitution of the United States. The need of the States is for more, not less, autonomy.

The provision that tries to make a "lynch mob" the agent of a State or political subdivision is altogether untenable. In no case can it be said that an agent gains his authority by acting against the will of the person thereby made principal—in this case the solemn law of the State. Such a concept is contrary to the basic ideas on which the law of agency rests.

The granting of permission to aggrieved persons to bring suits against the States for damages resulting from the activities of "lynch mobs" ignores the 11th amendment to the Constitution of the United States and the holding of the Supreme Court of the United States in *Fitts* v. *McGhee* (172 U. S.; 43 L. ed. 535; 19 Sup. Ct. 269). A citizen may sue neither his own nor another State, and the Congress is without power to grant him permission to do so.

Senator McCLELLAN. Would you prefer we wait until you finish your statement before we ask questions?

Mr. McCANLESS. No, sir. I would be happy to be interrupted at any time.

Senator McCLELLAN. It just occurs to me that every argument made in favor of an antilynching bill could be sustained against the Federal Government for permitting gangsterism. Certainly if a citizen of a State, under Federal law be given a right to sue the State for something that occurred and damages resulting from one violating the law of that State, why should not the Federal Government be liable for anyone who is killed by a gang of racketeers?

There is not a bit of difference in the principle, as I see it. Why should not the Federal Government be liable just as this undertakes to make the State liable?

Mr. McCANLESS. Senator McClellan, I believe the violation of any criminal law of any State could be made a Federal offense under the theory of this bill.

Senator McCLELLAN. Why would not the Federal Government be liable just as well as the State government, because it is taking over jurisdiction?

Mr. McCANLESS. I would see no difference after such a bill is passed.

Senator McCLELLAN. Do you not think the bill should be amended to make the Federal Government liable? It has taken over——

Mr. McCANLESS. I would rather see the bill defeated.

Senator McCLELLAN. Of course. But if we are going to pass it, let's go all the way; since the Federal Government wants to invade the province of the State in this area, why not go all the way and make the Federal Government liable for failing to enforce?

Mr. McCANLESS. That follows logically.

Senator McCLELLAN. I think it does.

The CHAIRMAN. What about a kidnaping under the Lindbergh Act?

Senator McCLELLAN. Sure.

The CHAIRMAN. Or a man who has got some counterfeit money palmed off on him.

Mr. McCANLESS. Shall I proceed?

The CHAIRMAN. Yes.

Mr. McCANLESS. I am impressed by the unfairness of the provision of S. 900 which allows monetary judgments in certain cases against counties and municipalities where lynchings, as defined in the bill, take place.

This would result in the payment of damages by innocent people utterly without power to prevent the act on which the judgment would be predicated. A poor widow would have to contribute from her meager funds for no reason at all except that her little home lay within the county or the municipality. She, though innocent, would be guilty in contemplation of law—guilty by association—at least guilty by location.

The CHAIRMAN. That brings another one in: That is, guilty by location, that is right; you are right there.

Mr. McCANLESS. Tennessee has laws, law enforcement, courts, and public opinion that are competent and adequate to deal promptly and firmly with any criminal activity that may take place within her borders.

All persons, black and white alike, enjoy the equal protection of her laws. As recently as 10 days ago in Benton County, in west Tennessee, a white man was found guilty of the homicide of a Negro and sentenced to a term in prison. It is my opinion, from my knowledge of the facts, that the sentence was as great as it would have been had the deceased been a white man.

S. 903—S. 907, title V—undertakes to provide protection to the citizen of his right to vote in national elections. Tennessee has good registration and election laws and conducts fair registrations and elections.

Candidates for nomination and election to the United States Senate and House of Representatives are nominated and elected in the same primaries and general elections at which State officials are elected.

The acts made criminal by this bill are also criminal under Tennessee law.

I am of the opinion that Tennessee can, does, and will continue to protect the right of her citizens to vote in national and in State and local elections.

S. 901, the poll tax bill, is not of direct concern to Tennessee because the poll tax was abolished by constitutional amendment in 1952, but I am opposed to this bill because it is unconstitutional and attempts to regulate a subject that is peculiarly a State's own business.

S. 902, S. 3604, and S. 907, title II, all provide for the establishment of a Civil Rights Division in the Department of Justice. It is not within my competence to advise with respect to the organization of the Department, but it is unfortunate that this bill should have been made a part of the controversial civil rights legislative program.

There is to be considered the possibility that at some time in the future, if not immediately, such a Division would be employed to harass political opponents.

S. 905—S. 907, title IV—is a dangerous, unnecessary, and unwarranted bill. If it should be passed, the practice of seeking in the Federal courts reviews of convictions in State courts, now quite prevalent, would become almost routine.

The bill is an undeserved reflection upon the skill and the fairness of the judges of the State courts, and should not be allowed to pass.

Tennessee justice and Tennessee law deal firmly with everything dealt with by S. 905. Sections 39–2801 to 39–2805 of the Tennessee Code specifically prohibit persons to go about in disguise for the purpose of terrifying and injuring other persons and destroying property.

It is interesting to notice that if a disguised person assaults another with a deadly weapon, he commits a felony punishable by death.

These code sections first were enacted as chapter 54 of the acts of 1869–70 by the first general assembly elected after the Confederate soldiers had had the franchise restored to them.

S. 904—S. 907, title VI—is a proposed amendment to the peonage statute. It makes an attempt a criminal act and adds a kidnaping section. I know of no conditions that require this legislation; certainly there are none in Tennessee.

S. 906 and S. 3605 both provide for a Commission on Civil Rights. I should suppose that the Congress would prefer to retain its investigative function so as to obtain information for its guidance in the consideration of future proposed legislation.

I urge that this distinguished committee make an unfavorable report on all this civil rights legislation. It is not needed; much of it is unconstitutional; it reflects discredit upon the governments of our States; it seriously invades the sovereignty of the States; and it will impair and will not improve the conditions it professes to correct.

The people of Tennessee are faced with the most difficult problems in the relations between the white people and the colored people that they have had to confront them since the terrible days of the Reconstruction.

Those relations have deteriorated markedly, and they must not be impaired further by the enactment of unnecessary and punitive legislation remindful of our earlier period of trial.

Tennessee is sovereign; do not impair that sovereignty. Tennesseans govern themselves well and justly; allow them to continue to do so.

The CHAIRMAN. You said there Tennessee is sovereign; do not impair that sovereignty.

Any questions, Senator Kefauver?

Senator KEFAUVER. I had 1 or 2. I do not find it in the listed bills here, but you testified, Mr. McCanless, about a poll-tax bill. Which bill is that you are testifying about?

Mr. MCCANLESS. I have it here, Senator. I have forgotten the number of it. I do have it here.

Senator KEFAUVER. Is that the bill, the resolution for a constitutional amendment, or is that——

Senator JENNER. S. 901 is the poll-tax bill, not of direct concern to Tennessee because the poll tax was abolished by constitutional amendment in 1952. It is on page 5.

Senator KEFAUVER. I know, but what is S. 901?

Mr. MCCANLESS. The poll-tax bill, Senator.

Senator KEFAUVER. This is a bill by Senator Humphrey which outlaws the poll tax as a condition of voting in any primary or other election.

There is also a bill here—a bill something like S. 901 passed the House quite a number of years ago, but it did not get passed over here.

I feel that the great majority of our people are against the poll tax down there, and this is based upon the form of the bill, or just what?

Mr. McCanless. No, sir; it is my opinion that the Congress should not enact such a bill as this, it being the function of the State to prescribe the eligibility of the voting of its citizens.

As I say, this bill is not of direct concern to Tennessee because, as you know, the poll tax has been abolished by constitutional amendment in our State.

Senator Kefauver. Yes, I know. Suppose this were in the form of a constitutional amendment to be submitted to the people. Would there then be any objection to it on your part?

Mr. McCanless. Senator Kefauver, I am opposed to any infringement of the Federal Government on the sovereign rights of a State. Of course, the constitutional amendment would be a process that would not carry with it objectionable unconstitutionality as this bill does, but I still would be opposed to it as an invasion.

Senator Kefauver. We have a bill here by Senator Holland which we have had hearings on, which would submit a constitutional amendment for the abolition of poll tax as to election of Federal officials.

Mr. McCanless. Yes, sir. I have not seen that.

Senator Kefauver. But you would oppose that in principle, too?

Mr. McCanless. Yes, sir.

Senator Kefauver. Another bill here which I have not had a chance of examining in detail has to do with protecting one's constitutional rights in connection with the election of Members of the United States Senate and presidential electors. Is that S. 903?

Mr. McCanless. That is S. 903. I have it here.

Senator Kefauver. I had understood—I have not read this in a long time—but in the case of *Boggs* v. *The United States*, which I have not read for a long time—anyhow, it is the Louisiana case arising out of the election of Congressman Boggs a number of years ago—that the Supreme Court of the United States said that the constitutional guaranties of preventing anyone from interfering with a person who is trying to vote, applied to even primaries for the election of a Federal official, a Congressman, or Senator.

Mr. McCanless. I so understand.

Senator Kefauver. I mean, what is the difference, then, between this and that?

Mr. McCanless. I feel that in our State, at least, the State government will protect the right of all citizens to vote, and that there is no need for intervention by the Federal Government.

Senator Kefauver. Do you feel that this goes any further than the decision in *Boggs* v. *United States?*

Mr. McCanless. Yes sir; it goes further than present law, and it is a very broad bill. Any act that might be construed as coercion or intimidation could be made the subject of an indictment, and I think there is grave likelihood that sometime in the future such an act might be made the subject of harassment of persons who are very honestly endeavoring to conduct elections correctly, and it would be rather embarrassing, perhaps, to persons who are trying to get candidates elected.

Mr. Young. Senator Kefauver, section 1 of S. 903, which covers the primary and special elections, is now rendered obsolete by case law. I believe the whole section could be stricken from the bill. It just enacts into law what is already case law.

Senator Kefauver. Is that the Boggs case you are referring to?

Mr. YOUNG. I do not refer specifically to the Boggs case. That is one of them. There are others—*Brown* v. *Baskin*; *Elmore* v. *Rice*; going all the way there to *Smith* v. *Allwright*, your standard bill.

So section 1 of S. 903, the participation bill, enacts into law what is now case law.

Senator KEFAUVER. That is what I was thinking of. I did not know what the difference was between the provisions of the bill and what the Supreme Court had already held on the subject.

Mr. YOUNG. No difference whatsoever, is the answer, Senator.

Senator KEFAUVER. As to S. 900, Mr. McCanless——

Mr. MCCANLESS. Yes, sir. That is the antilynching bill.

Senator KEFAUVER (continuing). I certainly agree it is not good policy to penalize somebody who had no participation or who may have had no part or who was innocent of having anything to do with any mob violence, which is what you referred to here.

I do not like for laws to be pointed at any particular section or group. But what if that section penalizing a person who had no part in it were taken out, and the bill were made to refer to mob violence beyond the control of the State anywhere, without pointing a finger in any particular place? That is, whether it is in the West or the North, the South, or wherever it might be, whether some Federal jurisdiction was involved, where either a State could not or would not control the action, just making such action part of the criminal code without imposing liability upon innocent people who had no part in it. Would that change or alter your opinions on that?

Mr. MCCANLESS. By amending the bill so as to remove that section, of course, one objection would be removed. But I think the bill is bad in all its particulars. I think that it so defines a lynching and a lynch mob as to give an entirely different meaning to lynching and mobs from anything any of us have understood before.

The CHAIRMAN. Do you not think there would be more reason to make it a crime for violence on a picket line?

Mr. MCCANLESS. Well, sir, I have seen one riot. I stayed away from it, but it occurred in our town in 1950. That happened to be a labor dispute. But whatever the cause of a riot may be, they are very terrible things.

You see men who are ordinarily good, law-abiding men, become frenzied and take courage, perhaps, from the mass of people around them; they do things that ordinarily they would not do at all.

I cannot imagine myself that a mob could be composed of as few as two people, and I do not think two men can perpetrate a riot.

This definition is not factual.

Now, the effect of this would be to give the Federal courts jurisdiction of any homicide or assault or any damage to property, either personal or real, that might be perpetrated on anybody because of his race or religion or language, I believe, when as a matter of fact the State laws, all of them, I suppose, certainly our laws in Tennessee, are fully able to cope with and they do cope with things of that sort.

The CHAIRMAN. You do not think we would have any such thing as State sovereignty remaining if these laws were enacted into law?

Mr. MCCANLESS. Well, I think it would be a very great invasion.

The CHAIRMAN. Well, it would destroy the States, would it not?

Mr. MCCANLESS. It would almost do so, yes, sir.

The CHAIRMAN. Deprive them of their police powers.

Mr. MCCANLESS. Yes, sir.

Senator KEFAUVER. What if these words were left out, just applied to general mob violence of any sort that was beyond the competence of the State to handle?

Mr. MCCANLESS. Of course, my knowledge of things is largely confined to my own State, but the State government of Tennessee has controlled every disturbance that has occurred there in recent times. It has had perhaps sometimes to call out the National Guard, it has had to use highway patrols, but the State government can control those things.

There is not any machinery set up in this bill for the quelling of a mob. It is only the punishment of the persons who are engaged in lynching.

We have laws that cover that very well, as you know.

Senator KEFAUVER. How about the quelling of a mob? I thought that was embraced in this bill.

Mr. MCCANLESS. I don't so understand it. I thought it was a penal statute that provides for trial and punishment for persons who engage in lynching as defined in the bill.

Senator KEFAUVER. You have got some section in here about a separate Civil Rights Division in the Department of Justice.

Mr. MCCANLESS. Yes, sir.

Senator KEFAUVER. At the present time it is part of the Criminal Division.

Mr. MCCANLESS. Yes, sir.

Senator KEFAUVER. Do you think any problems of civil rights can be more properly handled by a Civil Rights Division than as it is set up now?

Mr. MCCANLESS. As I have already said, I don't have the knowledge of the organization of the Department of Justice to make my opinion about its organization worth anything. I do suggest, though, that if the Department of Justice had such a division and it were made a large, very active one, the FBI were increased considerably in order to assist it, that there might at some future time, if not immediately, be the fact that it might be used as an instrument of harassment. I don't say it will happen, but I think it is a distinct possibility.

Senator KEFAUVER. You are right.

Mr. MCCANLESS. And it may be, Senator Kefauver, little more than a coincidence that causes this bill or these bills to be introduced along with these other civil rights bills.

It apparently is not altogether the present need that was being considered, but the need for enlargement, if these various other acts are passed.

Senator KEFAUVER. You refer to S. 904, and I do not seem to have a copy of that, Mr. Young.

Mr. MCCANLESS. I have got it, I think, Senator.

Senator KEFAUVER. It is an amendment to the peonage statute.

I did not understand just what your objection to this was.

Mr. MCCANLESS. My principal one is that so far as I know, there is not any need for it at all.

Senator KEFAUVER. Well, there is a peonage law at the present time.

Mr. MCCANLESS. Yes, sir.

Senator KEFAUVER. This adds a penalty to it, does it not?

Mr. McCANLESS. It makes an attempt to commit peonage as defined in the original Act, an offense; and I believe that is the kidnaping section. If one is kidnapped and taken across a State line for the purpose of being put into slavery or sold into slavery, that crime is committed.

It occurs to me that perhaps some person——

Senator KEFAUVER. Does not this expressly provide, though, for international commerce transactions?

Mr. McCANLESS. That is the kidnaping section; yes, sir.

Mr. YOUNG. It enlarges the vehicles in the previous law.

Senator KEFAUVER. If you bring a person from another State, another country, into the United States or take a person from one State to the other for the purpose of peonage, that would be a violation of this proposed law.

Mr. McCANLESS. It already is, I think.

Mr. YOUNG. It would be if you used a vessel.

Mr. McCANLESS. Vessel. This includes other modes of transportation.

Senator KEFAUVER. Other modes?

Mr. McCANLESS. Yes, sir.

Senator KEFAUVER. If the other law was sound, why would this not be sound, too?

Mr. McCANLESS. Well, I think there may be a distinction between charging and convicting one of doing something, and charging and convicting one of an attempt. Perhaps some person might be induced to say that a certain person tried to sell him into slavery when as a matter of fact it would be baseless, but would be a means of harassing him.

I do not know of any need for it. We have no slaves in Tennessee, Senator Kefauver, and I don't know of anybody who is in any State that even approaches it.

Certainly the colored people——

(Discussion off the record.)

Senator KEFAUVER. That is all I have, Mr. Chairman.

The CHAIRMAN. Mr. McCanless, you are a very able lawyer. Your statement is one of the ablest that I have ever heard.

I personally am grateful to you, sir, and I want to thank you on behalf of the committee for giving us the benefit of your views.

Mr. McCANLESS. Senator, I am very grateful to you, sir.

The CHAIRMAN. The committee will adjourn.

(Whereupon, at 4:25 p. m., the committee adjourned, subject to call.)

CIVIL RIGHTS PROPOSALS

MONDAY, JUNE 25, 1956

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

The committee met, pursuant to call, at 2:30 p. m., in room 424, Senate Office Building, Senator James O. Eastland (chairman) presiding.

Present: Senators Eastland (chairman), A. Willis Robertson, and Langer.

Also present Robert B. Young, professional staff member, and Richard F. Wambach, assistant to counsel.

The CHAIRMAN. The committee will come to order.

The first witness is the Honorable Joe T. Patterson, the attorney general of the State of Mississippi.

Mr. Patterson, we would like to have your views, sir, on the desirability and the constitutionality of these bills.

STATEMENT OF JOE T. PATTERSON, ATTORNEY GENERAL OF THE STATE OF MISSISSIPPI

Mr. PATTERSON. Thank you, Senator Eastland, and gentlemen of the committee. First, I would like to express my appreciation to the committee for affording me an opportunity to appear here in opposition to these pending bills.

I can fully appreciate how busy this committee is at this time at this session of the Congress, having been an employee of the Senate here a good many years ago myself and, for the sake of brevity, I shall address my remarks to the recent proposals submitted to the Congress by the United States Attorney General Brownell and the bills that have been introduced in support thereof, and what I propose to say with reference to the 4-point civil rights program, as it has been designated, of course, is equally applicable to all other bills of similar import.

Viewing the "4-point civil rights program" as proposed by the United States Attorney General, as a whole, and taking into consideration the guiding question that should control in the consideration of such far-reaching legislation—that is—whether such legislation is needed to accomplish the stated purpose of same? We can come to only one conclusion, and that is, that all 4 proposals are wholly unnecessary, in addition to the fact that all 4 proposals strike once again at the rights reserved unto the States by the 10th amendment, and constitutes another broad step toward the centralization of power in the Federal Government to the exclusion of the rights of the State.

1. Let us view the first proposal, and S. 3605—"To establish a bipartisan Commission on Civil Rights in the executive branch of the Government." The duties of the Commission as set forth in the bill are far beyond the capacity of 6 members to accomplish in 2 years, which is the life of the Commission according to the bill. In my humble judgment, the task assigned to this 6-member Commission by the bill could not be accomplished by 6 men, regardless of ability, in 8 or 10 years. Having served two terms in the legislature of my State, and having observed a similar trend in Congress, I learned long ago that the creation of a "temporary" commission or bureau by a State legislature, or the Congress, is in fact the birth of another permanent commission or bureau.

Every duty imposed upon the proposed Civil Rights Commission can now be accomplished under existing Federal or State laws.

Practically all of the duties imposed upon the proposed Commission are properly the prerogative of Congress and State Legislatures, and not of a commission in the executive branch of the Government.

Moreover, the creation of this Commission for the stated purposes would set up in the executive branch of the Government a source of harassment to the States in the administration of their laws, and a constant source of harassment to the executive branch of the Federal Government by those who are going to feel that this Commission is being provided for their sole benefit, to the exclusion of all others. At the very beginning, if the President does not appoint members of this Commission who have previously demonstrated complete sympathy and accord with the views and wishes of those well-organized groups that are responsible for this proposed legislation, he will immediately have the wrath of these groups brought down upon his head, and be accused of not being in sympathy with his own recommendation.

Regardless of party affiliation, regardless of the party in power, I think we can all agree that the creation of this Commission, for the purposes stated in the bill, will be the establishemnt in the executive branch of the Federal Government one of the greatest sources of political harassment that the Executive has ever had to contend with, and in my opinion it already has more than its just share of that to contend with.

The CHAIRMAN. What is the point in it? Our people are law abiding are they not?

Mr. PATTERSON. Definitely so, Senator.

The CHAIRMAN. And races get a square deal, do they not?

Mr. PATTERSON. This would just be a source of harassment to those States that the record shows are law abiding, which I shall attempt to point out briefly as I go along, with my statement.

The CHAIRMAN. Proceed.

Mr. PATTERSON. 2. The second proposal: "Creation of a new Civil Rights Division in the Justice Department, under an Assistant Attorney General, to facilitate enforcement of civil-rights statutes. The Attorney General said he anticipates a flow of litigation from the Supreme Court's ban on race segregation in public schools."

As I understand this proposal, it would create in the Department of Justice a "new Civil Rights Division" under an Assistant Attorney General appointed by the President, which would give to this Division the status of being one step from that of Cabinet rank.

The proposals that follow the recommendation of the creation of a new Civil Rights Division in the Justice Department clearly show that it is the desire of the Attorney General to completely take over the supervision and enforcement of all so-called civil rights legislation.

The CHAIRMAN. Does it not also show that he desires to move in on the States?

Mr. PATTERSON. Yes, sir, definitely.

The CHAIRMAN. And the expression of State sovereignty?

Mr. PATTERSON. Under the recent decisions on the question of supersession, I presume they would strike all of the State legislation on all such matters.

The creation of a Civil Rights Division in the Justice Department under an Assistant Attorney General, and amending existing laws to give to this assistant the power and authority as recommended, would create an even greater source of harassment to the States and their law-enforcement agencies than the creation of a Commission on Civil Rights.

The creation of a new Civil Rights Division in the Justice Department, clothed with the authority that is requested, presupposes the fact that the United States district courts throughout the country, and especially the State courts, have wholly failed to take proper cognizance of the civil rights of its citizens, regardless of race, and have not and will not see to it that the constitutional rights of its citizens are properly protected. After all, so-called civil rights cannot rise any higher than those rights conferred upon a citizenship by the Constitution of the United States and the constitutions of the respective States. The records of the United States district courts and of the State courts do not warrant any such assumption.

3. The Attorney General proposes an "Amendment to existing law to make it a crime for any person to use intimidation, threat, or coercion to deprive anyone of his rights to vote for candidates for Federal office. At present, Federal statutes aimed at preventing deprivations of voting rights reach only State officials and not private individuals."

That is the statement of the United States Attorney General.

In the first place, existing Federal and State statutes are fully adequate to protect the citizen against "intimidation, threat or coercion to deprive anyone of his right to vote for candidates" for both Federal and State office.

Section 1985 of title 42, United States Code Annotated, affords full protection of the right of a citizen to vote for President, Vice President, and Members of Congress of the United States.

It is wholly unfair to the United States district courts and the United States district attorneys throughout the country to assume that they have ignored this statute and have wholly failed to enforce same. Moreover, every State in the Union has statutes making it a crime "for any person to use intimidation, threat, or coercion to deprive anyone of his right to vote for candidates" for any office, State or Federal.

The CHAIRMAN. Those statutes are enforced within the States?

Mr. PATTERSON. Yes, sir.

As far back as 1848 the State of Mississippi had statutes making it a crime to intimidate electors in seeking to exercise their rights to vote.

Section 2032 of the present Mississippi Code of 1942 provides:

Whoever shall procure, or endeavor to procure, the vote of any elector, or the influence of any person over other electors, at any election, for himself or any candidate, by means of violence, threats of violence, or threats of withdrawing custom, or dealing in business or trade, or of enforcing the payment of a debt, or of bringing a suit or criminal prosecution, or by any other threat or injury to be inflicted by him, or by his means, shall, upon conviction, be punished by imprisonment in the county jail not more than one year, or by fine not exceeding one thousand dollars, or by both.

Section 2106 of the present Mississippi Code of 1942 (Annotated) provides:

If any person shall, by illegal force, or threats of force, prevent, or endeavor to prevent, any elector from giving his vote, he shall, upon conviction, be punished by imprisonment in the penitentiary for a term not exceeding two years, or in the county jail not exceeding one year, or by fine not exceeding five hundred dollars, or both.

We submit that it is wholly unfair to the courts of Mississippi to assume that they will not enforce the above-quoted statutes. However, the request of the Attorney General that "he be authorized to bring injunction or other civil proceedings on behalf of the United States or the aggrieved person in any case covered by the broadened statute," and his further surprising request "for elimination of the requirement that all State administrative and judicial remedies must be exhausted before access can be had to the Federal Court," is to assume that State administrative and judicial processes have broken down and wholly failed to meet their responsibilities under the law.

If it is to be assumed that State courts have so completely failed in the field of civil rights, then it is reasonable to assume that they have at least partially failed in their responsibilities in all other matters, and if the proposed legislation creating a Civil Rights Commission in the executive branch of the Federal Government, and a Civil Rights Division in the Justice Department of the Federal Government, has become necessary on account of the failure of the State judges and other court officials to live up to their solemn oath of office, then it is reasonable to assume that they have failed all up and down the line in the discharge of their duties, and have, therefore, ceased to accomplish their mission; and in order to correct this, another commission should be created in the executive branch of the Federal Government and another division created in the Justice Department of the Federal Government, to investigate, supervise, and direct on behalf of the Federal Government, or the individual concerned, in all matters that might come under the jurisdiction of State courts.

4. The fourth proposal of the Attorney General to amend "existing statutes so as to give the Attorney General power to bring civil action against any conspiracy involving use of hoods or other disguises to deprive any citizen of equal treatment under law," so as to "allow the Attorney General to bring proceedings on the Government's behalf," is wholly unnecessary and places the Federal Government in the courts as the complaining party instead of the aggrieved person, who certainly should properly bring his own suits.

Why should all the power and prestige of the Federal Government be thrown behind just one particular type of litigation on behalf of an aggrieved person? Isn't it reasonable to assume that if an aggrieved person really has a just cause of action that he could stand on his own in Federal or State court, without the Federal Government

taking over for him? I again repeat, if the Federal Government is to take over so completely in this particular field commonly called civil rights, then is it not reasonable to assume that the precedent has been set for the Federal Government to take over in any other field of law enforcement that it might deem expedient to do?

Such a course is bound to culminate in virtually the entire field of law enforcement being taken over by the Federal Government, and in reducing the State courts to mediocrity. Certainly, no justification for such a course can be found in the Constitution of the United States. Certainly, no such course can be justified if the States are to continue to be recognized as sovereign States.

I think it is reasonable to assume that the "Four-point civil-rights program" as recommended by the United States Attorney General, is aimed directly at one section of the United States; however, I think that it would be well to consider the effect that such broad and sweeping authority conferred upon the Department of Justice might have upon every State in the Union, because the authority and power conferred upon the Department of Justice by these proposals can be exercised and brought to bear upon the people of the States of New York and California as well as upon the people of Mississippi and Georgia.

The right kind of thinking people in every State, regardless of location, concede that members of so-called minority races are entitled to have their rights as guaranteed to them by the Federal and State constitutions properly protected; however, I have never found any one from any State in this Union—and from 3½ years in the Army, I had the opportunity to know and be with boys from every section—I never have found one yet that felt that the so-called minority groups had paramount rights to the exclusion of the majority.

Speaking for the State of Mississippi and its fine people, the record wholly fails to show where the people of Mississippi have ignored the civil rights of the Negro race, which up until only a few years ago constituted 50 percent of its population, and in some particular localities the Negro population exceeded the white population as high as 10 to 1.

A spirit of understanding and good will has existed between the white and colored races in the State of Mississippi for more than 100 years, and each race has prospered and gone forward side by side in an atmosphere of sympathy, understanding, and good will.

The charge of economic pressure being brought upon members of the Negro race by the people of Mississippi is unfounded and wholly refuted by the number of prosperous business and professional members of the Negro race in Mississippi. If an unbiased investigator wants to get at the truth of this charge of economic pressure, he has only to go to the banks, the mercantile establishments and other leading businessmen and make inquiry as to the credit rating of these reliable and well-to-do members of the Negro race.

An unbiased investigator has only to look at the farms and different business enterprises owned exclusively, and operated by, members of the Negro race, to arrive at the conclusion that a member of the Negro race can prosper in the State of Mississippi and be protected in his right to do so.

As heretofore stated, the request of the United States Attorney General "for elimination of the requirement that all State administra-

tive and judicial remedies must be exhausted before access can be had to the Federal Court" presupposes the failure of the State courts to recognize, and properly protect, the constitutional rights of its citizens, regardless of race, color, or creed.

The unbiased mind has only to review the decisions of the supreme court of the State of Mississippi, beginning many years ago, long before the present agitation and crusade for so-called civil rights was commenced, to come to the conclusion that the supreme court of Mississippi was jealously and carefully guarding the constitutional rights of its citizens, regardless of race, color, or creed, long before the present crusaders came upon the scene claiming for themselves to be the redeemer and savior of constitutional and civil rights for certain groups.

I will not burden this committee with a lengthy and detailed review of the numerous cases decided by the supreme court of the State of Mississippi, wherein the constitutional rights of a member of the Negro race have been so forcefully upheld; however, I do call the committee's attention to the case of *Richardson* v. *State*, decided by the supreme court of Mississippi on May 8, 1944, and cited in 196 Mississippi page 560, 17 So. 2d 799.

The defendant was a Negro man who had been convicted and sentenced to death upon a charge of rape, alleged to have been committed upon a 20-year-old white woman.

It is interesting to observe extracts from the opinion of the supreme court of Mississippi in reversing and remanding this case. In passing upon the testimony in the case, the supreme court of Mississippi said:

> The entire record of the testimony has been read by, or in the hearing of, every member of the court. Fifty years ago in *Monroe* v. *State* (71 Miss. 196, 13 So. 884), the rule, and the philosophy thereof, for the guidance of bench and bar in such cases was laid down, and that rule has never been departed from. It was reaffirmed in the recent case, *Upton* v. *State* (192 Miss. 339, 6 So. 2d 129). In these cases it was said that it is true that a conviction for rape may rest on the uncorroborated testimony of the person alleged to have been raped, but it should always be scrutinized with caution; and where there is much in the facts and circumstances in evidence to discredit her testimony, another jury should be permitted to pass thereon.
>
> A critical and cautious scrutiny of the record of the testimony discloses that in not less than four material, and in fact decisive, particulars the testimony of the prosecutrix is so highly improbable as to be scarcely believable—

that is the supreme court of the State of Mississippi, passing on a case where a Negro was convicted and where the prosecutrix was a white girl, saying that her testimony was wholly unbelievable—

> except, of course, to one who would simply prefer to believe it, and that when the four are considered together there arises such a doubt of the truth of what she has said on the stated crucial issue as to render the evidence hardly equivalent to a preponderance much less that which must carry conviction to an impartial and unbiased mind beyond all reasonable doubt. A majority of the court are of the opinion, in this respect, that without the so-called confession of appellant he would be entitled to a peremptory charge.

In the same case the supreme court of Mississippi, in reversing and remanding the conviction of its own accord, on the question of due process, in that the defendant had not been properly represented by counsel, stated:

> It is desired by some members of the court that mention be made of the fact that there hovers in the background of this record the broad issue of due process. The record does not disclose whether the attorney who appeared for the defendant was employed or whether appointed by the court; but, however, that may have been, candor compels us to admit that he made only a token defense. We

are entitled to take some knowledge of the members of the bar of the supreme court, of whom the attorney in this case is one, and we may assert with some confidence that he possesses both ability and energy. Why, then, did he make only a token defense, as to which see *Powell* v. *State of Alabama* (287 U. S. 45, 53 S. Ct. 55, 77 L. Ed. 158, 84 A. L. R. 527)? There must arise, therefore, more than a suspicion that there were such circumstances surrounding the trial, such a pervading atmosphere of prejudice engendered by a probable popular assumption of guilt with the resultant and revolting reaction of outrage, that it was deemed wiser by the attorney to make no more than the defense he did with a hope of life sentence, and that later, time would come to the relief of the helpless defendant. Such a situation involves due process, the protection of which, above the interest of the accused in his own life or the prosecutrix in her own vindication, is the supreme duty and responsibility of the court, and both in the trial court and here.

That is the record of what was laid down by the Mississippi supreme court in these cases that so often attract so much attention.

I submit that no court throughout the United States, Federal or State, could more clearly and forcefully express its belief in due process, and its determination to see that a member of the Negro race was accorded the full benefit of due process, than is set forth above.

I would like to call this committee's attention to the fact that in the celebrated case of *Willie McGee* v. *State of Mississippi*, a case that was seized upon by certain radical groups outside the State of Mississippi and made a cause celebre throughout the country. The seeds of hatred and discord were sown, which whipped the crowds to fever pitch, and then at the psychological moment, the hat was passed around for funds to save Willie McGee from an alleged legal lynching. All of this took place after Mr. Emanuel Block, of New York City, took charge of the defense, and who, incidentally, was later chief counsel for the Rosenbergs, wherein the same tactics were pursued as in the Willie McGee case. But in spite of all of the adverse criticism heaped upon the courts and other officials of the State of Mississippi in the Willie McGee case, the fact still remains that the conviction of Willie McGee was reversed and remanded twice by the supreme court of the State of Mississippi, and not by the United States Supreme Court, and that his third conviction and sentence to death was affirmed by the supreme court of the State of Mississippi and certiorari denied by the Supreme Court of the United States.

I would call the committee's attention to the recent case of *Bell* v. *State* decided by the supreme court of Mississippi on November 14, 1949, and reported in 207 Miss. 518, 42 So. 2d 728.

The defendant, Bell, was a young Negro boy around 20 years of age, who was charged with the killing of a white plantation manager in Coahoma County, Miss. Upon arraignment, Bell advised the court that he was without counsel and had no money to employ same. The court immediately appointed two of the ablest members of the local bar to defend Bell. Bell was found guilty and sentenced to death, and his appointed counsel appealed his conviction and sentence to the Supreme Court of the State of Mississippi, where they appeared and argued same.

And, incidentally, I handled the case as assistant attorney general in charge of the criminal docket.

The Supreme Court of Mississippi in its opinion setting forth the holdings of the Supreme Court in construing the law of self-defense for many years, held that Bell was—

not guilty of any crime but acted in his reasonably necessary self-defense.

And further held:

*** * * In our judgment, appellant was entitled to have had the directed verdict for which he asked; and to acquittal, on the ground of self-defense, as convincingly demonstrated in appellant's fine brief.**

It further stated:

We therefore reverse the judgment of the lower court, and direct the discharge of appellant from custody.

In the case of *Cockrell* v. *State* (168, So. 617, 175 Miss. 613), decided by the Supreme Court of Mississippi on June 8, 1936, a Negro was convicted of murder. The proof showed that he had killed a white boy when found in adultery with his wife, and had burned the body of the deceased. The Supreme Court reversed and remanded the defendant's conviction of murder and held the defendant to be guilty only of manslaughter, if anything.

In the case of *Coleman* v. *State*, decided by the supreme court on October 12, 1953, the defendant Coleman, a Negro, was convicted of murder for the killing of the town marshal of the town of Doddsville, in Sunflower County, Miss., Senator Eastland's hometown. The proof showed that the town marshal had ordered defendant to leave town during the early hours of the night, and that later, upon discovering the defendant in town, proceeded to bump and shove the defendant, informing him that he had told him to leave town. The defendant turned upon the town marshal, stabbing him one time with a knife, which resulted in his death. The supreme court, in reversing and remanding the defendant's conviction of murder, held that the defendant could not be guilty of more than manslaughter, if anything.

At the recent term of the Supreme Court of Mississippi, on March 9, 1956, the court had before it the case of *Willie Mabry & Oscar Mabry* v. *State* (86 So. 2d 23). The two defendants, brothers, were young Negroes, jointly indicted, tried and convicted of an assault and battery with intent to kill and murder a white man with two alleged deadly weapons, one being an iron wrench in the hands of Willie Mabry and the other being an iron pipe in the hands of Oscar Mabry. Each defendant was sentenced to serve a term of 5 years in the State penitentiary. The court, in concluding its opinion, said:

The appellants contend that under the proof they should not have been convicted of assault and battery with intent to kill and murder, but at most they were guilty only of a simple assault and battery, and we think this contention is well-taken—

citing many previous opinions of the Supreme Court of the State of Mississippi in support thereof. The court reversed the conviction and sentence and remanded the cause for proper sentence for a conviction of simple assault and battery, which is a misdemeanor, and carries with it only a fine and a probable short jail sentence.

The Supreme Court of Mississippi has, throughout the years, jealously guarded against deprivation of the constitutional rights of one charged with crime, regardless of race or color, by refusing to permit any conviction to stand wherein the records show that an appeal had been made to racial prejudice.

In the case of *Harris* v. *State* (50 So. 626), decided by the Supreme Court of the State of Mississippi in 1909, the supreme court said:

The language to the effect that he murdered a white man in the house out there, he did not deny is direct comment upon the failure of the defendant to testify. It is impossible for us to see any other construction to be given this

language, and under repeated decisions of this court this is a fatal error. But, aside from this, it certainly needs no argument to show that these remarks of the district attorney, the representative of the State, in his closing argument to the jury, were a direct appeal to race prejudice, and are of such a highly inflammatory character, and so manifestly transcend any legitimate bounds of argument, as to necessitate reversal of themselves, if there had been no other error. Every defendant at the bar of his country, white or black, must be accorded a fair trial according to the law of the land, and that law knows no color.

I could cite some 13 or 20 more other such cases, decided by the Supreme Court of Mississippi, wherein the court has condemned an appeal to racial prejudice in equally as forceful language as above quoted, but I will not do that here.

I wish to say again to this committee that if the State and Federal courts are to be permitted to continue to function in their respective fields as intended by the Constitution of the United States that such legislation as proposed by the United States Attorney General in the bills here under consideration should not be enacted into law.

We already have a situation in the courts with reference to habeas corpus proceedings wherein defendants who have been convicted in State courts and certiorari denied by the United States Supreme Court, have taken refuge in the Federal courts under petitions for habeas corpus, and thereby delayed their conviction and sentence indefinitely; in many instances, over a long period of years. The judges throughout the country have taken cognizance of this deplorable situation and the Habeas Corpus Committee of the Conference of the Chief Justices of the United States, in its report to the 84th Congress recommending legislation that would put a stop to such unwarranted procedure and abuse of the writ of habeas corpus in the Federal courts, stated that their recommendation:

> Meets virtually every situation that can be reasonably expected to arise under our system of dual sovereignty; and will insure to State courts—whose judges are just as sincerely desirous of protecting an accused against the invasion of constitutional rights as are the judges in the Federal system—that no longer will a criminal be able, upon a trumped-up or groundless claim, or one supported by new evidence not presented to the State court, to delay, unreasonably the execution of his sentence by invoking the jurisdiction of an inferior Federal court.

The proposed legislation under consideration here would open the gate to those who would go around and foment strife and confusion among the races for a flood of litigation in the Federal courts on behalf of the Federal Government, whereas, if the Federal statutes are permitted to remain as they are now, such will not be the case.

Certainly, it is not reasonable and fair to the States to assume that the judges of the State courts are not—

> just as sincerely desirous of protecting an accused against the invasion of constitutional rights as are the judges in the Federal system.

The principle of states rights goes further and deeper than just civil rights:

The United States Government can never be any stronger than the 48 States that comprise it. The stronger and more independent the individual State, the stronger and more forceful the Federal Government.

It was Thomas Jefferson who stated:

> It is not by the consolidation or concentration of powers, that good government is effected. Were not this great country already divided into States, that

division must be made, that each might do for itself what concerns itself directly, and what it can so much better do than a distant authority.

In later years, President Calvin Coolidge said:

> It is too much to assume that because an abuse exists it is the business of the National Government to provide a remedy. The presumption should be that it is the business of local and State governments. Such national action results in encroaching upon the salutary independence of the States and by undertaking to supersede their natural authority fills the land with bureaus and departments which are undertaking to do what it is impossible for them to accomplish, and brings our whole system of government into disrespect and disfavor.
>
> The Nation is inclined to disregard altogether too much both the functions and the duties of the States. They are much more than subdivisions of the Federal Government. They are also endowed with sovereignty in their own right.

I believe that if these words of wisdom uttered by President Calvin Coolidge will be applied to the pending legislation under discussion that all bills of this nature will be very promptly defeated in this committee.

Very recently another prominent public figure who now occupies an exalted position in the Federal judiciary, in speaking of the rights of the State, said:

> We operate this State on the premise that in government every problem capable of solution on the local level ought to be solved on that level. * * * Similarly, everything that can be solved by the State should be solved on that level. * * * We want decentralization of authority because the strength of the Republic depends largely on the virility of the State and local governments.

That sound philosophy of the right of the State to solve its own problems; that sound philosophy advocating decentralization of authority on the ground that strength of the Republic depends largely upon the virility of the State and local governments, was advanced by Gov. Earl Warren, of California, then Republican candidate for Vice President of the United States.

I submit that if this sound philosophy of Government advocated by the then Governor of California, and then candidate for Vice President of the United States, who now is Chief Justice of the United States Supreme Court, is applied to the bills here under discussion, and all others of similar import, that such bills will never get beyond this committee.

The enactment of the "four-point civil rights program" under consideration here, and all other similar legislation can serve no good purpose for the future welfare of this Nation and especially of the Southern States.

The same well organized radical groups that have demanded and brought about the introduction of this proposed legislation will be just as militant in their demands that they be permitted to select or approve the appointment of the membership of the proposed bipartisan Commission and of the new Assistant Attorney General who will supervise the enforcement of the proposed laws. They will be just as militant in their demands that the Commission and the newly created division of the Department of Justice permit them to formulate the policy and direct the course they will pursue in administering the law. This can only result in a widening of the breach between amicable Federal and State relations between the Federal Government and the States against whom this legislation is directed. The Federal Government can be no stronger than the States that support it. The history of the Southland shows without contradiction that it has con-

tributed its part toward the progress and development of this great Nation. The young manhood of the South has always been among the first to answer the call to arms whenever the security of this Nation has been threatened. The records of World War I and II will show that the Southern States were among the first to oversupply their quota of men, and the military records of the soldiers from the Southland clearly shows that the people of the South are a sincere and patriotic group of people. Sincere and patriotic soldiers are not born to, and raised by, parents who are not equally as sincere and patriotic. The Federal Government needs the cooperation and support of the Southern States, and certainly the Southern States need the cooperation and support of the Federal Government; neither can go its way alone.

I believe that the Director of the Federal Bureau of Investigation of the Department of Justice, and its many investigating officers, will tell you that one of the greatest contributing factors to their outstanding success has been the cooperation and services rendered them by State, county and local law-enforcement officers. This is as it should be. However I state to this committee, not by way of threat, but as a fact, that the Department of Justice cannot reasonably expect the cooperation and assistance of State, county and local law-enforcement officers when it goes into those States to administer laws designed to harass and intimidate the people of that State for the gratification of well-organized radial groups beyond the borders of that State who are really not interested in peaceful and harmonious relations between the people of different races of that State, but who in fact prefer to stir up hatred, strife, and discord between the races of the States toward whom the bills under consideration, and all others of like import, are directed.

Thank you, Senator Eastland, so much.

The CHAIRMAN. Thank you, Judge Patterson. You have made a very able and a very fine statement, and I know that it is going to be very influential with the committee.

You have put your finger exactly on what the problem is here. In my judgment, the Attorney General's proposals are political and an attempt to divide the people of this country at a very crucial time, and I should think that he could better take up his time in helping correct the pro-Communist decisions of our present Supreme Court.

As chairman of this committee, and as chairman of the Internal Security Subcommittee, I have never gotten adequate cooperation from them in correcting this far-reaching pro-Communist decisions that would destroy the American system of Government.

I want to thank you, sir, for a very able and very fine statement.

Senator Langer, any questions?

Senator LANGER. Mr. Chairman, I am glad that this gentleman is here, because I have received a great many letters about one case which, apparently, has aroused a lot of interest in a great many of the States. I do not know the name of the boy but the Chicago boy that was killed in Mississippi. He was 13 or 14 years of age. Are you familiar with that case?

Mr. YOUNG. The Till Case.

Mr. PATTERSON. Yes, sir.

Senator LANGER. Will you just tell us about it?

Mr. PATTERSON. Under the procedure in Mississippi, Senator Langer, the attorney general of the State does not handle prosecutions at the local level. That is handled by the county prosecuting attorneys and the district attorneys.

The Till case, as it has been referred to, was prosecuted by a most able district attorney, an able county prosecuting attorney, and the attorney general of Mississippi did that which he does not usually do. he employed special counsel to go down and assist the district attorney in the prosecution.

The accused killers of Till were indicted by a grand jury and were tried in the courts, and a very forceful and able prosecution of the case was made.

The jury did acquit them—of course, that could happen in any State of the Union and does happen just as frequently as it does in the State of Mississippi—in fact, more often in some States than in the State of Mississippi.

I might say this. There was lacking circumstantial evidence. However, the judge permitted it to go to the jury, but it is nothing unusual for any case wherein the evidence is based entirely on circumstantial evidence, it is certainly not unusual for a jury to acquit the defendant; but I think the State of Mississippi showed its good faith when a grand jury promptly indicted the two parties accused, when the district attorney and county attorney, and, in addition to that, the attorney general employed special counsel to go in there and vigorously prosecute those men——

Senator LANGER. You were not attorney general at that time?

Mr. PATTERSON. I was assistant attorney general at that time; yes, sir.

The CHAIRMAN. Isn't it true that the hostile papers who were there very heartily stated that it was a fair trial?

Mr. PATTERSON. Those who were there, who went down—and, of course, I don't think there is a State in the Union that would have a murder committed therein and have a bunch of outsiders say, "We will go down into that State and see that you try and convict those men;" I don't think any State in the Union would tolerate such an attitude from outside sources.

However, they came down and reviewed the trial and announced at first that it was a very fair and impartial trial and they were satisfied.

But, of course, when they went back home, they wanted to continue and make it a cause celebre, and a whipping post throughout the country, why, then they changed their minds and had other things to say about it.

I will say now that it was a very unfortunate occurrence, but one that could happen in any State of the Union, and does happen.

The CHAIRMAN. Mr. Young, do you have any questions?

Mr. YOUNG. Yes, sir.

Senator LANGER. Senator Robertson is here.

The CHAIRMAN. Yes, sir. Excuse me, Senator.

You want to introduce another witness?

Senator ROBERTSON. When you finish with him, I would like to have the pleasure of presenting two witnesses.

The CHAIRMAN. Would you like to present them first?

Senator ROBERTSON. If I may, Mr. Chairman, because I have just come from the floor of the Senate, and I have spoken for about 2½ hours and I am a little hoarse, but I wanted to be over here to present two Virginians.

The first one of them is the Honorable John J. Wicker, Jr., whom I have been privileged to know from the days that I started in the State Senate in 1916, 40 years ago.

Mr. Wicker has been a member of the State bar, of the bar of Richmond, for the past 41 years, and a member of the Bar of the Supreme Court of Appeals of Virginia, Federal courts of Virginia, and the United States Supreme Court.

He is a former member of the Senate of Virginia.

He is former chairman of the judiciary committee of Virginia, of the bar association.

He is a present member of the executive council of the insurance law section of the American Bar Association.

He is one of the founders of the American Legion, and he is a former Virginia State commander.

He was the Virginia State manager of HOLC, the Home Owners Loan Corporation, from 1933 to 1937.

He was past president and general counsel of the Road Bridge Corp., 1933 to 1941, which originated and built the Robert E. Lee Bridge as a self-liquidating RFC project.

He was the president of the electoral college of Virginia in 1944.

He was chairman for the first half of the 1945 constitutional convention of Virginia.

He has been a member of the Virginia State Board of Welfare and Institutions since 1948.

He was chairman of the War Memorial Commission of Virginia, which recently completed and dedicated the beautiful and inspiring memorial commemorating the service and sacrifice of Virginians in World War II and the Korean war.

But over and above everything else, Mr. Wicker is a loyal and dedicated patriotic American, and I have been privileged to see an advance copy of what he is going to tell you, and I want you to know that I endorse it, and I commend it to this distinguished committee, the members of the Senate, and to the American people.

Then after Mr. Wicker has testified, we have one of our very fine Commonwealth attorneys from Surry County, Mr. Ernest W. Goodrich.

He is a World War II veteran and he formerly taught constitutional law at the College of William and Mary.

He has not been in this legal and political turmoil as long as Mr. Wicker, but he, too, has his feet on the ground, and he is a loyal and patriotic American, and I feel confident that I can endorse his statement even without knowing what it is going to be.

I appreciate this opportunity of extending an introduction to these two fine gentlemen from the State of Virginia.

The CHAIRMAN. Thank you, Senator Robertson.

Will you proceed, Mr. Young?

Mr. YOUNG. I would like to direct your attention to the subject matter that Senator Langer brought up, this famous Till case.

Now, there has been a great deal of publicity concerning that, has there not?

Mr. PATTERSON. Yes, definitely there has.

Mr. YOUNG. And it has gotten its greatest national publicity through an original article in Look magazine—have you read that article?

Mr. PATTERSON. I did, sir.

Mr. YOUNG. That was an article with pictures, was it not?

Mr. PATTERSON. Yes, sir.

Mr. YOUNG. That was an article with suggestions, was it not?

Mr. PATTERSON. Yes, sir.

Mr. YOUNG. It was a racial article, was it not?

Mr. PATTERSON. Definitely so.

Mr. YOUNG. It was an antisouthern article, was it not?

Mr. PATTERSON. Definitely.

Mr. YOUNG. Was it a factual article?

Mr. PATTERSON. I don't think it was.

Mr. YOUNG. Well, you know the case. Would it stand up to the facts in that case in Mississippi?

Mr. PATTERSON. I did not participate in the trial of the case. I have never read the record of the trial of the case, so, therefore, I have my information from those who had attended the trial and who participated in the trial, that it was not factual; but, for myself, I did not participate.

Mr. YOUNG. Would you say that Look magazine is known as a southern or a northern magazine?

Mr. PATTERSON. Well, I think that it is definitely anti-South.

Mr. YOUNG. You know it is, don't you?

Mr. PATTERSON. Yes.

Mr. YOUNG. It is antisouthern—no question about it?

Mr. PATTERSON. Yes.

Mr. YOUNG. And the article was picked up and reprinted by the Reader's Digest magazine.

Did you happen to read the reprint in Reader's Digest?

Mr. PATTERSON. No, sir; I did not read the reprint.

Mr. YOUNG. Do you know the Reader's Digest magazine?

Mr. PATTERSON. Yes, sir.

Mr. YOUNG. Is it a magazine of general circulation?

Mr. PATTERSON. Yes, sir.

Mr. YOUNG. Is it a magazine that reputes itself to be without prejudice?

Mr. PATTERSON. Oh, yes, sir.

Mr. YOUNG. Is it a magazine that reputes itself to transcribe facts and to take prejudice out of stories and have little homey items and be pleasant reading for the women and children of America?

Mr. PATTERSON. Yes, sir.

Mr. YOUNG. Is it a magazine that prides itself on checking the authenticity of its sources?

Mr. PATTERSON. I had always understood that.

Mr. YOUNG. Does it not advertise that?

Mr. PATTERSON. Yes, sir, and that is why I had accepted it as such, and I had subscribed to it on that basis. However, my subscription was discontinued sometime ago.

Mr. YOUNG. Have you heard the rumor, a very interesting one, that they will not hire a Jewish writer? Have you ever heard that?

Mr. PATTERSON. No, sir.

Mr. YOUNG. But it will reprint many articles by minority groups; you have heard that?

Mr. PATTERSON. Yes, sir.

Mr. YOUNG. It is published where, the Reader's Digest?

Mr. PATTERSON. In New York, is it not?

Mr. YOUNG. Yes, in New York.

Do you happen to know the name of the town in New York?

Mr. PATTERSON. No, sir. Rochester, isn't it.

Mr. YOUNG. No, sir; it is not quite that far north. It is a little town up near the Connecticut border.

Do you know who wrote the articles for Look magazine and Reader's Digest on the Till case?

Mr. PATTERSON. I do not.

Mr. YOUNG. You do not know the names of the writers?

Mr. PATTERSON. I have a copy of the article in my desk, in my office, right now.

Mr. YOUNG. Have you ever heard of a free lance writer by the name of William Bradford Huie?

Mr. PATTERSON. No, sir.

Mr. YOUNG. Would it be enlightening to you if I said that William Bradford Huie wrote the Look magazine article?

Mr. PATTERSON. Yes; it would. I paid no attention to the writer's name. I read the article a couple of times and stuck it in my desk, and it has been there since.

Mr. YOUNG. Well, it would be news to you that Mr. Huie was not a reputable free lance author, it would throw some light on the Till case, wouldn't it?

Mr. PATTERSON. Well, I judge from reading about the Till case, he came to Mississippi, if he came, for a purpose, and he seemed to have accomplished his purpose.

Mr. YOUNG. What was that purpose?

Mr. PATTERSON. To write an article which would fan the flames of fury and hatred between people.

Mr. YOUNG. Well, did he pay any attention to facts?

Mr. PATTERSON. From what I learned of the Till case, no, sir.

Mr. YOUNG. Have you ever heard of a book known as The Revolt of Mamie Stover?

Mr. PATTERSON. No, sir.

Mr. YOUNG. Would it surprise you to know that a man by the name of William Bradford Huie wrote that book?

Mr. PATTERSON. I know nothing about that.

Mr. YOUNG. Do you know what the plot of the book was?

Mr. PATTERSON. No, sir.

Mr. YOUNG. Well, Mr. Huie wrote that book.

Would it surprise you to know that Mr. William Bradford Huie has written for the Saturday Evening Post athletic articles dealing with professionalism in college athletes? Would that be news to you?

Mr. PATTERSON. Yes, sir.

Mr. YOUNG. Have you ever seen an article in the Saturday Evening Post apologizing for a previous article which they published, by Mr. Huie, on athletics in the University of Alabama?

Mr. PATTERSON. No, sir.

Mr. YOUNG. In which they categorically stated Mr. Huie had not paid attention to any facts, that he was not an assistant coach in the University of Alabama while he tattletaled on their little activities there, and made a special apology; would that surprise you?

Mr. PATTERSON. Yes, sir; it would. As a matter of fact, I don't read the Post.

Mr. YOUNG. Are you acquainted with the fact that Mr. Huie has a reputation as being a nonfactual writer, a sensational writer, a writer who delves in pornographic type of materials such as this Mamie Stover book shows? Are you acquainted with that?

Mr. PATTERSON. No, sir.

Mr. YOUNG. Are you acquainted with the fact that the Reader's Digest has not ever followed up with an article of Mr. Huie's since the reprint of the Till case?

Mr. PATTERSON. No, sir.

Mr. YOUNG. Do you think that the Reader's Digest would reprint another article by Mr. Huie, from what you have heard me discussing here?

Mr. PATTERSON. I am sure they would not, if they intend to live up to that which they hold out to the public, that they are.

Mr. YOUNG. Do you think it would be interesting if this committee had Mr. Huie here to testify before it, under oath, as to where he secured the facts for the Till case in Mississippi, which he presents as an eyewitness, does he not?

Mr. PATTERSON. Yes, sir.

Mr. YOUNG. It is all in the ego, it is in the first tense, isn't it, "I was there," and "I saw it" and "I heard it" and "I did everything."

Don't you think it would be a grand thing if he came and showed us where the "I" was?

Mr. PATTERSON. I do. I think that we would go further than that. I think that if he would go down there and show those people those facts that he purported to see in that case, they would appreciate it very much, because he brought out facts that nobody seemed to know but him.

Mr. YOUNG. It was "I" all the way through?

Mr. PATTERSON. Yes, sir.

Mr. YOUNG. "I was there." And he led you to believe in reciting that, that there was something odd, and there was a third person there besides the two men, and that it was covered up, didn't he? He writes with a great deal of realism.

Mr. PATTERSON. He just portrayed it as a whitewash by the courts and everybody else.

Mr. YOUNG. All right. That is all.

Mr. PATTERSON. I would like to say this in that connection, Mr. Young, as to this unfortunate case. The embittered things that have been directed toward the State of Mississippi because of the Till case—which, as I said before, is certainly unfortunate, but could happen in any State in the Union——

Mr. YOUNG. Let me ask you another question on the Till case.

The Till case failed, did it not, on the identification of the defendants?

Mr. PATTERSON. That is right, sir.

Mr. YOUNG. And there, like any case, we have to have an identification, do we not?

Mr. PATTERSON. The Supreme Court of the State of Mississippi, as well the the supreme court of every other State of the Union, has held that for conviction on circumstantial evidence, that that circumstantial evidence has got to be positive to the point of and to the exclusion of every other reasonable doubt, and that is the rule, and that is not only the rule in Mississippi, but the rule under the entire American jurisprudence. It is an ironclad ruling that people cannot be convicted of a crime on circumstantial evidence unless it is so strong that it excludes, as the courts say, every other reasonable hypothesis.

Mr. YOUNG. Well, would it surprise you to know that Look magazine sells 10 issues in the North to 1 in the South?

Mr. PATTERSON. No.

Mr. YOUNG. Would it surprise you to know that the Reader's Digest sells 8 issues in the North to 1 in the South?

Mr. PATTERSON. No, sir.

Mr. YOUNG. Would it surprise you to think that the editor of this magazine would play up to the northern approach more than to the South, knowing the respective percentages of issues?

Mr. PATTERSON. They would not at one time, I understand, that they were more concerned with news than playing one group against another.

Now, Mr. Chairman, may I make one statement?

The CHAIRMAN. Yes.

Mr. PATTERSON. About this adverse publicity that came my way with reference to the Till case and the remarks that so many men in prominent life have seen fit to make about it in places like the State of Illinois and other places, and that is this: that I think that it is just as fair or that it would be just as fair for Senator Eastland or myself or anyone else who has been honored with high office at the hands of the people of Mississippi, to come along and say that all of the good people of the city of Chicago and the State of Illinois condone the ruthless murders that take place there at the hands of mobs every year, mobs who go out and deprive people of their civil rights, just as much so as people are deprived of their civil rights anywhere else when they are put on mob rule, it would be just as reasonable for Senator Eastland or I to say that it is indicative of the great State of Illinois and the people's thinking, as it is for them to say that the Till case is typical of the people of Mississippi.

I read an article only a short time ago where a good citizen, I believe, of Cicero, Ill., was beaten by baseball bats solely because he opposed the mob rule in his city.

When a grand jury of Mississippi indicted the perpetrators of the Till crime or the alleged perpetrators, and when a district attorney and a special assistant attorney general went into the courts and prosecuted him for having committed the crime, that is far more than has been done to those mobsters that beat up that good citizen in Cicero, Ill.

The CHAIRMAN. You mean gangsters when you say "mobsters"?

Mr. PATTERSON. Yes, sir; mobsters, gangsters, whichever one you want to call them.

So I say this thing can cut two ways. People have civil rights all over the country, as well as Mississippi. But I think the record of the courts of Mississippi will show that perhaps we go a little further in protecting people in their civil rights than they do in some of those localities where so much criticism is directed at us.

Even right up here in New York only a few weeks ago, some gangsters go out there and throw acid in the eyes of that fine newspaper reporter, Mr. Riesel. No one has been indicted or even arrested for that. But certainly it would be unfair for me to sit here and say that is typical of the people of New York, because I know it is not.

But if I did say it was typical of the people of New York, I would be just as truthful as those who say these great unfortunate occurrences down our way are typical of all the people of Mississippi.

The CHAIRMAN. Congressman Whitten?

STATEMENT OF HON. JAMIE L. WHITTEN, REPRESENTATIVE IN CONGRESS FROM THE SECOND CONGRESSIONAL DISTRICT OF MISSISSIPPI

Mr. WHITTEN. Mr. Chairman, I am highly privileged to say a few words about this case in connection with our distinguished friend from Mississippi, the attorney general.

I did talk to the sheriff of Tallahatchie County, in which this case occurred. I have known him all my life and his life. I formerly served as district attorney in the 17th judicial district in Mississippi prior to coming to Congress.

The sheriff of that county is a man of high honor and splendid integrity. His statement to me was that the body which they found in the Tallahatchie River was quite definitely 4 or 5 years older, of a more mature man than the Till boy was supposed to have been.

We all are familiar with the fact that under the law, as has been so ably pointed out by the attorney general, any jury swears to return an acquittal unless convinced beyond every reasonable doubt.

In other words, if there is a reasonable doubt raised in the record as to the identity of the deceased, it is sufficient not only to call for but to demand an acquittal at the hands of the jury.

Not only that, but on a circumstantial evidence case, the law in Mississippi, as it is in most all other States, provides that if a conviction is to be had on circumstantial evidence, it must exclude every other reasonable hypothesis except the guilt of the defendant.

Now, this is primary and basic law with which all of you folks are familiar. But the point that I wish to make here is that quite definitely there was certainly enough reason there for an honorable man, as I know the sheriff to have been, as to identification.

But the point I make is that these magazines that you mention ignore the fact that many other cases where the State is able to meet this proof burden as is required under the law, the situation happens to be completely different. The case of William Clark Mitchell was that of a white man who was indicted for killing two Negroes in the adjoining county to Tallahatchie County, in which the Till case occurred. Mitchell was put to trial in Yalobusha County, where they had white men on the jury.

They brought in not only a verdict of guilty, but a verdict of guilty and recommended execution.

That case went to the Supreme Court, and was affirmed. Later, on a writ of error coram nobis, I believe it was, they raised another issue and it went back to the Supreme Court the second time.

In the adjoining county, where the State was able to meet the burden of proof in the case of William Clark Mitchell, a white man indicted for killing two Negroes, they had a conviction, and that was a punishment brought back by the jury and affirmed by the Supreme Court twice.

I do not mean you should do one thing in one case and, because you do it, do it in the other. The 12 men on any jury take an oath that unless they are convinced beyond every reasonable doubt and, in this type of case, that the guilt of the defendant is the only reasonable answer, and no other answer is plausible except his guilt, they are sworn to bring in a verdict of acquittal.

I did not sit in the trial of this case. I was not there at the time. Prior to the trial, I did talk at considerable length, having been a former district attorney in the area, to the sheriff and to the county attorney in the county, people whom I have known all my life, and there is not a more honorable, honest officer in the United States than Clarence Stryder and Hamilton Caldwell.

The district attorney happens to be a very close friend of mine. I did not have occasion to talk to him about it. But certainly from the evidence which they gave me and which I fully believed, there was certainly a reasonable doubt or a sufficient lack of evidence to raise some reasonable doubt in the minds of a jury.

What inflames the public is, they are discussing all these issues in the Congress and elsewhere, and the letters I get presuppose his guilt when the jury did not convict. But the jury tries it on the evidence as is presented, and under oath which they have to take.

I do not know that that adds anything, any light to it, but it does raise the point that these cases such as the W. C. Mitchell, with which I am thoroughly familiar, and which, incidentally, I happened to handle as district attorney, you never read a line about that because it won't sell, you cannot sell that in the rest of the country. Who wants to read a magazine where somebody carried out the law as they should?

I will tell you that the local people discharged their responsibilities as seriously and as sincerely as they could. Whether the jury should have convicted was strictly a matter for that jury.

The CHAIRMAN. I know Sheriff Stryder well, he is a very able and a very conscientious enforcement officer. He is one of the best sheriffs in Mississippi.

I think that he did all he could. I know that Mr. Caldwell, the county attorney, and the district attorney, did all that they could.

We have just as many honorable people in Mississippi as in any other State in the Union, and I will put our record for law enforcement against that of any State.

Mr. PATTERSON. Bob Smith, Jr., from up at Ripley, was also employed as special prosecutor by the attorney general's office. He is one of the ablest young lawyers in North Mississippi; and in behalf of the sheriff, I would like to add further—and I am sure, Congressman, you will bear me out in this—that it was Sheriff Stryder who first brought this case to the attention of the public: his investigation is what brought it out.

Mr. WHITTEN. And when he investigated it——

Mr. PATTERSON. And he voted to investigate it, or it probably would have been forgotten. It was the sheriff that brought this to life, not the NAACP.

The CHAIRMAN. Judge Wicker?

Mr. WICKER. John Wicker.

The CHAIRMAN. Judge, we are glad to have you. Proceed, sir.

STATEMENT OF JOHN J. WICKER, JR., ATTORNEY AT LAW, RICHMOND, VA.

Mr. WICKER. Thank you, sir.

Senator LANGER (presiding). You may proceed, Judge.

Mr. WICKER. Mr. Chairman and gentlemen of the committee, my name is John J. Wicker, Jr. I am an attorney at law, and for more years than I like to remember, I have been a member of the bar of the Supreme Court of Appeals of Virginia, of the Federal courts in Virginia, and of the Supreme Court of the United States. I reside, as I have for most of my life, in Richmond, Va.

While I am appearing here before you today at the suggestion and request of the distinguished junior Senator from Virginia, the Honorable A. Willis Robertson, my appearance is solely in my capacity as a citizen of the Commonwealth of Virginia and the United States of America, and not in any representative capacity whatsoever.

I wish it to be distinctly understood that I am not appearing here, directly or indirectly, in behalf of any of my clients or any of the various organizations with which I am affiliated.

In other words, the views that I express here today are purely my own and do not necessarily reflect the views of any other individual or group whatsoever.

As a citizen I appear to express my opposition to certain so-called civil rights bills now pending before the Senate Committee on the Judiciary as follows:

S. 3605, a bill authorizing the creation of a Civil Rights Commission.

S. 3604, a bill authorizing an additional Assistant Attorney General who would, according to the Attorney General, direct the activities of a new Civil Rights Division in the Department of Justice.

S. 3718, a bill prohibiting interference with the right of vote, and authorizing the Attorney General to bring civil proceedings, in addition to the criminal proceedings already authorized, to enjoin threatened violations: and abolishing the time-honored requirement that State remedies be first exhausted before resorting to Federal courts.

S. 3717, a bill authorizing the Attorney General to institute civil actions for redress or preventive relief in case of any acts or threatened acts to obstruct the administration of justice or to deprive persons of their general civil rights.

It is my understanding that in considering proposed legislation, two questions are always highly important:

First, is the proposed legislation necessary?

Second, does the legislative body before which such legislation is pending have the right, as well as the power, to enact the proposed legislation?

I am down about the middle of page 2, Mr. Chairman.

The CHAIRMAN. Yes.

Mr. WICKER. May I interpolate there, my statement will show my opinion that the first question must be answered in the negative, that is, that this proposed legislation is not necessary. Consequently, the answer to the second inquiry becomes relatively unimportant.

Unless both of these questions are clearly and satisfactorily answered in the affirmative, then the proposed legislation should fail. And I conceive it to be the duty and burden of the proponents of legislation to establish both the necessity and the constitutional propriety of proposed legislation.

I believe I have read practically all of the available testimony heretofore given on this proposed legislation, both before the Committee on the Judiciary of the House of Representatives and before the Senate Committee on the Judiciary.

Analysis of this testimony will lead, I believe, inescapably to the conclusion that the proponents of this pending legislation have failed to adduce any evidence or proof whatever as to the necessity of these proposals; and they have also failed to prove that the Congress has any right to enact legislation which would, in practice and effect, deprive citizens of their fundamental right to trial by jury whenever the Attorney General, or someone acting for him, desired to do so.

The best examples of the failure of proof of necessity for this legislation are to be found in the testimony of the Attorney General of the United States before this committee and before the House committee in connection with this legislation.

For example, the principal reason advanced by the Attorney General in support of S. 3605 for the creation of a Federal Civil Rights Commission is a quotation from President Eisenhower's recent state of the Union message, in which the President said:

It is disturbing that in some localities allegations persist that Negro citizens are being deprived of their right to vote and are likewise being subjected to unwarranted economic pressures.

Now, Mr. Chairman, there are over a quarter million localities in these United States. Yet the principal basis for setting up a new Federal bureaucracy which would spread its powerful pressures all over the Nation—not like the "creeping socialism" which we have heard a lot about, but more like a form of "galloping paralysis"—appears to consist of mere allegations that some Negro citizens are being unfairly or unlawfully treated, merely in some localities—not in any widespread area or in any considerable number of localities.

On this flimsy ground of mere allegations, the Attorney General favors saddling upon the entire Nation the mental, spiritual, and financial burden of a new National Commission operating independently all over the Nation; applying its inquisitions and intimidations whenever and wherever it chose; dragging citizens away from their homes and businesses at any time and for any distance and to any place the new Commission desired, upon the compelling force of subpenas; merely to investigate whether and to what extent these allegations are well founded and to try and bring about correction of any conditions the Commission determines to be civil rights violations.

As you probably recall, the late and great Senator Carter Glass frequently pointed out the danger of authorizing the use of dynamite and TNT to exterminate a few cockroaches when a small quantity of bug powder would do the job just as effectively and at much less cost

and without danger to all the persons and property in the neighborhood.

The utter lack of necessity for the creation of any such Civil Rights Commission as is contemplated in this pending legislation is shown by the testimony of the Attorney General himself.

While dealing with another portion of this legislation, the Attorney General stated that in a recent case the United States Supreme Court had denounced systematic discrimination against Negroes in the selection of jury panels in Mississippi and that the Department of Justice thereupon had instituted an investigation.

Although the Attorney General said that—

according to the undisputed evidence in the record before it—

the Court—

systematic discrimination against Negroes in the selection of jury panels had persisted for many years past in the county where the case had been tried—

nevertheless the Attorney General admitted that the investigation by the Department of Justice—

showed that, whatever the practice may have been during the earlier years with which the Supreme Court's record was concerned, in recent years there had been no discrimination against Negroes in the selection of juries in that county.

Now, if the Department of Justice can proceed, by inquiry and investigation, as it did in this case, to determine that the unfair and discriminatory condition denounced in a recent decision of the United States Supreme Court no longer exists, and can do this without any new legislation and without the setting up of any new national Civil Rights Commission, why cannot the Department of Justice institute and conduct a similar investigation to ascertain whether or not "the disturbing allegations" mentioned in the President's state of the Union message are founded upon fact, or are without foundation, or refer to conditions which may have formerly existed, but which do not actually exist any longer?

Even if conditions in the field of Negro voting were such as to indicate the need for some remedial action or investigation, why should the Congress set up a new and independent National Commission, clothed with vast inquisitorial authority and vested with the power to be autocratic, intimidating, and oppressive, and necessarily involving the addition of a great horde of Federal investigators, agents, examiners, and so forth, at great expense to the already heavily burdened taxpayers?

There are many other fields of daily life of just as much and just as vital concern to the national and individual welfare which need investigation and remedial action far more. Yet the Attorney General does not propose setting up any National Commission to operate in these other areas.

The safety of persons in their ordinary daily pursuits is certainly just as important as the right to vote.

Robberies and holdups, planned and executed on an interstate basis, accompanied by violence and extreme brutalities, are taking place in ever-increasing numbers, not just "in some localities," but in a large number of areas, North, South, East, and West all over the United States.

Right here in the Nation's Capital, all of you know it is exceedingly dangerous to use the public streets in many sections of the city at

any time of night, and even sometimes in broad daylight. Gang warfare and teen-age hoodlumism, operating across State lines, take their toll of human life and property—frequently including many innocent bystanders—in practically all of the large cities of our Nation, and in some of the smaller places, too.

Th enslavement of large numbers of our young people—beginning even in their youthful public school days—by the poisonous narcotic drug traffic organized and directed nationally, constitutes a serious menace to the very foundations of our national life.

These are just a few areas in which there is far more reason to be disturbed by allegations than in the matter of Negro voting. Some of these matters have engaged the intelligent attention of various congressional committees from time to time, and these congressional committees—composed of duly elected Representatives of the people, rather than some unknown people just appointed by Executive power, and on whose recommendation, God knows who, and without any responsibility to the electorate—have accomplished much good.

But here we have a proposal for the investigation by a brandnew independent National Commission of merely one area in which there are allegations.

S. 3604 would give congressional approval and special authorization for the appointment of a special Assistant Attorney General to direct the activities of a Civil Rights Division in the Department of Justice, in both the criminal and the civil field.

Right there I interpolate, that act, as the chairman and other members of this committee know, that bill itself, makes no mention whatever of civil rights. It just simply says it provides for the appointment of one additional Assistant Attorney General who will assist the Attorney General in the performance of his duty at a compensation at a rate prescribed by law for his assistants.

But in the testimony before this committee and the House committee, the Attorney General frankly and clearly stated that the reason he wanted that, he wanted that so that that man could head up a new division that he wanted to create in the Department of Justice, a Civil Rights Division; and he wanted that Division, under the direction of the new Assistant Attorney General, to engage very broadly and widely in the operations, not only in a criminal way, but also in a civil field, in connection with civil rights.

Now, I submit that there is no necessity whatever for this legislation. In his statement before both the House committee and this committee, the Attorney General frankly stated that the Department of Justice had been operating a Civil Rights Section ever since 1939, but that "the noncriminal activity of the Department in the civil-rights field is constantly increasing in importance, as well as in amount."

Accordingly, the Attorney General feels that "the Department's civil-rights activities, both criminal and noncriminal [should] be consolidated in a single organization." And he thinks that in order to bring this about, a new Assistant Attorney General should be authorized by Congress.

If it is proper—and I say "if" it is proper—for the Department of Justice to busy itself in the civil field of civil rights—as the Attorney General admitted the Department had actually done in some cases—then he can certainly reshuffle his organization and personnel

and designate one of his assistants to direct the activities of the Department, both in the civil and criminal phases of civil rights.

In his recent testimony before your committee, the Attorney General was questioned rather pointedly on this proposed new Civil Rights Division in the Department of Justice and the proposed new Assistant Attorney General to be in charge thereof.

And he admitted that he already had authority to assign civil rights enforcement duties to any of the assistant attorneys general already authorized and serving under him. As he testified:

*** * * the act, under which the Department of Justice is set up, does not specify any particular duties for any Assistant Attorney General.**

One reason for the proposal is found in his testimony that the passage of any such legislation would be followed "almost automatically" by increased appropriations for the Department of Justice. Another reason is shown by the testimony of the Attorney General before the House committee in which it was pointed out that the main reason for special authorization of an Assistant Attorney General in charge of civil rights was "to give emphasis and prestige in the enforcement of civil rights."

The Attorney General also said that if this legislation was passed, the activities of the Department of Justice would not only be greatly broadened in the field of civil rights, but greatly increased in volume, as well as in scope.

That was just a very euphonious way of saying that if this legislation is passed, then the Federal Department of Justice will encroach still further into the daily lives of our people in practically every State—especially the Southern States, of course—and will extinguish by mere force and volume and power even more of the safeguards and rights of the citizens to local government in local State affairs.

With the prestige of congressional approval, the Department of Justice would undoubtedly move in various States wherever and whenever the Attorney General thought it to be advisable from any standpoint.

And he could subject the governments of those States and the governments of municipalities and counties, and the officers and citizens thereof, to intimidations and powerful pressures against which there could be no redress.

In fact, the situation could be very much like that which occurs when a surging, flooding river overflows its banks and breaks over or through whatever levees may be set up to contain it within its proper bounds, and spreads, with devastating force and volume, over many areas which it is not supposed to invade. And even after its muddy tide has receded, great damage has already been done and cannot be undone. So would it be in this case.

If the Department of Justice under a politically minded Attorney General should be armed with congressional authorization and sanction and blessing for this new Civil Rights Division, presided over by a new Assistant Attorney General, he could invade any State or any locality he chose at any time he chose upon any allegations, no matter from what source they came or how flimsy they were.

And he could do this at such times and in such manner as to intimidate the officials and citizens of such States and localities and interfere with them, unjustly and unfairly, in the ordinary exercise of their constitutional and lawful rights.

And against this arbitrary and oppressive action—all of which would be paid for by the whole taxpayers of the United States—the victimized States and localities and officials and citizens would have no redress whatsoever.

Perhaps after long and protracted litigation they might be able to drive the intruder back but, like the receding flooding river, the damage would already have been done.

Please understand that I do not charge that the present Attorney General would actually and consciously exercise these powers and this new prestige in the oppressive and unfair manner indicated; but I do say that if this legislation were to be passed, then you would be placing these powers in his hands. And I do not believe that the record and the public expressions of the Attorney General give any indication that he would be either cautious or moderate in his approach or in his use of this power if he is vested with congressional sanction, approval, and prestige by this legislation.

We come now to S. 3717 and S. 3718, which are, to my mind, just about the most dangerous and objectionable of all the proposals being advocated by the Attorney General. These bills would have the effect of enabling the Attorney General, through the Department of Justice, to institute and conduct civil actions and proceedings in Federal courts all over the United States in the name of the United States of America, but really for the private and personal benefit of whatever individuals the Attorney General might choose to recognize or prefer, and he could do this whenever those individuals allege that any other person has "engaged or is about to engage in any act or practice" which would deprive the complaining individual of his free and untrammeled right to vote for or against candidates of his own choice for Federal office.

These two bills would also have the effect of enabling the Attorney General, in whatever location and in whatever cases, apparently, involving civil voting rights he chose to recognize, to deprive the defendant or defendants of the fundamental right to trial by jury.

These two bills would also be bypassing and nullifying proceedings in State courts and other State tribunals now authorized to deal with present or threatened invasion of the civil rights of individuals.

All of these effects would do serious damage to our constitutional system of government, and would place in the hands of the Federal Department of Justice, whenever controlled by any partisan political chief, the power to inflict intolerable burden and expense upon individual citizens throughout the Nation and to intimidate State and local officials.

And, in a practial even though, perhaps, not in a narrow technical legal sense, they would authorize judicial conviction of violation of law, or of intent to violate law, without affording the accused the fundamental right of trial by jury.

The testimony of the Attorney General in connection with these bills shows in itself that they are not necessary. In his testimony he told of how the Department of Justice had intervened in a civil suit in Arkansas in a school-board case, which was a civil proceeding for an injunction.

Likewise, as already noted, the Attorney General testified that the Department of Justice had instituted and conducted an inquiry and investigation in the voting conditions in Mississippi.

No doubt the Department of Justice has busied itself in other States and other localities in various civil proceedings having to do with civil rights.

All of this has been done under the present laws and without the specific sanction and approval and blessing of any such congressional enactments as the Attorney General now advocates.

But the Attorney General insists that any activities of the Department of Justice in these matters which might lead to some criminal prosecution would inevitably "stir up such dissension and ill will in the State that it might very well (do) more harm than good."

By some queer and mysterious sort of reasoning, the Attorney General seems to feel that State and local officials and local citizens would resent any Federal activity that might lead to criminal prosecution for a violation of law. Yet he seems to feel that they would not experience any similar resentment or ill will of such Federal activities were directed along the line of investigations and inquires leading to the institution and conduct of civil proceedings and injunctions coupled with the threat of punishment by fine, or imprisonment, or both, for contempt of court in the event of failure to respect such injunctions.

Such reasoning seems very unrealistic to me. In fact, I believe that the average State and local official and local citizen would much prefer that the issue of his guilt or innocence be determined, after investigation, by customary procedure where he is not only confronted by his accusers but where he has the constitutional safeguard of a trial by jury of his peers.

Instead, the Attorney General wants to have a Federal judge, sitting without benefit of a jury, determine either that defendants had been guilty of the alleged law violations in the past, or that they were about to commit these law violations in the immediate future.

In either event, it would be necessary to show that the defendant or defendants were guilty. The humiliation and worry and trouble and expense to the defendants would be just as great and perhaps greater in such civil proceedings. But they would not have the protection that every accused deserves in the form of a trial by jury.

The Attorney Geenral argues that these civil proceedings could be accomplished "without having to subject State officials to the indignity, hazards, and personal expense of a criminal prosecution in the courts of the United States."

Parenthetically, it leads me to say when I read the testimony and consider the different things the Attorney General has done with regard to State officials and States rights, to have him come up and testify before any committee that he seems to entertain great regard for the feelings of State officials and does not want to see anything done to subject them to what he calls indignity and hazards, is unusual.

State officials——

The CHAIRMAN. Bypass a grand jury here, too.

Mr. WICKER. Completely. Oh, yes, sir; bypass the grand jury.

Of course, as the chairman knows, a grand jury merely finds probable cause, and frequently they indict a man——

The CHAIRMAN. They prevent people—it is its function to protect from unnecessary harassment and expense and humiliation.

Mr. WICKER. That is right; unless there is a showing of probable cause, they won't even indict.

The CHAIRMAN. That is correct.

Mr. WICKER. But under the proposal the Attorney General has, the man not only would not have a jury to determine that he was guilty beyond all reasonable doubt, he would not even have the benefit of a grand jury to stop the thing in the beginning if there was not a showing of probable cause.

The CHAIRMAN. He would deprive an accused of the very foundation stones of Anglo-Saxon justice. That is just what it means, is it not?

Mr. WICKER. Well, that is exactly right, Mr. Chairman.

And the worst thing about it, the most eveil thing about it, is this: that he could look in any locality he chose, when an election was about to come up. All right, he gets a list of people that he wants to discredit, just before the election. He gets somebody to make allegations, or some allegations come in to him.

He picks and chooses those that he likes and does not want to embarrass; he files nothing. But any that he wanted to embarrass or any of his underlings wanted to embarrass and wanted to intimidate and harass and discredit in the public eye by an 11th-hour smear, just file these proceedings and charge him with conspiracy, and charge him with violating civil rights, or about to do so, and the damage is done, no matter how it turned out later.

The damage is done. That is what he wants to do, and he wants to do it with the sanction and blessing of congressional approval, so to speak. That is the thing.

The CHAIRMAN. And in the name of the United States.

Mr. WICKER. Oh, the name of the great United States of America. Yes, sir, that is the thing behind it. Not in his own name, but this is the Government of the United States stepping in.

State officials charged in a civil proceeding, either with past violations of law or with determination to violate the law in the future, and dragged into the Federal courts by the Department of Justice and subjected to long, drawn-out civil proceedings—in which no "speedy trial" is constitutionally guaranteed, and in which no jury is assured—would be subjected to just as much "indignity, hazards, and personal expense" as in a criminal prosecution—and perhaps even more.

The Attorney General argues that while the present statute—section 241 of title 18, United States Code—

> makes it unlawful for two or more persons to conspire—

against the exercise of civil rights by another, the statute fails to—

> penalize such an injury when it was committed by a single individual * * *

However, in his testimony, I do not believe the Attorney General referred to another statute, of equal dignity—section 594 of title 18, United States Code—which makes it a crime for any one person to intimidate or threaten or coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with such other person's right to vote for or against any candidate for Federal office.

While it is true that this latter statute refers only to civil rights in connection with voting, at the same time it is also true that the Attorney General's testimony before this committee and before the House committee indicated very strongly that the principal interest of the Department of Justice in legislation at this time is confined practically to the matter of voting and elections.

In fact, in his testimony he conceded that there is really no necessity for any sort of antilynching legislation, especially since no lynchings had occurred in the United States since 1951.

Furthermore, in response to suggestions from the House committee chairman that he might comment upon "certain other proposals relating to civil rights now pending before the committee"—involving amendments to the "two principal criminal statutes intended for the protection of civil rights"—the Attorney General testified that—

> there is grave doubt as to whether it is wise to propose at the present time any further extension of the criminal law into this extraordinarily sensitive and delicate area of civil rights.

As I read that testimony, I could not help but be struck with the thought that it was somewhat like a man who said it would be right irritating and messy to hit a man in the head with a club, spill his blood all over his Palm Beach suit, so the proper thing to do is to inject a little poison in him, just kill him without him spilling any blood or ruining his suit or anything like that.

He does not want to do anything in one area of civil rights because he says it is an extraordinary sensitive and delicate area, and at this time it is not wise; and yet here he proposes, on the other hand, something that I think is far worse than what the chairman of the House committee asked him to comment on.

In the testimony of the Attorney General before both the House committee and this committee, no attempt has been made to estimate the size or extent of the financial burden which would necessarily be involved, if hese proposals are enacted into law, by the creation of a new and enlarged division in the Department of Justice, and the authorization of the Attorney General to become the Government paid attorney for whatever complainants he chose to recognize in the vague field of civil rights.

Anyone acquainted with Government, as you gentlemen are, will recognize the fact that the burden will not be small or inconsequential. Nor would it diminish as time went on, but instead it would spread and grow with the speed and fertility of noxious weeds.

For example, when questioned by the chairman of the House committee as to the expenses of the proposed Civil Rights Commission, the Attorney General testified that supplemental appropriations to cover new expenses—

> would follow almost automatically, I think, if the Congress authorized it * * * If this Commission is authorized and the new Division is authorized in the Department of Justice, it would be immediately followed by an appropriation.

I agree thoroughly, may I say, with that statement. There is not any question about that.

The CHAIRMAN. I do, too.

Mr. WICKER. Mr. Chairman, the more I have studied this matter and the more I have thought about it, the more convinced I have become that there is a great deal more to these proposals of the Attorney General than meets either the naked eye or the legislative eye.

In my opinion, the enactment of this proposed legislation, as advocated by the Attorney General, would result in the serious evils and grave injustices to which I have alluded. It would also eventually empower the Department of Justice to harass and intimidate and burden and punish citizens who believe that the Supreme Court of

the United States went beyond its own lawful powers and usurped legislative prerogatives and encroached unconstitutionally upon the reserved rights of the States when it declared that public education of Negro children and white children in separate schools was unconstitutional.

The CHAIRMAN. Elaborate on that.

Mr. WICKER. Sir?

The CHAIRMAN. Elaborate on that.

Mr. WICKER. I am strengthened in that—my statement was written about a week ago, when I expected to be up here about a week ago—yesterday, a public statement which the Attorney General made certainly did confirm this belief that I have that his real purpose, the real underlying purpose, of the advocacy of the Attorney General of this particular legislation at this time is in order to put in his hands a club in the name of the United States of America that they can use to intimidate not only officials but citizens who are unwilling to go along and to go ahead and mix up Negro children and white children in the Southern States.

I believe he has the idea that he can get this, by the use of this and the injunctive process, and giving him the sole right that he can haul up people.

You will say, "How can he do that?" Take one case that came up. Here is a school board. All right, the school board of a certain county, whether it be Virginia, Mississippi, Ohio, it does not matter where, any State—that school board and the board of supervisors and other authorities simply declined to provide appropriations and go ahead with a public school on a racially mixed basis.

Well, the white people there, since they are furnishing 85 percent, at least they are in Virginia, 85 percent of the money for education, while they are receiving only thirty-some percent of the benefits, while the Negro citizens are furnishing 15 percent of the money and receiving two-thirds of the benefits—the white people could go ahead and organize their own schools and educate their own children, but most of the Negro children, unfortunately, would then be deprived of any educational facilities.

All right. Let a situation like that occur, and that is not fanciful, that is a very real possibility in many, many areas. Let that occur. Then when allegations come in to the Attorney General that school board officials and that citizens, civic associations who are supporting that stand and urging that stand, are conspiring together to deprive Negro boys and girls of their civil rights——

What civil rights? Why, of the right of education.

If they can stretch it as far as they have stretched the term already, they can stretch it to cover education or anything else.

The CHAIRMAN. Unsegregated education.

Mr. WICKER. Oh, sure. Anything that he has got a right to, a civil right to. Education where he sits down right next, if he is a Negro boy, right next to a white boy; or if he is a white boy, he sits down and goes through the cafeterias and athletics and social life and educational life with one of the other race.

He says that is his civil right. And these people are conspiring to deprive him of it, and they are depriving him of it, and they are conspiring, and therefore he files proceedings against them under this

new authorization that he would get, and he can pick his own judge—and with all the judges that he appoints, he can certainly pick some that he has a pretty good idea which way they go—and that judge, which way his opinions are. And then that judge enters a decree, and it is not only an injunctive decree, it is a mandatory decree in which he directs these people to go ahead and supply the money and levy the tax and open those schools and operate them on a mixed, integrated basis.

Then they refuse to do it, just as patriotic citizens have in the past sometimes, from the days preceding the granting of the Magna Carta at Runnymede. The have stood up against judicial tyranny as well as despotic tyranny of rulers.

They refuse to do it. All right, they are faced with fine and imprisonment, and they have got them out, they declare them out of office.

They even go to the extent—it is not fanciful—they can go back to the extent of what they did in the old Reconstruction days: If what the local governmental authorities did, did not suit the administration, they just threw them out and appointed their own in the military sections, so they go ahead and the court appoints them as sort of a receiver.

There is one of the most basic dangers in this proposed legislation here.

By the same sort of devious reasoning exhibited in his testimony concerning this legislation, the Attorney General, if vested with the powers and prerogatives sought in this legislation, could very well conclude that the State officials and local officials and private citizens who did anything to preserve segregation in areas where there will not be any public education without segregation, were guilty of conspiring to deprive, or attempting to deprive, Negroes in their localities of some sort of so-called civil rights.

In the public school cases decided in 1954, it was clearly pointed out in the able brief of the attorney general of Virginia and his associate counsel, that Senator Trumbull, of Illinois, the leading sponsor of the 14th amendment and one of the leading sponsors of the Civil Rights Acts of 1866 and 1875, flatly declared:

> * * * the right to go to school is not a civil right and never was.

That is from the Congressional Globe, 42d Congress, 2d session, at page 3189.

It was also pointed out in the same brief that the congressional framers and sponsors of the 14th amendment and the legislatures of the States that ratified it were all agreed that public school education was not within the purview of the amendment. Nevertheless, the Supreme Court, in its 1954 decision, blandly disregarded these cogent arguments and historical facts. I think they term them "inconclusive."

The CHAIRMAN. Let me ask you a question.

Mr. WICKER. Yes.

The CHAIRMAN. The Court has held that a child has a new civil right: It is the right to attend an unsegregated school. That was the decision, was it not?

Mr. WICKER. That was the gist of it or the natural effect of it.

The CHAIRMAN. All right.

Now, how far do the contempt powers of a court go? How far do the contempt powers of the Federal court go? A man who is a party to a suit and against whom a decree, a final decree, has been rendered, can he, if he refuses to comply—can the court, after a hearing, sentence him to jail?

Mr. WICKER. It can do so.

The CHAIRMAN. Or would he be entitled to a trial by jury?

Mr. WICKER. No, sir; a court can throw him into jail.

If the Supreme Court has done what it has done, can do what it has done, then it can do anything.

The CHAIRMAN. There are a number of decisions which, as I understand it, hold this: That in a case where the defiance of a decree of a court, a United States court, is also a violation of the Federal Penal Code, that the person cited is entitled to a trial by jury, for the reason that the United States could not proceed by contempt and deprive a man of the right of jury trial.

Now, what is your view on that?

Mr. WICKER. My view on that, sir, is—and I am familiar with some of those cases that I believe you are referring to. My view on that is that a clever and partisan Attorney General, with an upright but mentally compliant judge in the local Federal district, would so frame the decree as to avoid that necessity of any trial by jury, and would place it on the basis of contempt of the court's decree without any reference to an implied violation of the law.

The CHAIRMAN. Yes.

Mr. WICKER. Furthermore, I think that if it was taken up, then, the question of a right of trial by jury was taken up by the defendant who had been sentenced to jail, imprisonment, taken up to our present United States Supreme Court, I believe, based on the way they acted in the public school cases, that the present United States Supreme Court would sweep aside the cases and decisions to which you have referred, and would say, "Well, we can't be bothered with those old precedents." They would find some sociologist, like Smyrdahl, or somebody like that, who could back them up, and they would refer to him and say, "Well, here, see so-and-so, such-and-such a writing, and on sociological grounds we just can't afford to allow a man a trial by jury when the man is defying the orders of the court, because the reason we can't is that a jury might decide that he was justified or that the orders were wrong, or for some other reason fail to convict him; and if we did that, that would subvert the power of the court. Therefore, being unable to turn the clock back, and so forth, we are going to uphold the decree and affirm the decree, and it will be so ordered."

That is my opinion of exactly what would happen.

The CHAIRMAN. Thank you.

Mr. WICKER. Consequently, there can be no assurance that the Supreme Court, as constituted at present, would attach any weight to the declared intentions of the sponsors of this proposed legislation.

Therefore, if this legislation is enacted, and the Attorney General then chose to file proceedings against State and local officials, school board officials, officers and active members of various citizens groups, who believe that the Supreme Court's public school decision was unconstitutional and who, accordingly, are unwilling to establish and

maintain a mixture of races in their public schools, in all likelihood the Attorney General would be upheld by the Supreme Court.

Such proceedings could result in mandatory and injunctive decrees by Federal courts, followed by fine and imprisonment upon failure to comply therewith.

Some may think that these forebodings are far-fetched, and that the Attorney General, if this legislation is passed, would not take such advantage of the situation and take such extreme measures.

But I reply that whenever any court of last resort can completely ignore—I say completely ignore—the plain provisions of the 10th amendment to the Constitution of the United States while giving to the 14th amendment a meaning completely contrary to the demonstrated intentions and opinions and belief of those who proposed the latter and the States which ratified it, as was done by our Supreme Court in the public school decisions, then there is no fearsome consequence beyond the realm of reasonable possibility.

If, perchance, anything that I have said about the tendency of the present Supreme Court to usurp the rights of Congress and to ignore the constitutionally reserved rights of the States appears to be somewhat harsh, let me remind you of the opinions expressed over a century ago by one of the greatest Americans of all time.

Commenting upon the encroachments upon States' rights by the Supreme Court and as to how they might be checked, he said:

> By reason and argument? * * * You might as well reason and argue with the marble columns encircling them * * *.

Renouncing the use of force, he advocated that the States should "denounce the acts of usurpation until their accumulation shall overweigh that of separation."

That was the opinion expressed by Thomas Jefferson, author of the Declaration of Independence, in his letter to Giles, December 26, 1825, shortly before he died, and when his experience was the richest, when he had more background and had seen more of life and government than any other time.

So, in my opinion of the extreme lengths to which the Supreme Court seems willing to go in violation of the constitutionally reserved rights of States, I find myself in excellent company.

Of course, it may be argued that I am seeing a lot of fanciful situations and that the Department of Justice would not go to any such extremes under any circumstances; and if it did, that the Supreme Court certainly would not fail to interfere.

Unfortunately, however, the recent decisions of the Supreme Court have shaken public confidence, and in many areas destroyed public confidence in any assurance that States' rights will be protected.

The CHAIRMAN. What other right is secure from this Court?

Mr. WICKER. Well, if it can do it to the States, God knows they can do it to any individual.

During the Virginia Constitutional Convention of 1788, John Marshall, in replying to Mason's argument about possible encroachment by Federal courts, replied that any such idea was "absurd." Then he said:

> Has the Government of the United States power to make laws on every subject? * * * Laws affecting the mode of transferring property, or contracts, or claims between citizens of the same State? Can Congress go beyond the dele-

gated powers? Certainly not. If they were to make a law not warranted by any of the powers enumerated, it would be considered by the national judges as an infringement of the Constitution which they are to guard. They would not consider any such law as coming under their jurisdiction. They would declare it void.

Obviously, the man who was later to become the great Chief Justice never had the slightest thought that in later years the Supreme Court would not only fail to protect the separate sovereign States from encroachment on their reserved powers, but would actually become the active executioner of those powers.

During the testimony of the Attorney General before your committee on May 16, 1956, it was brought out that, at various times last year, the late Senator Kilgore, as chairman of your committee, and Senator Hennings, as chairman of the Civil Rights Subcommittee, and perhaps others, repeatedly sought to obtain the cooperation of the Department of Justice in connection with several civil rights bills covering practically the same ground as those to which I have specifically alluded.

The testimony further brought out that all of the efforts of these distinguished Senators to obtain cooperation from the Attorney General or the Department of Justice in these matters were unsuccessful.

It was further brought out that in connection with those bills, the distinguished Senators were unable to obtain from the Department of Justice either support or recommendation or, in several instances, even the courtesy of a reply to their official letters.

However, just a few months ago, with dramatic fanfare of publicity broadcast all over the Nation, the Attorney General announced that, in keeping with a White House announcement, an administration program of civil rights legislation would soon be placed before the Congress.

The Attorney General's announcement was followed by the introduction of these so-called new bills—S. 3604, 3605, 3717, and 3718—which are substantially the same as the old bills.

But there were two very important differences. In the first place the old bills, still pending, but on which no cooperation had been obtained from the Department of Justice, were introduced and sponsored by distinguished Democrats; while these new bills now before you were introduced and sponsored by distinguished Republicans.

In addition, the old bills were introduced last year when there was no big national election; while the new bills were introduced this year just a little over 6 months prior to the national election.

No doubt some skeptical or cynical people might possibly suspect from this that the fervent support now being given to these new civil rights bills by the Attorney General and the administration is actuated or inspired, in some way or other, by political motives. But, of course, I would not be so unkind as to intimate any such evil thing.

I do not question or impugn the motives or intentions of the sponsors or patrons of this proposed legislation, or of the Attorney General or any other advocates.

Furthermore, I gladly accord to all of them the same honesty of purpose and sincerity of conviction that I possess.

At the same time, I must point out that the all-important thing is the possible or probable result or effect of this proposed legislation.

If a mule kicks you in the face, the results and effects are mighty bad, even though he may have had the kindliest motives and have been kicking you simply as a friendly gesture.

And lest—I will interpolate—lest there be any sort of political implication in my reference to a mule, or Democratic donkey, let me add that the same situation would exist if you were stomped upon by an elephant.

No matter how high and noble and honest the motives and intentions of this proposed legislation's sponsors and advocates may be, the fact remains, in my opinion and in the opinion of a large number of other citizens, that the results and effects of this legislation, if enacted into law, would be seriously and irreparably damaging to the constitutional rights of the States and of their governments, and of many of their officials and citizens.

For the reasons I have already indicated, therefore, I sincerely trust that this proposed legislation will meet with the defeat that it richly deserves.

Thank you.

The CHAIRMAN. Judge, I want to thank you. It is a very powerful statement. It is going to be more than helpful.

Mr. WICKER. Thank you, sir.

Mr. YOUNG. Thank you.

Mr. WICKER. Thanks for the opportunity of appearing.

Mr. Goodrich?

STATEMENT OF ERNEST W. GOODRICH, ATTORNEY AT LAW, SURRY, VA.

Mr. GOODRICH. Mr. Chairman, I am Ernest Goodrich, from Surry, Va. I live about 6 miles from the birthplace of this Nation, across the river from Jamestown Island.

I want to correct the record in one respect. The Senator, when he introduced me, said I taught constitutional law at William and Mary. I taught criminal law and property law for 4 years. I did not teach constitutional law. I am what is known as a country lawyer. I live in a small town of about 250 people.

Lest my background might make me too provincial, let me say I was connected with the Department of Labor here in Washington from 1935 to 1939. I was in the United States Navy stationed here in Washington for 4 years, 1942 to 1946.

I am not appearing here in any representative capacity today. I am here because I have a very deep-seated concern for the welfare of my country, and because I feel very keenly the seriousness of the threat that the legislation before this committee presents.

I believe, however, and I say to you, sir, and I think this is an important thing, that the views that I express are held by the great majority of people in this country.

I think it is unfortunate that the great majority of the people are never represented at hearings such as this. Militant minorities have organizations that present their views. They do research, they compile statistics, and they appear before these committees of the Congress of the United States, while the hard-working, law-abiding, average citizen stays at home, and his voice is seldom, if ever, heard before

a congressional committee when they are considering legislation of this type.

I think that is a serious thing in this country. I think it is a serious thing that the great majority of our people are unorganized.

We have had during the past 2 years in this country a great deal of fun poked at, a great deal of ridicule heaped upon, organizations that have developed in the South since the school decision. They have been called vigilante groups, they have been called all kinds of names.

But I want to say to you here and now that in my area, and, I believe, in your area, and I believe throughout the southland, that the best people, the best people in the South, are members of organizations that are devoted to the principle of States' rights, and that are determined that there shall be an end to this encroachment that has been taking place.

I say to you, sir, sincerely, that I am deeply concerned, and I have been since the late thirties when I was an attorney here in Washington with the United States Department of Labor, at the swift accretion of power here in the Federal Government.

As I understand our history, our Founding Fathers envisioned these United States as a group of sovereign States with all governmental powers except certain specific powers, delegated to the Federal Government by the Constitution.

They purposely established a republic rather than a central democracy for the very reason that they feared a government too far removed from the people. It was their belief that the best government was that government closest to the people.

It may be that those ideas have become outmoded just as many people at times consider the Holy Writ outmoded. It may be that it is inevitable that our local governments be swallowed up by the States, and the State governments swallowed up by the Federal Government.

If this is true, then you gentlemen are wasting your time having hearings on the civil rights bills. I believe, however, that there are three institutions in which bigness is distinctly a disadvantage, and saps the vitality of the institution. Those three institutions are government, religion and education.

I firmly believe that religion, and I am speaking only of the Christian religion although I believe it would apply to any of the religions of the world, performs its most useful service organized in small units with the government of the religion close to the people.

Likewise, I believe that centralization in education reaches a point beyond which it loses its effectiveness.

Likewise, in government, I think that it cannot be denied by anyone that the further you remove a government from the people, the less interested the people become and the less responsive the government becomes to the people.

In addressing civic groups in my area during the past 15 years, I have continually stressed the importance of strengthening our local government. I am concerned that so many of the powers and functions of the local government have been transferred to the State Capital, because I think that as you move the government from the county seats to the State capitals, the people lose interest in their

government, and those in authority lose the sense of responsibility to the people whose money they spend and whose lives they regulate.

When you move the functions of government from the State capitals to Washington, you widen the gap between the people and the government to such an extent that it is impossible to bridge that gap.

The past 20 years have seen, as you gentlemen well know, an accretion of power in the Federal Government far greater than was accrued over the first 150 years of our existence.

The Congress of the United States, made up of elected representatives of the people, has played a large part in this. I cannot understand how a man who gets back to the grassroots and talks with his people can fail to see the danger of what has been happening.

More far-reaching, however, than the congressional action that has been taken in this extension of Federal authority—and this, I think, is very important—has been the additional extension by the executive department of the Federal Government in applying the laws which have been enacted.

As you gentlemen well know, each of the executive departments here in our Capital City has a large legal staff, part of whose duties it is to see how far, under existing legislation, the tentacles of control can be extended.

Where the question of extending the application of Federal statutes is concerned, I do not believe that there is a single instance in which any of the executive departments have said, "We have gone far enough. We may be able to go further, but let's don't go any further, even though we probably could under the statute."

I would like to hear of one instance in which they pulled in their horns rather than extended the control under the legislation. I have worked in the executive departments, and I know from first-hand experience that that is the attitude of some of the departments—to extend the law not only as far as it goes to the letter, but just as far as they can by implication or interpretation.

In addition to all of this, the courts, under the leadership of the Supreme Court of the United States, since the days of the court-packing threat in 1937, have by interpretation extended Federal control to the point where today there is hardly a vestige of governmental function in which the Federal Government does not have its hand.

The States have been emasculated and our republican form of government is in the process of destruction, while many people sit by and say, "We never had it so good."

During the recent White House Conference on Education, I happened to be a delegate from the State of Virginia, and in the course of our argument over Federal aid to education, I voiced this fear that I am voicing to this committee today, and expressed the view that certainly in the field of education the matter should be left to the States.

I stated at that time, and I state now, that there is not a State in the Union that cannot provide its children with an adequate education.

You will remember the recommendations of the Conference for Federal aid. There was in the report, however, the statement that there was probably no State that could not provide adequate education for its children, but there were no present plans to do so.

In the course of my argument on this point, a gentleman from New York State asked why I was concerned about Federal control. "Because," said he, "we have Federal control in so many fields at the present time and we have unprecedented prosperity." That was his argument, "We have it in all these fields now, and yet we have all this prosperity, so why are you worried?"

I say to you gentlemen if that attitude prevails to any large extent in our country, if the Congress of the United States believes that the State lines should be obliterated and the State governments destroyed, and that our country should become completely centralized, then it is the height of foolishness to argue against civil rights legislation.

I, for one, however, do not subscribe to the theory that the time has come when we should scrap our system of government and adopt a plan wherein all of the power is concentrated here in Washington.

I say that for one very important reason: That is, that no man living is smart enough, has the wisdom and breadth of vision enough, to make decisions affecting intimately the lives of all our people.

Some of you gentlemen, I think—the honorable chairman is from a fairly small town—probably come from small towns. You are familiar with the workings of the boards of supervisors and town councils and bodies of that nature. You know that they have difficulty in deciding what is best for their people, even on a small scale.

And when you multiply that a million times, you can understand what it is when you are trying to make your decision here in Washington. And even though there are people to the contrary, who believe otherwise, I think that our governing bodies in our localities throughout this country are just as intelligent, just as level-headed, and just as patriotic as are many of the men who occupy high places in the Federal Government.

After all, there are no supermen, and I repeat that no man living today is smart enough, has the breadth of vision and the independence to decide issues which affect all of our people. The Federal Government has become so complicated that no one knows what is going on.

Now, why have I said all of this at a hearing on the civil rights legislation? I think it is apparent to you gentlemen that the civil rights program of the present administration, as was the civil rights program of the previous administration, is only another manifestation of the determination of certain groups in this country further to centralize our Government and further to increase the power of the Federal bureaucracy which we now have.

There are many other facets to this problem. The one affecting my area most critically at the moment, of course, is education. Other areas, however, are affected by other matters. There is not an area in the whole United States that should not be concerned with this problem.

While the big problem in the Southland is integration, there is the problem of the alien and sedition laws in other States, the tidelands oil question, and many others.

In discussing the civil rights legislation, the first question to be asked, it seems to me, is: Is there a need for a civil rights commission, an Assistant Attorney General to head a Civil Rights Division, specific laws relating to voting, lynching, fair employment, and other phases of the civil rights program?

I do not believe that Congress has ever enacted a law without having more factual information regarding the need for such legislation than has been produced before the committees in this case.

I have not had an opportunity to read all of the hearings before this committee or the other committees of the Congress which have considered this question, but I venture to say that factually the need for such legislation has definitely not been shown.

I understand there has not been a lynching in this country now for several years—that is, a lynching in the sense it is usually used. Of course, mob killings in areas other than the South are usually not termed lynchings.

I do not know where any facts have been presented to support any allegations that there is any serious interference with the voting of any citizen in this country.

Now I say to you gentlemen quite frankly that when you are able by legislation to eliminate all discrimination and all of the inequities that exist in a human society, you will have indeed reached the millennium.

I say to you that time will never come. I say to you, further, that it was never intended that, and I do not think it is the prerogative of, the Federal Government to undertake to bring about that millennium. I do not think it is the prerogative of the Federal Government to enforce the Sermon on the Mount. I think the great Master Himself did not propose a temporal government to enforce the Sermon on the Mount, and I do not think the Federal Government should arrogate to itself the job of enforcing the Sermon on the Mount.

I am not so naive as to believe there have not been cases of injustice, discrimination, and mistreatment accorded persons in the so-called minority groups in this country.

I think, likewise, that there have been injustices, discrimination, and inequities meted out to certain persons in the majority groups in various areas in this country. I think that examples could be cited to bear out these statements, but I defy anyone to show anywhere any concerted violation of the rights of minority groups as a whole.

The Southland has been the scapegoat for the past few years and has been accused of barbarous and uncivilized action toward the Negro, but I believe that I can certainly speak with more authority than many of those who have hurled these accusations, because I live in a community where there are 65 percent colored and 35 percent white.

I have been the chief law-enforcement officer in my county since 1940, except for the period in the armed services, and I can say before this committee, before God, and before the world, that in not a single case that has come before our court has a man been denied his full rights because of color or for any other reason.

I have observed in my law practice over southside Virginia, where the Black Belt is located, the same situation to obtain. I do not know what they do in North Carolina, South Carolina, Georgia, Mississippi, and Alabama, but I believe that the few cases that have been cited are rare, indeed. Because, the opinion of certain persons to the contrary notwithstanding, the citizens of those States are just as law-abiding, just as honest, just as sincere, just as God-fearing as are their critics.

I say to you that there is no more need for any civil rights legislation, any commission, or any division in the Department of Justice on the

civil rights, than there is for the President of the United States to send the militia in to regulate, control, and direct the activities of the peoples in the various areas of this country toward which the civil rights legislation is aimed.

We do not need any help in my area to carry out the laws; we do not need any help in my area to regulate our society. The minority group, which actually is the majority group in my area, is not suffering any injustice.

You ask, perhaps, if it would not affect my area, if we are performing our duty as law-enforcement officers, if we are not denying the people their rights because of color, why am I worried about legislation of this kind.

Gentlemen, the insidious thing about this legislation and the insidious thing about so much of the legislation that has been enacted in the last 20 years, is found in that question.

Take the question of Federal aid for schools. A man can hardly oppose it, regardless of his honest convictions, because he is denying to his people things that other people are going to get. The tax money is going to be taken from my State and put somewhere else if my State does not take advantage of it.

All of this legislation, when it starts, is like a snowball: There is no way in the world to stop it. And that is true of this legislation that we have before us.

It has been said that the best government of all is the benevolent dictator. The only trouble is that you do not have any assurance that a benevolent dictator might not change and become a malevolent dictator.

Thus it is with legislation which places in Washington the power to regulate, control, and direct the activities of citizens throughout the length and breadth of our land. Those who believe in ideologies foreign to our own, those who would destroy our freedom and liberty, would have a much better opportunity to do so were all powers centralized here in Washington.

While I do not impugn the honesty, patriotism, sincerity, or good intentions of any man supporting this civil rights legislation, I do say, with all the earnestness at my command, that it is this type of legislation that the Communist and fellow-travelers always support. They give lip service to the Golden Rule, while denying its practice in their own country.

No one condones mistreatment of other people; no one in his right mind would oppose this legislation on the grounds that discrimination should exist and that people should be denied the right to vote or be denied a fair trial or should be hanged by a mob.

There are many other laudable things in life that are desired, but not realized by many people; but that does not mean that the Federal Government should be the vehicle to provide these things and come into the State of Virginia and proceed criminally and civilly against the citizens of Virginia for alleged violation of the civil rights of certain persons.

Law and order has not broken down in my State, nor in any other State of this Union; and, I said a while ago, unless people are willing to destroy completely the State governments, then there is a least one field, namely, the enforcement of criminal law, in which the State should remain supreme.

There will be miscarriages of justice, there always has been and always will be, but such miscarriages do not warrant the Federal Government in taking over law enforcement.

I have before me a subcommittee report to accompany Senate bill 900—I am sorry the Senator from North Dakota is not here, because I see his name is signed to that, because that report, it seems to me, bears out what I have been trying to say here.

On page 4, in discussing the anti-lynching bill, the question is asked:

> Where does the Congress derive authority for the punishment of such action?

The subcommittee's answer to that question is as follows:

> First of all from its authority to punish attempts to usurp Federal authority.

If the regulation by the State of its own affairs is to be considered a usurpation of Federal authority, then I say to you gentlemen that there is no limit to which the Federal Government may go.

> Secondly from its constitutional power to guarantee to each State of the Union a republican form of government.

This is section 4 of article IV of the Constitution of the United States, and I call the committee's attention to the entire section:

> The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

It seems to me, gentlemen, that section 4, article IV, of the Constitution of the United States clearly indicates that except upon an invitation by the legislature or the chief executive of his State, the Federal Government cannot intervene, whether it be by the Attorney General or by other means, and I think that section would outlaw the proposed legislation.

It seems to me that this is an absolute prohibition against interference in domestic affairs of the State by the Federal Government.

The committee then says:

> Thirdly from constitutional power to enforce the provision of the 14th amendment prohibiting States from depriving any person of due process and equal protection of the laws.

I say to you, gentlemen, that while there may be individual cases of discrimination and injustice, there is no proof, nor can there be any proof, that there is any systematic denial of due process or equal protection of the laws by the States.

The committee then goes on to say:

> Also, from the constitutional delegated authority to define and punish offenses against the law of nations.

While this is perhaps not the time and place to discuss the matter, I cannot help but say to this committee that one of the concerns that I have, and it is a very real concern, is that more and more it seems we are working toward one world, and that not only is there a danger of a breakdown of our republican form of government, but there is a real danger that our National Government may be submerged in one world, and that the law of nations may in a very real sense become the law of the United States.

In other words, the language "law of nations" as used in article I section 8 of the Constitution,

To define and punish Piracies and Felonies committed on the high Seas, and offences against the Law of Nations,

is far different in its meaning than the present-day connotation from the words "law of nations."

It may be that some of our people are ready for the United Nations to lay down the rules of society under which our domestic affairs are to be regulated. I, for one, am not now ready, nor shall I ever be ready, to abdicate that job to the United Nations or any other super-agency.

I am seriously disturbed that legislation of the type proposed would be but the forerunner for more far-reaching legislation reaching even more intimately into the lives of our citizens and emanating in its inception from sources not American.

I say to you gentlemen of this committee, that not only is there no need for civil rights legislation, but that the enactment of the proposed bills, or any of them, would do irreparable damage to our structure of Government in this country, and would be one more step toward breaking down the sovereignty of our States and destroying our republican form of government.

I say to you further, that the citizens of our State, and I believe the citizens of all the States, are perfectly capable of managing their own affairs, and that assistance from the Federal Government is not needed.

Thank you.

The CHAIRMAN. Thank you, sir. It is a very fine statement.

Mr. YOUNG. Mr. Goodrich, you taught constitutional law?

The CHAIRMAN. No; he said he did not.

Mr. GOODRICH. I did not teach that. I taught criminal law.

Mr. YOUNG. You know a criminal proceeding when you see one. Is a subpena provision given to a body a coercive provision?

Mr. GOODRICH. Yes, sir; no question about that.

Mr. YOUNG. Are contempt powers given to any body coercive powers?

Mr. GOODRICH. I would say the most far-reaching kind, because it is summary in its effect.

Mr. YOUNG. Is the injunctive power a coercive power?

Mr. GOODRICH. The same as contempt; yes, sir.

Mr. YOUNG. Is the power to sue individuals and political subdivisions for damages for the acts of others a coercive power?

Mr. GOODRICH. Yes, sir.

Mr. YOUNG. If you have to determine certain facts and a fact-finding agency—with your PTA in your locality, do you have to have those powers to determine whether you need 4 schoolrooms instead of 8 for your county?

Mr. GOODRICH. No, sir.

Mr. YOUNG. Then if a body has those types of powers, it is really not set up as a factfinding body: is it?

Mr. GOODRICH. I would think not, sir.

Mr. YOUNG. Then when the Attorney General comes forward and asks for powers in a commission which he presents to Congress as a factfinding body, and he asks for those powers in it, he is asking more than just a factfinding function; is he not?

Mr. GOODRICH. It would seem to me, sir, that he is.

Mr. YOUNG. Is the Attorney General an elective official or an appointive official?

Mr. GOODRICH. Unfortunately, he is appointed.

Mr. YOUNG. Then he is subject to the whims of the appointing power; is he not?

Mr. GOODRICH. Yes, sir.

Mr. YOUNG. And if the appointing power would like to delve into a locality for a political purpose, the Attorney General, would he, or would he not, be persuaded and go that way?

Mr. GOODRICH. I would think he would be, sir.

Mr. YOUNG. If he did not, would he be removed?

Mr. GOODRICH. I would think so.

Mr. YOUNG. Then these powers have a political overtone in them; they can be used for evil purposes at times; can they not be?

Mr. GOODRICH. Yes, sir. That is the whole danger, I think, of concentrating here.

Mr. YOUNG. Right.

Mr. GOODRICH. I mean, that is just the threat; it is concentrating it here.

Mr. YOUNG. It becomes very similar, does it not, to a Gestapo?

Mr. GOODRICH. That is right.

Mr. YOUNG. The Gestapo has the right in any country to willy-nilly go into the domain, the bailiwick or the county of any political subdivision, and coerce the citizens, has it not?

Mr. GOODRICH. Yes, sir.

Mr. YOUNG. We saw it in Germany. It could knock on doors at midnight or 2 o'clock in the morning, and arrest and hold people incommunicado or hold them so they could not get a lawyer, or not be known or get a lawyer, is that right?

Mr. GOODRICH. Yes, sir.

So many of our minority groups that are supporting this legislation, and that support all legislation that tends to centralize power here in Washington, have historically been the first to suffer when it reaches the point that you are talking about.

Mr. YOUNG. That is my point.

Mr. GOODRICH. They have been the ones that have been first to suffer.

Mr. YOUNG. When the power gets into evil hands, who suffers first?

Mr. GOODRICH. The minority.

Mr. YOUNG. The minority always suffers first; does it not?

Mr. GOODRICH. That is right.

Mr. YOUNG. That is all.

The CHAIRMAN. Any further questions?

Mr. YOUNG. That is all.

Mr. GOODRICH. Thank you, sir.

The CHAIRMAN. The committee will now stand in recess until 2:30 tomorrow afternoon.

(Whereupon, at 5 p. m., the committee recessed, to reconvene at 2:30 p. m., Tuesday, June 26, 1956.)

CIVIL RIGHTS PROPOSALS

TUESDAY, JUNE 26, 1956

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

The committee met, pursuant to adjournment, at 2:50 p. m., in room 424, Senate Office Building, Senator James O. Eastland (chairman), presiding.

Present: Senator Eastland.

Also present: Robert B. Young, professional staff member, and Richard F. Wambach, assistant to counsel.

The CHAIRMAN. The committee will come to order.

Judge, sit right here, please, sir.

Proceed.

STATEMENT OF HON. JAMES C. DAVIS, REPRESENTATIVE IN CONGRESS FROM THE FIFTH CONGRESSIONAL DISTRICT OF GEORGIA

Mr. DAVIS. Thank you, sir. Mr. Chairman, I want to express my appreciation for the opportunity to appear before your committee and give my views on the legislation now pending before you.

During the 10-year period which I have served in the House of Representatives I have followed these so-called civil-rights bills which have been introduced in first Houses of Congress. Without variation they have year after year attempted to give the form of law to a Federal invasion of an area prohibited to it and have deliberately sought to destroy our Federal, State constitutional boundary.

These bills, if enacted, would establish a unitary monolithic Federal state with supreme power and unchecked by constitutional limitations.

I am convinced, Mr. Chairman, that there is no need for any additional civil-rights legislation. I would add to this by saying that if civil-rights measures of the nature described in the bills before your committee should be enacted, they would only result in bringing chaos, bitterness, and turmoil down upon areas which now enjoy harmony and unity.

In addition, I am satisfied that the vast majority of the right-thinking people of this country are opposed to any additional civil-rights legislation.

Hearings on four of these bills which have been reported out by the Subcommittee on Constitutional Rights, I am informed were conducted on five separate days during the months of April, May, and June 1956. The record of these hearings reveals with unmistakable clarity,

that the principal support for these bills comes from radical organizations.

Mr. Chairman, this legislation is actually a threat to State and local governments on a nationwide basis. It is aimed at the South, but the threats were equally vigorous to States north and south alike. There are ample laws and constitutional provisions now existing to protect the civil rights of all people. It is a strange fact but a fact nevertheless, that the advocates of this legislation always protest long and loudly and indignantly when they think they find an instance of violation of civil rights in the South, but violations of unquestioned civil rights, constitutional rights of the most serious nature frequently occur in the North without causing any protest whatever. Or arousing any indignation whatever.

I call your attention to such an instance which occurred in Cleveland, Ohio, a few weeks ago. In that hotbed of civil-rights agitation, one of the most brazen denials of civil rights occurred and without so much as a token protest from those quarters so quick to condemn the South for far lesser acts.

The instance I am referring to is one in which a judge of a Cleveland court issued a deportation order requiring a Negro woman, her eight children to return to Alabama.

Following the order a court employee actually shipped them back to Alabama. Now section 2 of article IV of the United States Constitution reads——

The CHAIRMAN. You have not heard of the Attorney General sending the FBI to Cleveland to investigate that?

Mr. DAVIS. I state that a little further along in this statement that I have not heard of it.

The CHAIRMAN. Proceed.

Mr. DAVIS. Section 2 of article IV of the United States Constitution reads:

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

The constitutional right of every citizen to live anywhere in the United States where he or she may choose is protected by this section of the Constitution.

The newspaper accounts of this incident describe the woman as presenting a tearful plea to remain in Ohio. However, this judge——

The CHAIRMAN. Do you know this judge's name? Have you got his name?

Mr. DAVIS. I don't have it here, I have it in my files.

The CHAIRMAN. Would you supply it for the record?

Mr. DAVIS. I would be glad to, Senator.

His name is Judge Albert A. Woldman, juvenile judge, Cuyahoga County, Ohio.

However, this judge, in violation of a clear, constitutional right banished this woman and her family from Ohio back to Alabama.

There could not possibly be a clearer violation of civil rights. Yet I have not heard of any effort by the Federal Bureau of Investigation to investigate that case. In fact, I have not heard of any protest from those who claim to be so concerned with violations of civil rights.

The CHAIRMAN. Don't you think that the fact that the Attorney General did not act was a dereliction of duty?

Mr. DAVIS. Well, I certainly do, and especially in view of the fact, Mr. Chairman, that the matter was specifically called to his attention by more than one person. I know of my own personal knowledge that Congressman George Andrews of Alabama wrote him a letter calling it to his attention and making it an affirmative request that the Department of Justice investigate it.

I know that had such a violation of constitutional rights occurred in the State of Georgia, it would have precipitated condemnation through every conceivable medium of information not to mention threats of reprisal from every professional agitation organization in the country, plus an investigation by the FBI.

Is there a double standard of conduct on the question of civil rights?

The CHAIRMAN. Well, there is. You know it.

Mr. DAVIS. I am asking the question. I have—I do think myself there is but it is a question that everyone should ask and answer.

Does the fact that this act is committed in Cleveland, Ohio, convert into a laudable and praiseworthy act something which would be denounced and excoriated if committed in the South?

Mr. Chairman, the first of these bills which I will discuss is S. 900. This bill is cited as the Federal antilynching bill.

Now certainly there is nothing new about an antilynching bill. It has been presented before Congress on numerous occasions, and the very fact that Congress has refused to assert any jurisdiction or authority on this subject in the past indicates the complete lack of wisdom embodied in this bill.

There was a time years ago when lynching did occur in various parts of the United States. However, without the aid of Federal legislation, lynchings have ceased to occur. Statistics supplied by Tuskegee Institute, a Negro college in Alabama which are recorded in the World Almanac and the Book of Facts for 1956 show that there was not a single lynching during the years 1952, 1953 and 1954.

Now that lynchings no longer take place and inasmuch as they were put down by State action why is it now necessary to make lynching a Federal offense? Why is it necessary for Congress to legislate against a crime which is nonexistent and in a field which rightfully belongs to the States?

A close look at this bill, S. 900 supplies the answer. This bill would give to the words "lynching" and "lynch mob" a meaning with such sweeping coverage that it would encompass any assault against any person or his property by as few as two people induced by the motive of race, color, creed, national ancestry, language or religion.

The term antilynching which is applied to this bill is merely a label, and is apparently solely used for the purpose of attracting support.

What this bill would actually do can be effectually demonstrated by applying its provisions to an incident which happened in Muncie, Ind., on June 10 this year. A municipally operated swimming pool which had for years been exclusively used by white people, was suddenly invaded by a group of Negroes.

The incident precipitated a disturbance which the police termed as racial.

Ensuing events led to the arrest of 19 persons of which 10 were juveniles between the age of 14 and 17 years.

There can be no doubt that mob action was present in this instance under the terms of this bill, nor could there be any doubt that the disturbance was based on race and color.

Under the terms of this bill, this group of teen-agers would have constituted a lynch mob and under a further provision of the bill would be subject to a thousand dollar fine or 1 year in jail or both.

In addition to other objectionable features of this bill——

The CHAIRMAN. Would the city be liable there?

Mr. DAVIS. Yes, indeed, under the terms of this legislation, the city or the State or any other subdivision which had assumed police jurisdiction over that particular territory would have been liable to a civil suit and one of the things which is so arbitrary and unheard of is that this legislation, contrary to the legislation which governs damage suits in cases of negligence, would put the burden of proof on the defendant in the case, and the sorriest person who ever came into a community, either white or black, could file a suit of that nature and allege that it was based on race or creed or color or religion, and put the city or the county or the State, as the case might be, the defendant, in the position of having to assume the burden of proof and proof by a preponderance of the evidence that they were not guilty of the acts charged.

The CHAIRMAN. Of course that is a very sound doctrine of Anglo-Saxon jurisprudence that the burden of proof is not put on the defendant, is it not?

Mr. DAVIS. Yes, indeed.

The CHAIRMAN. It is something that is unheard of.

Mr. DAVIS. Yes, sir, absolutely.

The CHAIRMAN. And unjust.

Mr. DAVIS. Yes, sir, it certainly is.

The CHAIRMAN. And a judgment against a city would mean that taxpayers, people who would have to pay their taxes, would be increased, people who had nothing to do with it, were entirely innocent——

Mr. DAVIS. Absolutely.

The CHAIRMAN. Would be penalized in damages.

Mr. DAVIS. Yes, sir, and another provision is that if the plaintiff prevailed he could not have a judgment for less than $2,000. It would be $2,000 or more regardless.

The CHAIRMAN. Even if his damages were a hundred dollars he would get a judgment for $2,000.

Mr. DAVIS. That is what the bill says, yes. This bill atempts to make the actions of a lynch mob the actions of a State or one of its political subdivisions, and attempts to make the members of the mob the acts of the State. It would give to any victim of a lynch mob permission to bring suit against the State where the lynching occurred. This would be in direct violation of the 11th amendment to the Constitution of the United States, and of course, Congress does not possess the authority to override the Constitution.

The CHAIRMAN. The Court does, though. The Supreme Court does.

Mr. DAVIS. Well it certainly has been assuming that authority.

Certainly it cannot be argued that if a citizen has a right to bring suit against a State for an act committeed against him when such act violates State laws, this same privilege should be denied to everyone, no matter what the crime.

If a State is to become liable for the violations of a citizen's so-called civil rights action by another citizen, then the question presents itself should not the State be liable also for one injured in a gang war or by any other means, if you are going to feed everybody out of the same spoon.

This section of the bill sets a new standard in unfairness and it must be obvious, even to the most casual observer that such a provision would result in constant litigation against the States and their political subdivisions. It would completely frustrate the normal processes of law and order, and would inevitably result in strife and confusion in the States.

Senate bill 902 proposes to elevate the civil-rights section of the Department of Justice to a status of a Civil Rights Division in that Department. It would authorize the enlargement of the Federal Bureau of Investigation to whatever size might be necessary to investigate civil-rights cases. Such an enlargement would signal every race agitator in the country to file a complaint. It is a well-known fact that the civil-rights field already receives more complaints than any other field, and the record in this case speaks most eloquently for itself.

In 1940 approximately 8,000 civil-rights complaints were received. Of that number prosecution was recommended in only 12 cases. This means that prosecution was recommended for only 1 case in every 666 cases investigated.

In 1942 there were 8,612 complaints received, and prosecution action taken in 76 cases. During 1944, 20,000 complaints were received, and prosecution action taken in 64 cases.

I would like to direct your attention to the minority views expressed in House Report 2178 which also deals with civil-rights legislation, and which is pertinent in this case. That report says, and I quote:

> Under the present laws relating to civil rights the Justice Department has been so heavily engaged in the investigation of groundless complaints using the FBI to conduct such investigations we wonder whether or not the FBI has been able to diligently pursue and investigate the cases involving the national security and offenses designed to violently overthrow our Government. Certainly this poses a vital question.

This bill invites complaints and undertakes to saddle the FBI with still further investigations in this field.

As to the provision of this bill which would create an additional Assistant Attorney General it fails to say how large his staff would be or how much clerical help he would require. If the function of this newly created division is to investigate every civil-rights complaint then it would be impossible to determine how large it would become. In view of the voluminous complaints in this field, most of which warrant no consideration, the personnel requirements of this division would surely grow larger year by year.

The report which accompanies this bill makes it crystal clear that this legislation would convert a part of the FBI into a secret police with the idea of keeping certain organizations and individuals under scrutiny.

Thus the threat of an investigation and civil litigation would hang over the head of anyone who dared to oppose the minority groups to whom this legislation is directed.

It would seriously hamper the administration of State government, and would impede the official duties of the officers of the States.

Senate bill 903 which deals with the elective franchise and the right to vote introduces principles completely alien to American jurisprudence, and principles which, if enacted, would prove the final blow to the destruction of States' rights.

This bill undertakes to give the Attorney General power to instigate civil action in the district courts in behalf of aggrieved persons without first exhausting State remedies.

Now some of the provisions of that bill are ambiguous, and possibly would need construction by the courts in order to really determine what they do mean.

But, it appears that under the provisions of this bill the Attorney General need not have the consent of the injured party in order to instigate a proceeding under the bill. The party in interest need not even be aware that such a suit was being filed in his behalf, and this would open the matter up to any number of possibilities.

What is to prevent some pressure group from convincing the party in interest that he has a complaint even though he may feel to the contrary? By what means would a defendant be protected from facing litigation in two courts at the same time, one filed by the party in interest in a State court, and the other by the Attorney General in the United States district court.

This bill empowers the Attorney General to enforce this act by seeking preventive relief in the district courts. Such a measure would pave the way for an outright invasion by the Federal Government into State elections, into State educational systems.

Into intrastate transportation and other institutions of purely State and local character?

The practice of seeking court orders to regulate State matters would become routine, a Gestapo type interference would become a daily occurrence.

Recently such a Gestapo type occurrence did occur under existing laws in Cobb County, Ga., and it is a case which clearly demonstrates what could be expected if this bill becomes law.

A Negro serving in the Georgia Penitentiary for assault with intent to rape and for two counts of robbery was assigned to a public works camp in that county. While working on the road he went to the home of a white woman and appealed to her for a glass of water. Moments later he attacked her, and raped her in her own home. He voluntarily confessed to the crime, was tried, convicted, and sentenced to die in the electric chair. Ultimately the case reached the Supreme Court of the United States and the decision was reversed on the basis that counsel for the accused had not been appointed until after the accused had been indicted by the grand jury. Now members of the bar who know the operation of courts can understand what an outrageous decision that is. It would place on the judge of a circuit court, many of them who have as many as five or six counties in the circuit, the duty of keeping up with the arrest of every person in every county, and of appointing counsel for them before the grand jury met. Many people who are arrested never need counsel at all. The grand jury

no-bills many of the cases which are brought before it. Many of the people who are arrested and placed in jails are amply able to employ their own attorneys and pay them, and pay them whatever fee may be required.

But under that decision the burden would be placed on the judge of a superior court to see to it that before the grand jury met and indicted a person who had been arrested and placed in jail that counsel was appointed for him.

And that was the basis on which this decision was rendered.

It also alleged that he had been denied a fair trial due to an absence of Negroes on the panel which tried him. Although no such allegations were made before the trial or at the trial, and the judge was never given an opportunity to rule on that point.

It is a well-established principle of law, as all lawyers know, that if a complainant desires to take advantage of a point of that nature then it must be made either before the trial or at the trial, so there is an opportunity that is given to rule upon it.

Following this decision——

The CHAIRMAN. There would be no error if there was not a ruling.

Mr. DAVIS. Of course not.

Following this decision the Attorney General's boys instructed the Federal Bureau of Investigation to investigate what it was alleged to be systematic discrimination against Negroes in the selection of jury panels.

Now, all of that without any knowledge whatsoever of what had been done in that county, based purely on an allegation, unsupported, and which was made after the case was tried and on the way up.

Such an investigation was conducted, and the finding in that investigation completely exonerated the county and the officials in question.

The Attorney General did not cite any authority for such an investigation nor did he limit the investigation to the method of selecting jurors. It was charged that efforts were made to intimidate the solicitor general of that circuit by inquiring of him if he intended to again prosecute this Negro defendant.

Now the FBI asked him that.

Investigators tried to engage the judge in the superior court in conversation about the case in an apparent effort to disqualify him to hear any future trial of this defendant.

This investigation was completely unwarranted, as the facts in the case clearly demonstrate.

What the investigation actually demonstrates is the political weapon which could be and would be made of this legislation if the Attorney General is given a greatly enlarged staff and unlimited power to make an investigation on the barest of pretexts. There is no doubt in my mind that such investigation would be used as a threat against local court officials, and would almost invariably come at a time which would interfere with the normal adjudication of civil-rights cases.

There is no need for anyone today to maintain that his civil rights are being repeatedly violated or being violated at all without a remedy.

The courts are open to anyone claiming such a violation, and existing laws adequately cover any violation of civil rights which may occur.

The following is a list of some of the civil rights statutes now on the statute books, section 241, title 18 of the United States Code deals

with conspiracy to deny the free exercise of rights and privileges secured by the Constitution or laws, a statute which prohibits the deprivation of any rights, privileges or immunities secured by the Constitution or laws or to inflict different punishments, fines or penalties on account of such inhabitants being an alien or because of color or race, section 243, title 18 of the United States Code.

Section 243, title 18 of the United States Code; section 594, title 18 provides for $1,000 fine, a year's imprisonment, or both for anyone who intimidates, threatens or coerces or attempts to intimidate, threaten or coerce for the purpose of interfering with the right of such person to vote as he chooses for or against any candidate for President, Vice President, Presidential elector, Member of the Senate, the House of Representatives, delegates or commissioners from the Territories and possessions, and we have in our State, and I am sure they must have them in other States, laws which protect every person in his right to vote for any local officer in a State, from the bailiff in a justice court on up to the governor of the State.

Revised Statutes, section 722, gives the Federal district courts exclusive jurisdiction of all civilian criminal matters under the laws heretofore set out.

Revised Statutes, section 1981, provides civil action against any person having knowledge of any wrongs conspired to be done or about to be done who neglects to prevent the same, extending the right of action to legal representatives of any one killed through conspiracy.

Section 31 of title 8 of the United States Code entitles all citizens to vote who are qualified and protects this right without regard to race, color, or previous condition of servitude.

Section 41 of title 8 of the United States Code provides that all persons within the jurisdiction of the United States shall have the same rights in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property, as is enjoyed by white citizens and shall be subject to like punishment, fines, penalties, taxes, and licenses and exactions of any kind and to no other.

Section 1583 deals with enticement into slavery, and section 1584 has to do with sale into involuntary servitude. Section 47 of title 8 deals with preventing any United States officer from performing his duties or with obstructing justice by forced threat or intimidation against any party or witness in any court of the United States, and with conspiracy by two or more persons to deprive either directly or indirectly any person or class of persons of the equal protection of the law or equal privileges or immunities under the laws, and for additional civil rights statutes, I point to the minority views expressed in House Report 2187.

With all the laws now on the statute books to protect civil rights there is no more reason to ask for the enactment of these bills than there would be to ask for another law to prohibit slavery.

In conclusion I would like to say to this committee that these bills constitute the most dangerous abrogation of the sovereign rights of the States ever threatened by Federal legislation.

They do not express the will and the desire of the majority of the American people. Instead they reflect an abortive attempt by pres-

sure organizations to destroy the rights of the several States and deliver them into the hands of centralized bureaucracy.

It cannot be said too often or too strongly that there is no need for additional legislation in this field. Enactment of these bills can only result in strife, bitterness, and confusion in the relationship between the States and the Federal Government.

I earnestly urge you gentlemen, as members of this committee to reject this legislation and, Mr. Chairman, I appreciate the opportunity which this committee has afforded me to express my views on this pending legislation.

The CHAIRMAN. A very able statement, Judge.

Do you have any questions?

Mr. YOUNG. Just a few, Senator.

Judge, I call your attention to the definition of the lynching bill. I presume you are well acquainted with this new wide definition that is included in lynching in S. 900.

Mr. DAVIS. I have read it; yes, sir.

Mr. YOUNG. I would like to paraphrase that definition and bring out how far reaching it is. It says if two persons—it can be two—attempt to inflict damage upon another's property, property, I emphasize, because of language, it is a lynching.

Mr. DAVIS. Yes, sir.

Mr. YOUNG. Is language a word of art in law? Do you know what that means in a definition of a penal offense? Is it a skilled word, does it mean swearwords, does it mean an accent, does it mean a foreign tongue. We don't know, do we, Judge?

Mr. DAVIS. It has no peculiar meaning in law that I am aware of, no.

Mr. YOUNG. It also says that if those acts are done against another because of his national origin, do we know exactly what that means?

Mr. DAVIS. I think it is very vague and indefinite.

Mr. YOUNG. And also then it speaks about relying on which I presume we could know what that means, but it gives us an idea of the extent of this crime. I gave a ludicrous example some meetings ago and asked a witness whether if it were that two Methodists kick a Baptist's fence, is it or is it not a lynching under this bill?

Mr. DAVIS. Well, it could certainly be alleged to be one and that would put the burden on the defendant in any such suit of proving by a preponderance of the evidence that he was not guilty as charged.

Mr. YOUNG. In other words the Methodists must prove that they have not committed a lynching?

Mr. DAVIS. By a preponderance of the evidence, yes, sir; must affirmatively prove it.

Mr. YOUNG. If he kicked a picket off of another man's fence of another religion.

Mr. DAVIS. Here is another ludicrous illustration: Let's say if two Baptists and one Methodist should get into an argument about the relative merits of their religion, which is not an infrequent thing, in our discussions of that kind and one of them—and say the Baptist should make some remark which irritated one of the Methodists and he should grab the Baptist's hat off his head and throw it on the ground and stomp it.

Mr. YOUNG. It is a lynching, isn't it?

Mr. DAVIS. Under this bill it would be and he could secure a judgment of not less than $2,000.

Mr. YOUNG. That's right.

The CHAIRMAN. Against the town or the county.

Mr. DAVIS. Yes.

Mr. YOUNG. And he also can sue the town and county can he not?

Mr. DAVIS. Yes.

Mr. YOUNG. And he can levy on the courthouse can he not to collect it.

Mr. DAVIS. Yes; he can under this.

Mr. YOUNG. And sell the courthouse if it is practical to sell it.

The CHAIRMAN. Sell the jail.

Mr. YOUNG. Or take the school funds away and close the schools first.

Mr. DAVIS. I expect so.

Mr. YOUNG. If the taxpayers are unable to raise money.

Mr. DAVIS. There is just no end to the absurd lengths to which this thing could be stretched out.

Mr. YOUNG. I believe it can be even one step further than your illustration. I say the bill also punishes attempts.

Mr. DAVIS. Yes, sir.

Mr. YOUNG. If he attempts to grab the other man's hat and is a little bit unsteady on his feet and misses the hat and throws air down he is guilty of a lynching.

Mr. DAVIS. Under the terms of this bill it is true.

Mr. YOUNG. Isn't it the idea in lawyers' minds and jurists' minds and the public's mind that lynching is an assault by force and violence, as taking away a person from the officer or State or municipal instrumentality, and takes him away; isn't that the historical illustration?

Mr. DAVIS. Of course mob violence and the true meaning of mob violence is when law enforcement breaks down and when people by reason of numbers or possibly other attending circumstances become stronger than the law and are unable to take a person and inflict violence upon him, either injury or death or by reason of their strength and the weakness of the law are able to take a person from the custody of a law enforcement official such as a sheriff or the jailer and take him out and lynch him.

Now of course that is what the mob violence is and that is what lynching is. But this thing here, would carry it to such absurd lengths, it is really just something that defies description to say how absurd it is.

The CHAIRMAN. It would give us a police state.

Mr. DAVIS. That's right, that is what I undertake to say in my statement.

Mr. YOUNG. Judge, what is your reaction to the recitation in the policy provisions of this bill that when we ratified the United Nations Charter in the Senate we gave not only the Federal Government the right to punish for all crimes but foreign countries to punish in your home county for infractions of law?

Mr. DAVIS. I was greatly concerned when I read that provision in this legislation. Anyone who has read this so-called declaration of human rights which this UNESCO got up and distributed, would certainly be appalled to think of the possibilities of what might happen if this legislation should ever be enacted into law.

Mr. YOUNG. Have you read Missouri versus Holland, Judge, a case under which the Supreme Court has said that that is possible, power under a treaty?

Mr. DAVIS. Yes; I have read that.

Mr. YOUNG. It is dangerous doctrine, is it not, if it is carried to the extent that the framers of this bill want to carry it?

Mr. DAVIS. Yes, indeed.

Mr. YOUNG. It does away with the sovereignty not only of the country but of the State and possibly of the National Government.

Mr. DAVIS. Yes, sir.

Mr. YOUNG. It is really one world government, is it not?

Mr. DAVIS. It certainly is.

Mr. YOUNG. One world state doctrine.

Mr. DAVIS. Yes, sir: this is exactly what it is or would lead to.

Mr. YOUNG. What do you think about the provisions in this bill which say that a lynch mob or lynchers are really agents of the State and since they are the Federal Government is going to be the crime enforcer, what do you think about the fact that the Federal Government is not the agent of a State, isn't the principle of the lynchers as agents.

The doctrine would carry all the way through would it not?

Mr. DAVIS. Well I have heard of many absurd and outrageous propositions in my lifetime, but I don't think that I have ever heard of one any more outrageous or absurd than an effort to make a member of a mob an agent of a State.

Mr. YOUNG. We have a doctrine in this country of guilt by association——

The CHAIRMAN. Has Congress got such powers, Judge?

Mr. DAVIS. I don't think so.

The CHAIRMAN. To declare a member of a lynch mob is an agent of a sovereign State?

Mr. DAVIS. Senator, 20 years ago I would have thought we did not face any danger if an act of this kind had been enacted by Congress. At that time we had a Supreme Court who were able to interpret the Constitution and who had the courage and the stamina to interpret it.

The CHAIRMAN. And the honesty?

Mr. DAVIS. Yes; I was debating with myself as to whether to say the integrity. [Laughter.]

But they did have it and at that time I would have said it wouldn't matter if Congress did pass a bill of this kind because the Supreme Court would strike it down as soon as it got there.

But with the continued pattern of usurpation of legislative functions and of executive functions also by the present Supreme Court, I would not say that anything that Congress would enact now would be stricken down by that body.

Mr. YOUNG. A State though is sovereign in the field in which it operates, is it not?

Mr. DAVIS. Yes, indeed.

The CHAIRMAN. Now then, has Congress got the right to declare that citizens of that State are agents of the State? If that is true, there is no such thing as State sovereignty.

Mr. DAVIS. Well, I say no, certainly. I say they have no right, and that any such provision would be unconstitutional if the Constitution should be properly applied to it.

The CHAIRMAN. You could not have any such thing as State sovereignty if Congress has that power to do that?

Mr. DAVIS. Why, certainly not.

Mr. YOUNG. I will ask one more question, if I may, sir: Under our due process clause, law enforcement of a Federal statute, anything has to be precise or definite in order to be constitutional, so that a person will know wherein he is in violation of the law.

Mr. DAVIS. Yes.

Mr. YOUNG. If I consulted you as my attorney on my actions of the past week, and asked you whether I was in violation of any section, during the week, of this antilynching bill, would you be able to advise me?

Mr. DAVIS. I doubt very much that I would.

Mr. YOUNG. That is all.

The CHAIRMAN. Thank you, Judge.

Mr. DAVIS. Thank you.

The CHAIRMAN. Congressman Williams?

STATEMENT OF HON. JOHN BELL WILLIAMS, REPRESENTATIVE IN CONGRESS FROM THE FIFTH CONGRESSIONAL DISTRICT OF MISSISSIPPI

Mr. WILLIAMS. Mr. Chairman, like the distinguished gentleman who just preceded me, I would like to express my personal appreciation to the committee for its indulgence in permitting me to say a few words in opposition to the various bills now pending before the committee.

Noting the attendance of the committee in the Senate at these hearings, it would appear that tremendous interest has been evinced in the passage of this legislation, very much like it was in the House Rules Committee about 3 or 4 days ago, when the committee found itself without a quorum and was forced to adjourn.

Let me say that I cannot qualify as an expert lawyer, nor as an expert legislator, nor have I had an opportunity to read and analyze the various bills before the Senate in minute detail.

However, there is one point on which I can qualify as an expert, and that is on the matter of analyzing relationships between the white and colored races.

My district, the district that I represent in Mississippi, has 210,000 colored people. Four members of the House of Representatives—and, I might add, only four—appeared before the Rules Committee in support of civil rights legislation. Those four members were Mr. Keating of New York, Mr. Boyle of Illinois, Mr. Celler of New York, and Mr. Scott of Pennsylvania.

There are eight members of the Rules Committee who have by their actions in the past expressed support for this legislation. Those eight members are: Mr. Allen of Illinois, Mr. Madden of Indiana, Mr. Brown of Ohio, Mr. Delaney of Massachusetts, I believe, or New York, Mr. Bolling of Missouri, Mr. O'Neill of Massachusetts, Mr. Latham of New York, and Mr. Ellsworth of Oregon.

May I say, Mr. Chairman, that I have more Negroes in my district than the combined total of the Negro population in the districts of every one of those members that I have just called off, who are sup-

porting this legislation, plus the combined Negro population of the States of Wyoming, Montana, and North Dakota.

Therefore, I feel that representing a Negro population which is larger than the combined Negro populations of those 12 congressional districts plus those 3 States, that I am qualified to some extent to speak as an expert on this subject.

Also, I would like here to quote a news item that appeared under an Associated Press byline dated June 18, 1956, from Biloxi, Miss., in which it quotes a speech made by the distinguished immediate past president of the United States Chamber of Commerce, Hon. Boyd Campbell, and with the leave of the committee I would like to read this Associated Press release:

Mr. Boyd Campbell, board chairman of the United States Chamber of Commerce, today blamed the National Association for the Advancement of Colored People for what he called a halt in progress toward racial understanding. Campbell said—

and I am still quoting—

"Great progress was being made on both sides before the Supreme Court's school segregation decision 2 years ago. But it came to an abrupt halt when the NAACP took over leadership for the colored people." He told the Mississippi Theater Owners Association the lost ground is not likely to be regained. It is up to the local people of both races who are leaders in their communities, he said, to discuss their problems without name calling. Legislation, he said, will not bring closer understanding between the races any more than abusive language. Habits must be changed gradually, he said.

The situation is very serious, Campbell said, but there is more understanding from people of other States than Southerners realize. He said other people also are beginning to understand that the problem is best worked out at the local level.

Mr. Campbell urged that communication lines always be kept open to give both races an opportunity to discuss their problem in an intelligent and understanding manner.

Mr. Chairman, as you well know, being a fellow citizen of the State of Mississippi, which has the highest percentage of Negro population, higher than any other State in the Union, racial—friendly racial relationships have been virtually destroyed, not by acts of violence within the State of Mississippi between the 2 races, but by outsiders who have come into Mississippi for the express purpose of stirring up trouble, hatred and discord between the members of the 2 races.

I can say categorically that the matter of racial relationships was never a problem in the State of Mississippi until the United States Supreme Court decided to abort the Constitution and to take over the prerogatives of the States.

Now, Mr. Chairman, in the time that I have been privileged to represent my people in the House of Representatives, which is now going on to 10 years, I have always attempted to approach the consideration of any legislation with several things in mind:

First, before we should consider any legislation, it is my belief that we should recognize that a problem exists which needs correction.

Second, that that problem can be cured only by legislation.

And third, that the legislation presented will cure the problem and will do so within the constitutional limitations imposed upon the Federal establishment.

This legislation which is before your committee, in my opinion, meets none of the requirements that I have just mentioned.

I think it is significant to note that those who are furthest removed from the problems about which they speak, are the first to come forward with absolute solutions to the problems.

As I mentioned a moment ago, I have the problem in my district, if such a problem exists. It was not a problem before this agitation began. Today, perhaps it is becoming somewhat of a problem.

Those who live in Wyoming, Montana, and Minnesota, where an infinitesimal percentage of the population is colored, do not have a problem under any circumstances. Yet, for some reason, they attempt to solve the problems of the South, people who must live with that problem, without consulting with the people who live with the problem, and actually over the objections of the people who have to cope with it.

I dare say that in the past 10 years, no member of the House or Senate representing a State or district in the South, which was comprised of more than 30 or 40 percent Negro population, has ever supported these civil rights bills, with the exception of the two Negro districts in Chicago and in New York, respectively.

I think that in considering this legislation, and all legislation, we should consider what it does to our basic form of government. Because the Federal Government in recent years has moved into the welfare field, has taken over the jurisdiction over our highways, has moved into the field of health and, through the Supreme Court decision, into the field of education.

Now if it moves into the police power, if it usurps the police powers of the States under this legislation, there will be no such thing as reserved powers left to the States.

The Constitution of the United States, as we all know, proscribes the powers delegated to the Federal Government, it specifically limits those powers with the 10th amendment, and provides that all other powers shall come within the reserve powers of the States.

Through usurpation, the Federal Government agencies, executive, judicial and legislative, have practically destroyed all of the reserve powers left to the States. If this legislation is enacted, we might as well erase all State boundaries, do away with our State capitols and our county courthouses, and bring all of our government to Washington.

Mr. Chairman, getting down to the specific legislation which is before the committee, I would agree with those who have testified here that this is the most far-reaching and most dangerous legislation to ever come before the Congress, because the legislation, in order to be enforced, must set up a type of Gestapo in this county if it is to be effective as it is intended to be by the sponsors.

We have just concluded a war some 10 years ago with a country in which Gestapo practices were carried on. At that time it was up by our Government to be an extreme evil.

Today, under a different name, civil rights, a great portion of the press of this country, and many in Government, give sanction to a police state.

One of these bills that is before your committee provides, as I understand, that the Department of Justice shall investigate these various allegations of civil-rights violations and then may institute a suit on behalf of this alleged victim of the violation, over the objections of the victim himself.

And then it provides that whenever any persons have engaged or are about to engage in any acts or practices which would give rise to a cause of action pursuant to parargaphs (1), (2) and (3)—

the Attorney General may institute that suit in the name of the United States, but for the benefit of the party in interest.

But then what are the causes of action pursuant to paragraphs (1), (2), and (3)?

No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose or of causing such other person to vote for or not to vote for any candidate for the office of President, Vice President, Presidential elector, Member of the Senate or Member of the House of Representatives, Delegates or Commissioners from the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

I wonder, as I am sure the chairman and members of this committee do, what would constitute an act "about to engage in an attempt to threaten," and yet that is considered the basis for civil action in this legislation.

The CHAIRMAN. We are about to have a vote on the Bridges amendment, and I will hear you as soon as the vote is over.

(Short recess.)

The CHAIRMAN. Let's have order.

Proceed.

Mr. WILLIAMS. Mr. Chairman, I believe when we recessed a moment ago, I just covered some language which is in this legislation, which makes the act of "about to engage in an attempt to threaten" a civil crime.

It is rather difficult for me to understand, in the first place, how anyone could "attempt to threaten" a person. I don't know just how that would be defined or what would constitute an act of an attempt to threaten.

Yet under this legislation that would make a person subject to civil liability.

But even if you could define an attempt to threaten, I wonder how in the world you could ever say that a person was about to engage in an attempt to threaten.

I think perhaps if it took until the year 2000, I think that should be explained thoroughly and to the satisfaction of this committee before this legislation is reported to the Senate.

The CHAIRMAN. Well, are you going to explain that in the House if the bill comes up?

Mr. WILLIAMS. Mr. Chairman, I think it will be the duty of the proponents of this legislation to explain that, and I will certainly do my best to get an explanation out of them.

Also, in connection with that, Mr. Chairman, the question was asked of the chairman of the Judiciary Committee the other day, who appeared before the House Rules Committee, if, as has been done by six States already, a State legislature should pass an act of interposition against legislation of this type, if the members of the State legislature who voted for the act of interposition would be subject to civil damages as being engaged in an attempt to carry out one of these practices that is forbidden by this act.

Mr. Celler, the chairman of the Judiciary Committee, replied that these men would be subject to civil liability for voting, for the vote that they cast in the State legislature, under those circumstances.

Furthermore, under this act, which provides that:

> No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose or of causing such other person to vote for or not to vote for any candidate—

that would put quite a number of the candidates on the spot.

I know in my case, I have told my friends that any job I had to hand out would be given to people who had supported me, and I am quite sure that every other Member of the House and Senate has made the same type statement in a campaign.

Under this legislation, if I made such a statement it could be construed as an attempt to coerce people into voting for me; or if someone asked me, who was a political enemy, if I would appoint him as postmaster, for instance, and I told him that I did not intend to appoint anybody who did not support me, then I would be guilty of a violation of this act.

I can say this, Mr. Chairman, that while there are no criminal penalties in this legislation, I recognize that that can be handled by contempt action by the courts, and if this legislation is passed, the United States Government——

The CHAIRMAN. In other words, you think the man would wind up in jail, regardless.

Mr. WILLIAMS. Yes, sir, I do, and I was just going to make the statement, Mr. Chairman, that if this legislation is enacted, the Federal Government will probably have to see if they cannot lease the State of Texas to make the penitentiary big enough to hold all the people going into jail as a result of this legislation, white and colored.

The President, in his recommendations to the Congress, made some reference to what he called economic pressures, allegedly being used in certain parts of the country, which of course had reference to the Southern States, against minority groups who sought to exercise their privilege of franchise.

In the first place, no specific instances of any economic pressures having been used or exerted or attempted to be used in the South have come to the attention of the Justice Department; otherwise, the Attorney General in his testimony before the committees of this Congress certainly would have pointed to those specific cases.

It is true that he did mention, when he was before the House Judiciary Committee, that he had several affidavits from Negroes in the South who had said that in a certain county in Mississippi a Negro who had applied for registration had been asked the question, "How many bubbles in a bar of soap?" as a means of qualifying him or disqualifying him from voting.

That matter has been thoroughly investigated and has been found to be a complete fabrication of fact.

(Short recess.)

The CHAIRMAN. You may proceed, Mr. Congressman.

Mr. WILLIAMS. Mr. Chairman, the incidents about which Mr. Brownell spoke allegedly occurred in Forrest County, Miss., of which Hattiesburg is the county seat. I am reliably informed by competent

attorneys, if Mr. Brownell though there was any substance to these charges, that he already had available sufficient law with which to take this matter into court as a violation of existing civil rights statutes.

The CHAIRMAN. But you know there was no substance to those charges?

Mr. WILLIAMS. Of course there is no substance to the charges. At a matter of fact, if the committee will permit me, I would like to read an editorial which appeared in the Jackson, Miss., Daily News under date of April 14, 1956, entitled "Brownell Is a Liar."

Appearing before a congressional committee a few days since, Attorney General Brownell made the statement that in a certain county in Mississippi a Negro who had applied for the privilege of registering for citizenship was asked this question: "How many bubbles in a bar of soap?"

The story seems so utterly senseless that the Daily News requested the Associated Press to contact Attorney General Brownell and ask him in what county the incident occurred. The reply was that it happened in Forrest County, of which Hattiesburg is the county seat, in the year 1952.

Luther Cox, circuit clerk, and registrar in Forrest County for more than 20 years, brands this story as utterly false. "I never asked such a silly question in all my life."

In other words, Attorney General Brownell, without making any inquiry whatever to obtain verification or denial of the story, uttered a brazen falsehood. In still other and much plainer words, Mr. Brownell is a liar.

Mr. Chairman, I would like to read also a letter signed, "A Colored Voter," written to the State Times, the Jackson, Miss., State Times, under date of April 18, 1956:

I am a colored voter in Hattiesburg, Forrest County, Miss., and I did not have to guess how many bubbles there are in a bar of soap. This was the rule laid down by Mr. Brownell, Attorney General, in which he says he backs it up with some affidavits.

Before colored people could register or vote, Pontius Pilate had affidavits and some live witnesses to prove his political points for the Roman Government. However, I know the answer to the question, "How many bubbles in a bar of soap?" and the answer is 2,300 bubbles less than the political tricks by a Yankee politician, and 3,200 bubbles less than the tricks of NAACP voters.

Us Negro voters would like to be left alone and not pulled at all of the time. It looks like they want us to work for them like mules, or else they think we are fools.

Will you let Mr. Brownell know how we feel?

Mr. Chairman, I hope Mr. Brownell reads these hearings and gets that message from that colored voter down in south Mississippi.

As I stated a moment ago in the beginning, this, the agitation for legislation to shackle the people of the South and put them in a straitjacket, is coming from the people who do not have the problem. So far as I know, none of this agitation is coming from the people who are alleged victims of all of this so-called discrimination, the Negroes in the South themselves.

As to this economic-pressure business, I can say that no specific examples of economic pressure having been used, that is, subtantiated allegations, have come to the attention of the Congress.

However, on the other hand, those who are advocating legislation to straitjacket the people of the South are openly and avowedly advocating using economic boycotts and pressures against the people of the South.

As an example, legislation now pending in the House of Representatives is expected to face an amendment offered by a Congressman from New York which would exert official Government economic pressure

against the people of the Southern States by denying them any of the funds under the legislation if they segregate their schools.

That, in itself, would be economic pressure, with the official sanction and approval of the United States Government, if that were written into the law.

A month or so ago, a colored entertainer was assaulted by hoodlums on a stage in Birmingham, Ala. May I say that the good people of the South were very much distressed over that occurrence. We are very sorry that it happened.

However, I think that the one redeeming feature of it was the fact that this entertainer himself refused to permit himself to be used as a tool of the NAACP in stirring up racial hatred among the Negroes and white people in the South.

The CHAIRMAN. Some people were assaulted on a boat at Buffalo, N. Y., were they not?

Mr. WILLIAMS. That is very true; and, of course, it was rather difficult for us to get any information on it from the distorted stories that appeared in the local press.

I did find in the press in Buffalo, having obtained a copy of the newspaper reporting that incident, that it was openly and overtly a race riot, and that it resulted as a result of ill-feeling between white and colored who had been forced to mix together socially on that boat.

Then the case of this singer, Nat King Cole, I would like to quote to the committee from the New Jersey Telegram, a Negro paper published in Newark, N. J., under date of Sunday, April 29, 1956. Speaking of boycotts—this story is datelined New York, written by Harry B. Weber, who I presume is colored. It is a Negro newspaper:

Nat King Cole has become the third major Negro figure to be marked expendable by the NAACP and the NAACP-control Negro press, because he does not agree with rabid NAACP policies in the South. The chief NAACP organ, owned by Jesse Matthews Vann of Pittsburgh, member of the national board, last week headlined a story initiating a boycott on King Cole's records in Harlem. That was because Cole slashed at NAACP policy and said to Roy Wilkins, "I am letting you know emphatically I don't intend to become a politician. I am a performer. I am crusading as a gentleman."

Speaking of boycotts, Mr. Chairman, Labor's Daily, in the October 13, 1955, edition, reports as follows, and it endorses the policies in this report:

Representative Powell of New York advocated adoption of the following measures to properly deal with the situation brought on by the Till case:

1. The designation, in view of President Eisenhower's illness, of someone who could assume the responsibility of the Chief Executive's office in the administration of the Nation's affairs.

2. The sending of a team of Federal Bureau of Investigation agents from the North to look into civil rights in Mississippi.

3. A national boycott by Negroes and whites of anything that comes from Mississippi.

Speaking of boycotts, this same newspaper, Labor's Daily, on October 27, 1955, reported:

Earl Brown, New York City Councilman, accused the Department of Justice of failing to investigate accurately the violation of Negro civil rights in the South.

And further:

Brown suggested that a Mississippi refugee committee be established to bring Negroes from the Delta State to New York. Such a movement, he declared,

would serve as a powerful economic sanction against Mississippi which would, to use his words, "collapse without the sweat of the Negro."

Mr. Chairman, this economic-boycott business is something that we in the South have been accused of using, but which has actually been used as the tool of the NAACP and its sister radical organizations, including the Communist Party and its subsidiaries.

They speak very fluently of the existence of what they call an official reign of terror throughout the Southern States. Permit me to say, Mr. Chairman, that I think they can very well look into their own back yard to find a reign of terror.

There is not a street in any Southern city that I know of where a person cannot walk down the street in full personal security. I can say categorically that there are streets in the city of Washington, D. C., where a white person would not dare to venture after dark.

That has been illustrated hundreds upon hundreds of times. To use specific cases, three young white high-school students from Mississippi were assaulted by a gang of Negroes on a street here in Washington after dark, an unprovoked assault upon innocent young sightseers.

In March, I received correspondence as a member of the District of Columbia Committee, from a union of workers in one of the Federal agencies, this union being made up primarily of lady workers, demanding police protection on the streets at night, and citing specific instances wherein white ladies had been assaulted in Negro sections on the streets at night, for no reason except for the fact that they happened to be white people in a Negro section.

There is not a city or a town in the Southern States but where Negroes are welcome.

The city of Dearborn, Mich., for instance, up in the land of desegregation, integration, and social equality, a city of 97,000 people, has an unwritten law against a Negro spending the night in that town.

The mayor, a gentleman named Hubbard, very openly and frankly admits that that is true, and says that he and the people of that city intend to keep it that way.

As to this reign of terror business, the State of Mississippi has 986,494 Negroes in her population. The city of New York has some sixty-odd thousand fewer; they have 918,191.

The CHAIRMAN. Is that the city of New York?

Mr. WILLIAMS. I mean the State of New York, I am sorry.

So you might say that they have practically the same colored population. Yet the State of New York has more than five times as many Negroes in prison as does the State of Mississippi.

To be specific, the State of New York Negro prison population is 7,585. The Mississippi Negro prison population is 1,432.

I might add there that the integrated States have more than twice as many Negroes per capita in their penitentiaries as do the segregated States.

So if there is a reign of terror, Mr. Chairman, I think perhaps this antilynching legislation and all of this other police state legislation should be directed primarily at the Northern States rather than at the Southern States, which have enjoyed racial harmony and comity for the past hundred years.

One more point, Mr. Chairman, and then I will stop, and I would like to again thank the committee for its indulgence in hearing me at this length.

That is that the antilynching bill which is before your committee is directed at a nonexistent crime or evil, the crime of lynching. Congressman Davis, in his testimony just preceding, established that fact on the basis of official reports of the United States Government and other agencies, official agencies.

The other day I requested my secretary to contact all of the Government agencies which keep statistical data, including the Library of Congress, the Department of Labor, and other agencies, and to find out for me the number of people who had been killed as a result of violence arising out of labor disputes in the last 10 years.

Mr. Chairman, the Department of Labor, the Library of Congress, and other agencies of this Government kept statistics on every conceivable subject. They could even tell you how many horseflies there are for every square yard in the Chicago stockyards. They can give you statistical data which nobody in the world is interested in. They make it their business to keep statistics.

However, I was surprised to find that no agency of Government keeps any record whatsoever of the number of labor disputes, of incidents of violence arising out of labor disputes, the number of people injured or the number of people killed as a result of labor disputes.

Now, if this legislation is really intended to correct an evil, Mr. Chairman, I think you might well amend this legislation so as to make it include as the basis for describing a crime as a lynching crime, any attack made by two or more persons upon a person who is attempting to exercise not only his constitutional but his God-given right to earn a living.

The CHAIRMAN. Yes, there is an amendment like that pending.

Mr. WILLIAMS. There is an amendment like that pending?

The CHAIRMAN. Yes.

Mr. WILLIAMS. I hope that this committee will act with honesty, with integrity, and without regard to the politics in this situation and, if it reports such legislation, reports such legislation to the Senate, and it eventually reaches the House, that this legislation will include all such crimes as well as the nonexistent crime of racial lynchings, allegedly confined to the Southern States.

Mr. Chairman, I am very grateful to the committee for hearing me, and while this is a subject about which I could talk, as I am sure my distinguished senior Senator could, for 60 days without stopping, I hope he does not have to do that.

Nevertheless, I will close by saying that while Members of the House and Senate whose States and districts are made up of an infinitesimally small percentage of Negro population, and do not have the problem, consider this legislation as a perfect political vehicle for riding themselves back into office, if they just go down South below the Mason-Dixon line, they will find that down there, with whites as well as colored, it is a matter very, very close to our hearts, and a matter about which we do not feel that there should be any political toying.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Congressman Williams.
Mr. Attorney General?
Mr. WIMBERLY. Mr. Chairman.
The CHAIRMAN. Give your name to the reporter.

STATEMENT OF HORACE WIMBERLY, ASSISTANT ATTORNEY GENERAL OF THE STATE OF TEXAS

Mr. WIMBERLY. I am Horace Wimberly, assistant attorney general from Austin, Tex.

The CHAIRMAN. You are the assistant attorney general of the State of Texas?

Mr. WIMBERLY. Yes, sir.

Mr. YOUNG. I understand, Mr. Wimberly, you are going to open your statement today, and then come back at 2:30 tomorrow afternoon and continue with your statement. Would that meet with your program all right?

Mr. WIMBERLY. That would be satisfactory; yes, sir.

Mr. YOUNG. Could you qualify yourself and open your statement at this time, please?

Mr. WIMBERLY. Well, I want to say, likewise, that I appreciate the opportunity of appearing here in this committee, and I have a letter with me from the attorney general of the State which I would like, of course, to read to the committee, and to file with you, and I do not know how much of that you would like to hear this afternoon.

Mr. YOUNG. How long is the letter, Mr. Wimberly?

Mr. WIMBERLY. It is just a page or two. I could read it quickly, if you like.

Mr. YOUNG. Why don't you read the letter, sir, and then we will adjourn until tomorrow at 2:30.

Mr. WIMBERLY. Thank you, sir.

The CHAIRMAN. Read the letter, and I will take it into the record.

Mr. WIMBERLY. This is a letter addressed to Senator Eastland:

DEAR SENATOR EASTLAND: Due to an illness in my immediate family, I regret that I cannot personally appear before your committee at this time. However, Assistant Attorney General Horace Wimberly will represent this office and will submit this letter which sets out my general views on pending civil rights legislation. He will also discuss in some detail the individual bills now under consideration by your committee.

The protection of the civil rights of every citizen in this State is of paramount importance to the people of Texas and particularly important to State and local law enforcement officials. All available evidence indicates that the civil rights of Texas citizens are fully and properly protected at the present time, and that no necessity exists for additional Federal legislation in this field.

No question more vitally affects the delicate balance of State-Federal relations than does civil rights. These relations have been strained to the breaking point by recent Supreme Court decisions thrusting on the Department of Justice, over their protests, such exclusive powers as the control of subversives. Enactment of legislation that would impose harsh Federal controls and authority over local enforcement officials is not only unneeded but could be a disastrous blow to close cooperation between all levels of law enforcement.

Let me say at the outset that I regard most of the civil rights proposals as purely vote-buying gimmicks. While the protection of civil rights is a day-in and day-out proposition, a national election year seems to give the question a powerful resurgence of interest by the Federal Government. Cool heads are needed for any study of civil rights and legislation (particularly in this sensitive field) should not be passed with one eye on the polls. The question boils down to whether the vote of a minority pressure group is worth wholesale Federal in-

vasion of State and local police fields, and whether the rights of all must be jeopardized to gain a few votes.

After studying the proposed measures carefully, I am firmly convinced that their adoption would be the largest single stride ever made toward an absolute Federal police state. Passage of such laws would be a brutal slap to every State in the Union, substituting Federal law for State law, substituting Federal courts for State courts, and imposing unrealistic punishment for possible offenses. If the present situation is a critical emergency which Congress feels would justify an absolute police state, it should not be concealed in these bills. The matter should be submitted to the people in a constitutional amendment.

The proposed civil rights bills can be divided into three major categories as follows: (*a*) Proposing a commission appointed by the President or a joint congressional committee to either investigate alleged civil rights violations or to propose civil rights legislation, (*b*) establishing a separate civil rights division in the Department of Justice or pledging the legal machinery of the Justice Department to support those whose civil rights might have been abridged, (*c*) making Federal felonies out of a number of offenses which have previously been State misdemeanors.

Under (*a*) above, the need for remedial legislation, if any, is clearly the responsibility of Congress, and it should not be delegated to the executive branch. A commission, appointed by the President, just before a national election, would scarcely be divorced of politics. A strictly nonpartisan congressional committee to investigate the need for civil rights legislation might be appointed after the election when it could make a deliberate and unbiased investigation. We would welcome such an investigation in Texas.

With regard to the proposal to establish a separate division for civil rights in the Justice Department, the existing personnel are now devoting considerable time to investigating real and imagined infringements. The FBI training program for civil rights has been well received and is helpful, but the States are already doing a good job through their law enforcement officials. Extra personnel in the Justice Department would be more of an irritant to the States than an aid to the Nation.

The proposals to furnish free legal representation by the Justice Department to all those who contend their civil rights have been impaired would open the door to all sorts of abuses. It would establish a precedent of providing Federal legal services for plaintiffs in all types of cases. It could easily result in not a new section in the Justice Department, but a Department of Free Federal Plaintiffs' Attorneys, even larger than the legal staff of the present Justice Department.

The final group of bills make Federal felonies out of State misdemeanors. One (S. 900) defines lynching as an attempt to commit violence on another's property because of his religion. It has been pointed out that this could result in two Baptists being convicted of a Federal felony for kicking at a Presbyterian's fence and missing! Other bills would impose felony penalties for offenses that haven't been committed in several generations and which have never been considered felonies in nature. Most of these bills are not only unneeded but insulting as well.

The United States Attorney General has just completed a conference on the problem of congestion in the Federal courts. At his invitation we sent a representative to this meeting at which it was established that the Federal dockets are much more congested than are those of the State courts. Much of this congestion results from the trend to make Federal criminal law supreme. Review of State court convictions by Federal courts, establishing of additional Federal offenses, substitution of Federal offenses for State offenses by judicial decree or congressional action raises the very real and apparent danger that continuation in this direction may contribute to establishment of a totalitarian government, as history proves it has in other countries.

Consideration of all of these bills should be postponed until after the elections to avoid the ready explanation that they are vote-buying devices beamed at appeasing a minority pressure group. Many of these bills have been introduced before without any significant success, leaving considerable doubt of their need. Banded together they represent a larger problem, but are not more desirable. If passed, the problems created would be greater than the problems attempted to be solved.

I deeply appreciate the deliberation that this committee is giving these measures, and we are grateful for the opportunity for Mr. Wimberly to appear before you and represent this office.

Sincerely,

JOHN BEN SHEPPERD,
Attorney General.

Mr. YOUNG. Thank you, Mr. Wimberly.
For the record, will you give us your full name, please, sir?
Mr. WIMBERLY. Horace Wimberly.
Mr. YOUNG. And your title?
Mr. WIMBERLY. Assistant attorney general of Texas.
Mr. YOUNG. And your business address?
Mr. WIMBERLY. Capitol Building, Austin, Tex.
Mr. YOUNG. And your home address, please, sir?
Mr. WIMBERLY. 515 Terrace Drive, Austin, Tex.
Mr. YOUNG. Are you an attorney, Mr. Wimberly?
Mr. WIMBERLY. Yes, sir.
Mr. YOUNG. Authorized to practice law in the State of Texas?
Mr. WIMBERLY. Yes, sir.
Mr. YOUNG. Are you here with the permission or under the authority or direction of the Attorney General of the State of Texas?
Mr. WIMBERLY. Yes, sir.
Mr. YOUNG. Upon authority of the chairman, the hearing is adjourned until 2:30 tomorrow, at which time we will hear the rest of the testimony of Mr. Wimberly.
Thank you, sir.
(Whereupon, at 5:25 p. m., the committee adjourned, to reconvene at 2:30 p. m., Wednesday, June 27, 1956.)

CIVIL RIGHTS PROPOSALS

WEDNESDAY, JUNE 27, 1956

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

The committee met, pursuant to adjournment, at 2:40 p. m., in room 424 Senate Office Building.

Present: Senator James O. Eastland.

Also present: Robert B. Young, professional staff member, and Richard F. Wambach, assistant to counsel.

Mr. Young. We are recommencing today the testimony of Mr. Horace Wimberly, Assistant Attorney General for the State of Texas, on civil rights bills before the full Senate Committee on the Judiciary.

Mr. Wimberly opened his statement yesterday, but because of the calls on the floor, the hearing was adjourned until 2:30 today.

Are you prepared to resume your statement, Mr. Wimberly?

Mr. WIMBERLY. Yes, sir.

Mr. YOUNG. Proceed.

STATEMENT OF HORACE WIMBERLY, ASSISTANT ATTORNEY GENERAL OF THE STATE OF TEXAS—Resumed

Mr. WIMBERLY. I concluded yesterday afternoon by reading a letter I brought with me from John Ben Shepperd, Attorney General of Texas.

In addition to these basic and fundamental principles set forth by our attorney general. I would like to express some particular and detailed observations as to legal problems inherent in the civil rights proposals now before Congress, most of which I understand to be assigned to this committee for study.

Senate Concurrent Resolution 8 to establish Joint Committee on Civil Rights: There is no need for this legislation. There are countless committees and organizations throughout the country handling this type problem under both public and private auspices. Such a committee would be a wasteful duplication.

There is a lack of safeguards against the committee being at some time "stacked" with members of both parties who have a political axe to grind against a given section.

This bill does not provide a time limit for the filling of vacancies on the committee, thus raising the possibility of an abnormal ratio in party representation being allowed to exist for a considerable length of time.

The power of subpoena is too broad. The possibility of requiring the presence of any citizen in the country to appear at hearings per-

haps several thousand miles distant, without mention of reimbursement for expenses thus incurred, in order to answer any charge whatever, no matter how ridiculous. It would also enable the committee to subpena books, papers, and documents belonging to the States without the States' consent, thus infringing upon their freedom of action, and perhaps retaining these books, papers, and documents for an indefinite period of time when they might be necessary for the functioning of the State. Thus, the committee could indefinitely impound in Washington the entire records of the State of Texas, if the committee "deems it advisable." There is no limitation other than the discretion of a possibly "stacked" committee in its own subpena powers.

There is no restriction on the use of funds other than the discretion of the committee.

Senate Joint Resolution 29, Proposing constitutional amendment to abolish Poll Tax, etc., as qualification for voting: This would deprive the State of a revenue source. In Texas most of this revenue goes to the school children.

It would make registration fraud easier, and detection thereof more difficult.

S. 900, Federal antilynching bill: The title of this bill is a misnomer. This is far more than an "Antilynching Act."

It makes violence against an individual violence against a group; thus, violence against a white, Germanic Baptist is violence against all these groups.

Mob violence is violence, pure and simple, regardless of the individual's group classification. This bill merely restates State law. Usurpation by individuals of State police powers is already illegal.

Under this bill, failure of the State to secure a conviction in a lynch case makes the lynching the act of the State. Does this then make it liable for damages, etc.?

Lynching is illegal, and merely one of many illegal acts. Does every illegal act in the United States therefore "discredit this country among the nations of the world," and "render it imperative that Congress permit no such acts"? This would declare Congress' responsibility to prevent all murders, felonies, misdemeanors, and civil suits arising thereunder.

Have "the United Nations Charter and the law of nations" come to assume so great a role in domestic criminal actions as to necessitate their inclusion as authority in a bill of this nature?

This bill is also unconstitutional, in that the Federal Government may protect the State against "domestic violence" only at the request of the legislature or the executive. (Art. IV, sec. 4, United States Constitution.)

Must the U. N. Charter be invoked to effect these ends? I was under the impression that the United States Constitution does a pretty good job of this.

A person has no more national right to be free from lynching than he has the right to be free from other forms of murder. The Government can only apprehend the criminals who commit such acts and institute various preventive measures. Each State is doing a good law-enforcement job in this field of State responsibility.

The definition of a lynch mob in this bill is far too broad. The term "attempt to commit violence" allows of far too broad interpretation.

Who is to determine whether or not violence is committed because of race, creed, color, national origin, ancestry, language, or religion? Almost any two people in the United States belong to different groups insofar as at least one of these classifications is concerned. Therefore, almost every act, or attempted act, of violence committed by two or more people against another, would have to be investigated to determine whether or not this is the cause. This would in effect transfer almost all criminal jurisdiction into the Federal courts.

What does "incite" mean? Would it cover such remarks as "This man needs executing" to a friend, come within the meaning of "incite"?

What constitutes "mental injury"? Does calling someone of another group a "sorry so and so," etc., constitute "mental injury"? Such a remark is certainly likely to mentally upset the individual. It is conceivable that such a statement could be classified as causing "serious mental injury" and result in 20 years' imprisonment and a $10,000 fine. This is an absurd provision.

The penalties are far too heavy for what might well be trivial offenses.

There are already State laws dealing with murder, maiming, etc. It is unnecessary for the Federal Government to enter the field.

By the new doctrine of Federal preemption—such as the Pennsylvania sedition case—Federal legislation in the entire criminal field might preempt the entire criminal laws being voided and a national criminal code, changing our Nation into a "police state."

This would result in constant Federal supervision of every local law enforcement officer.

This bill is utterly superfluous. A kidnaping across State lines is just that, regardless of the nature of the individual kidnaped, or the groups to which he belongs, or the reasons for his kidnaping.

This bill would remove virtually all civil suits into the Federal courts, for the same reason given above in regard to criminal actions. It authorizes suits against the States, in violation of the 11th amendment.

It places the burden of proof on the law enforcement officers, who must prove that they used "all diligence and all powers vested in them," rather than on the prosecutor to prove otherwise.

The minimum limit of a civil judgment is unheard of to begin with and far too high when trivial incidents may be involved.

The trial of cases under this bill could be conducted in places other than the Federal courtroom, suggesting many possibilities of trial in places too small to admit of reporters and general public, too remote, etc.

The time of limitation is too long and would permit nuisance or malice charges brought long after the event.

S. 901, Federal anti-poll-tax bill: This bill would deprive the State of a revenue source, would make registration fraud easier, and detection thereof more difficult. This bill is unconstitutional as it violates article I, section 2, which allows the States to prescribe the requirements of suffrage.

S. 902, bill to add Assistant Attorney General to Justice Department to enforce civil rights: No need for such addition.

This bill provides for a wasteful increase in the Department of Justice and FBI, when a need therefor is not shown.

It would allow increased meddling in State affairs and affairs under the jurisdiction of the State by an increasingly imposing Federal police.

S. 903, bill to make Federal offense any interference with voting: This act is superfluous, since it is merely a restatement of case law. It would allow prosecution by the United States Attorney General of large numbers of nuisance and malice suits.

S. 904, bill against peonage, slavery, etc.: This act is totally unnecessary in the present day and time. What does "attempt" include? This could allow of too broad interpretation, and it would give rise to the necessity of determining a man's thoughts and intent, even when no criminal action had taken place.

S. 905, bill to supplement civil-rights laws: This is mainly a restatement of case and statute law and is utterly superfluous.

S. 906, bill to establish a Commission on Civil Rights: The purported findings are unwarranted. No need for such commission has been established, as other agencies, public and private, carry on such work.

Review of action detrimental to civil rights by private individuals is unnecessary, as the Congress, under the 14th amendment, may only legislate against State action.

The discretion of the Commission is the only limitation on the objects on which its moneys are spent.

The subpena power in this bill is too broad. It is conceivable that a State governor could be subpenaed and retained indefinitely to the detriment of State affairs, and his refusal to appear could result in a district court citing him for contempt.

S. 907, general civil-rights bill inclusive of many topics: Title I is identical to S. 906; title II is identical to S. 902; title III is identical to Senate Concurrent Resolution 8; title IV is identical to S. 905; title V is identical to S. 903; title VI is identical to S. 904; title VII is largely a restatement of case law. Segregation in interstate commerce has already been struck down.

S. 3415, bill to establish FEPC: This is nothing more than FEPC with a new name. There is no need shown.

It would be wasteful, as there are already many public and private organizations doing the same work.

Federal intervention is not necessary in formulating plans to promote civil rights.

It smacks too much of a propaganda agency.

Its investigation powers are so broad that it may interfere with and interrupt any individual's business upon nuisance or malice charges being brought.

The subpena power is too broad. The same criticism is due in this case as in Senate Concurrent Resolution 8.

There is no need shown for financial assistance to a State civil-rights commission. The States desiring such a commission are financially able to pay for it themselves.

S. 3604, bill to appoint additional Assistant Attorney General: No need shown for an additional Assistant Attorney General.

S. 3717, bill to authorize Federal Government to prosecute civil suits for persons making civil-rights complaints: This would furnish the resources of the Federal legal branch as counsel for individuals.

No need shown.

It would allow the individual to go directly into Federal court, without even trying to obtain relief through State channels.

Lawyers in private practice are able to represent the plaintiffs as well as the defendants in civil causes for damages claimed for violations of civil rights, and should not be supplanted in this regard by a huge and costly increase in a Federal Government agency.

S. 3605, bill to establish Civil Rights Commission: The subpena and contempt powers are too broad.

There is no protection against the Commission being "stacked" against a section.

The powers are too broad.

Since when has "social" discrimination become the concern of the Government, Federal or otherwise?

S. 3718, bill against vote interference and to authorize Federal Government to represent individuals in civil-rights litigation: What is the interpretation of "attempt"? This could be far too broad. How is the Attorney General to determine when a person "is about to engage"? This would involve judging a man's thoughts.

This bill makes the Federal legal branch a private counsel for individuals, and opens the door to the Government taking over all law practice in all fields.

It removes the case into Federal court without trying State remedies.

It seems that a number of persons have come before your committee to tell of instances which they characterize as violations of civil rights, and infer that in some of these instances the local law-enforcement officers were to be blamed for not solving the crime. We of Texas are proud of our law-enforcement officers, and would welcome having your committee visit our State and personally investigate our law-enforcement procedures. We believe you wouuld find us justified in our high evaluation of our law-enforcement record.

Of course, no enforcement system can be perfect all the time. That includes the Federal law-enforcement agencies. Therefore any argument based on the allegation that because in some instances local enforcement has not produced conviction of every criminal, such local enforcement must be discarded and replaced with Federal Government enforcement agencies is clearly erroneous.

Various local, State, and Federal law-enforcement agencies are daily cooperating in getting their respective jobs done. This voluntary cooperation is far more to be desired than to have a Federal police state imposed upon the people.

There always has been and always will be minority groups seeking various types of legislation. States are taking steps to protect the rights and privileges of the people within their borders, but must not be subjected to Federal Government pressure to make all State laws conform to one set pattern.

To grant wishes of one group will usually infringe upon the wishes of another, but in any event the States should determine what laws are needed in this field.

Mr. YOUNG. That is a very fine statement, Mr. Wimberly.

I would like to ask you a few questions, if I may.

Mr. WIMBERLY. Yes, sir.

Mr. YOUNG. I direct your attention to S. 900, the antilynching bill. Do you have a copy?

Mr. WIMBERLY. Yes, sir.

Mr. YOUNG. This bill, as you are aware, has a very broad definition of lynching, does it not?

Mr. WIMBERLY. Yes, far too broad.

Mr. YOUNG. Heretofore a classic case of lynching has been that where a mob seizes a prisoner in jail and takes him out and exercises some corrective power over the prisoner. Is that about the historic pattern of lynching?

Mr. WIMBERLY. That is my understanding of it; yes, sir. And I think the people in each State have become so thoroughly convinced that lynching comes under that definition, where either murder or maiming is involved, that a public sentiment has grown up against that type of action. And therefore, the very term "lynching" is a term that arouses in the minds of every individual a feeling that it should naturally be stamped out and stopped. In fact, I believe it has been. But I believe it is the effort of the people writing this bill to carry over into the bill the term "lynching" in order to gain that public opinion against the acts they are trying to bring under the jurisdiction of it.

Mr. YOUNG. It is really an antidiscrimination bill, is it not?

Mr. WIMBERLY. It just covers such a broad field of attempts and thinking and any type or form of imaginative discrimination, that I don't believe it could really be called lynching, in any way.

Mr. YOUNG. Isn't 50 percent of the bill directed to property damage?

Mr. WIMBERLY. Property damage and attempts to damage property, are included to a great extent in the bill.

Mr. YOUNG. To get it clear in the record, does an individual in this country have a right to be free from lynching, as a Federal right?

Mr. WIMBERLY. Well, I think that is an individual right that each State—it is the duty of each State to protect him with their police and with their criminal machinery.

Mr. YOUNG. My question is: Is it a Federal right?

Mr. WIMBERLY. No; I don't see that it would be a Federal right.

Mr. YOUNG. Do you have a Federal right to be free from assault and battery?

Mr. WIMBERLY. No, sir, I wouldn't say it is a Federal right.

Mr. YOUNG. Do you have a Federal right to be free from theft committed upon you?

Mr. WIMBERLY. Well, as distinguished between the State right and the Federal right, there is no Federal right involved in those individual crimes.

Mr. YOUNG. In other words, your right to be free from theft, your right to be free from assault and battery, and your right to be free from lynching, are State rights, are they not?

Mr. WIMBERLY. Yes.

Mr. YOUNG. If you are burglarized you go to your State sovereign and complain, and it is his job to try and catch and apprehend and punish the culprit, is it not?

Mr. WIMBERLY. That is my understanding of the law.

Mr. YOUNG. Not the Federal Government's job, is it?

Mr. WIMBERLY. No.

Mr. YOUNG. This bill attempts to make it the Federal Government's job, does it not?

Mr. WIMBERLY. It certainly does; yes, sir.

Mr. YOUNG. Do you know of any case that has been tried before the Supreme Court, where the Supreme Court has said that the Federal Government has the right to exercise criminal sanctions when one individual commits a crime upon another?

Mr. WIMBERLY. Well, unless there is some peculiar, we will say, interstate angle to the crime some way, I don't know——

Mr. YOUNG. The Federal Government would have the right if there were interstate commerce involved.

I am talking about individual action within the State borders.

Mr. WIMBERLY. I do not know of it.

Mr. YOUNG. Isn't it true that we have a list of cases extending over 80 years that have never been upset, and the Supreme Court has categorically said that the Federal Government has no right to intervene in an action of a criminal nature occurring in a State?

Mr. WIMBERLY. It is firmly established that way.

Mr. YOUNG. Then this bill, according to the law as we know it today, is not constitutional, is it?

Mr. WIMBERLY. No, sir, I don't think it is constitutional.

Mr. YOUNG. Now, you will notice in the first four pages of this bill, the framers have attempted to set out a new doctrine which the Supreme Court, they hope, will espouse, in order to hold this bill constitutional, because they also know of this 80 years of uninterrupted cases against it.

Have you read those purposes in pages 1 to 4?

Mr. WIMBERLY. Yes, I have.

Mr. YOUNG. Well, I will review them for you.

Mr. WIMBERLY. All right.

Mr. YOUNG. They state that this bill could be held constitutional on the basis of the 14th amendment.

Is it not true that the 14th amendment is a prohibition against State action and not individual action?

Mr. WIMBERLY. Yes, that is right, to prohibit the States from taking action detrimental to the matters set out in that amendment.

Mr. YOUNG. There is nothing in the 14th amendment that prohibits individual action against individuals?

Mr. WIMBERLY. No, it doesn't authorize the use of the Federal Government to enforce any laws in that regard, one way or the other.

Mr. YOUNG. Well, if you will read further in the purposes of this bill, you will see that the doctrine is that under the 14th amendment, lynchers are actually agents of the State, and therefore it is State action, and they hope that the Supreme Court will espouse that argument and say that a lyncher in a mob is a State officer at the time he is lynching, and therefore it is State action, and therefore the 14th amendment applies.

What do you think of that doctrine?

Mr. WIMBERLY. That is so utterly absurd that it is hard to feature a person writing such a bill, because to make a person an agent of government because that person violates the very laws of that State government, looks like working in reverse. It is just impossible to reconcile the line of reasoning there with any kind of established law.

Mr. YOUNG. It is an absurd line of reasoning, isn't it?

Mr. WIMBERLY. I never could figure out how they could have any basis of law in that, to make a person an agent because he did something against the one they want to call his principal.

Mr. YOUNG. Yet it has certain dangers; does it not? In the school segregation cases handed down by the Supreme Court, the opinion says that the 14th amendment doesn't mean today what it meant when it was ratified, because times have changed.

In other words, we have a new philosophy now, that the amendments to the Constitution change from time to time and from place to place.

Mr. WIMBERLY. That is right. That would tend to diminish the protection of the precedents that we try to follow in our legal reasoning in these matters.

Mr. YOUNG. Now, it gives us a second ground of constitutionality in this bill, the republican form of government in the Constitution, which says that every State shall have the republican form of government.

The theory of the framers of this bill is that when you have a lynching, all recognized forms of government in the State have broken down, and chaos reigns; therefore, there is no form of government, let alone a republican form of government, and then Uncle Sam can come in and exercise punitive powers because it has the authority under the Constitution, under the republican form of government clause.

What do you think of that argument for the constitutionality of this bill?

Mr. WIMBERLY. I can't see that at all, because actually when an individual or 1 or 2 individuals commit some crime, that certainly could not indicate even that a State's law enforcement law machinery had broken down in anyway.

Mr. YOUNG. Let's take a practical point of view:

If there was a lynching in any State, isn't it a local affair?

Mr. WIMBERLY. I consider it entirely a local affair.

Mr. YOUNG. It is the hysteria of the moment in a small locality; is it not?

Mr. WIMBERLY. It is. Those things can break out anywhere, of course. But the State is able to take care of them, and I think the history of the situation shows that lynching, as such, as it is known to the law—that is, where murder or maiming results from a group of people taking sudden action, you might say, against an individual—that that is practically unknown. If it does break out, it is a very, very unusual situation, and it, of course, creates a lot of news in the papers, like a murder, a bad wreck, or anything like that that happens. But the State can step in, and if local law-enforcement officials can handle the situation—and they can—there is no need for the federal officials to step in, or in trying to take that as a basis for the broad interpretation including all types of discrimination in the State field as subject to Federal jurisdiction.

Mr. YOUNG. If you have a little violation in the picket law in Detroit, would you say that all law enforcement in Michigan has broken down, and that the Government should come in?

Mr. WIMBERLY. No; I would not.

Mr. YOUNG. If you had a gangster killing in New York, would you say that all law-enforcement agencies of the State of New York have broken down, and the Federal Government should step in and take over the law enforcement of the State of New York?

Mr. WIMBERLY. No, sir.

Mr. YOUNG. That just won't bear with the facts, will it?

Mr. WIMBERLY. No, sir.

Mr. YOUNG. Isn't it true that the cases under the republican form of government clause of the Constitution, in those cases the Supreme Court has always brushed it aside on the basis that it is a political question, and they will not go into it?

Mr. WIMBERLY. Well, up to now; yes, sir.

Mr. YOUNG. I direct you to the third basis for holding this bill constitutional, which is set out in this bill.

It says that the bill is constitutional under the Federal Government's power to define and publish offenses against the law of nations, as set out in the Constitution.

Do you know of any place in any court decision where offenses against the law of nations is set out?

Mr. WIMBERLY. I don't know of them being set out. I don't know of any case actually based upon them.

Mr. YOUNG. Do you know of any textbook in constitutional law that lists the offenses and crimes against the law of nations?

Mr. WIMBERLY. No, sir; I do not.

Mr. YOUNG. Do you know of any treatise that has attempted to set them out?

Mr. WIMBERLY. I do not.

Mr. YOUNG. There are none, and we don't know what they are.

Mr. WIMBERLY. That is right.

Mr. YOUNG. The last basis for holding this bill constitutional is the United Nations Charter.

Now, the argument goes this way, that when we ratified the United Nations Charter, it contained two provisions, 55 and 56 of the charter, to the effect that all nations in the world should see that there should be no discrimination based on race, creed, color, and so forth.

Under the power, the ratification of that charter, in the doctrine of *Missouri* v. *Holland*, the Federal Government now has the power to publish individual action against individuals in the State, and it did not have that power previously. It is the old theory of raising yourself by your bootstraps via the treaty route.

What do you think of that doctrine?

Mr. WIMBERLY. Well, that would seem to be an incident in that type of case—it doesn't look like it was sound. It was injected into the decisions there all right, but it looks to me like it is just opening the door to maybe turning over our soveriegnty to world power some way. It doesn't look healthy, at all, to me.

Mr. YOUNG. In a logical promulgation of it, the United Nations could go into a county and charge individuals with crimes. Would that not destroy the county sovereignty?

Mr. WIMBERLY. I think it would destroy all sovereignty, other than the United Nations.

Mr. YOUNG. It would destroy the sovereignty of the State, county, State and local sovereignty; would it not?

Mr. WIMBERLY. Yes, sir.

Mr. YOUNG. It is the one world doctrine; is it not?

Mr. WIMBERLY. It looks as if that is what it would point to, or open the door to.

Mr. YOUNG. And yet it is offered here as a basis for holding this bill constitutional.

I direct you to the "definitions" section of the bill, Roman numeral IV. It is a one-page definition tucked down in the bottom of it, the historical definition of lynching. The rest of it is new. Ludicrous examples have been cited here a number of times of this extension of property damage to lynching. That is a tremendous extension of the criminal powers of the Federal Government; is it not?

Mr. WIMBERLY. That is a very, very far-reaching extension that they propose in such a definition.

Mr. YOUNG. I direct you to the section of the bill which is headed "Duty of the Attorney General of the United States." And that goes on to state that if any of these acts happen here, it is the duty of the Attorney General of the United States to carry out his obligations under the law; is that necessary?

Mr. WIMBERLY. I would consider it unnecessary in our present setup, but if legislation of this nature should by any chance get on the books, I suppose his duties would be just beyond all measure, and I don't know that anybody could even define what those duties are.

Mr. YOUNG. What I mean is, do you have to legislate a public official to do this duty?

Mr. WIMBERLY. Well, I can't see that there would be any need of saying that a man shall do his duty.

Mr. YOUNG. Do you have a Texas statute that says the Attorney General of Texas must do his duty?

Mr. WIMBERLY. That is implicit in his very oath of office, when he takes the office and goes to work. There would be no statute saying that a man shall do his duty—that is, no well-considered legislation. Sometimes things get on the books——

Mr. YOUNG. Do you know of any State in the country that has a law on the books that says the State attorney general shall do his duty?

Mr. WIMBERLY. I am not personally acquainted with any law that sets it out that way. I understood that any public official is to do his duty; whatever the duties of his office are, he is to perform his duties.

Mr. YOUNG. Are you acquainted with the fact that in the 80th Congress and 81st Congress, this committee specifically turned out this bill, S. 900, and refused to report it, and reported out instead S. 91, for the reason that it was unconstitutional?

Mr. WIMBERLY. That is my understanding of it, yes.

Mr. YOUNG. Has anything transpired in the history of jurisprudence since the 80th and 81st Congresses that would lead you to believe that it is now constitutional, when it wasn't before?

Mr. WIMBERLY. It would not lead me to believe it was constitutional. I can't see any constitutionality to it.

Mr. YOUNG. I would like to direct your attention to S. 903, the bill entitled, "To protect the right to political participation."

The first section of this bill is a restatement of case law, as you pointed out in your testimony. If the law of the land is stated clearly in cases, do you think it necessary that it be enacted into law?

Mr. WIMBERLY. It looks to me like it is certainly unnecessary legislation, to do a thing like that.

Mr. YOUNG. Would it surprise you to know that bills containing this provision here go back at least 10 years in Congress?

Mr. WIMBERLY. Yes, it does.

Mr. YOUNG. And the cases that settled this section 1 into case law were handed down during that intervening period, making this provision obsolete, and it looks, does it not, as though the sponsors of this bill forgot to check the law and leave this provision out before they introduced this legislation?

Mr. WIMBERLY. Either that, or they have no basis for believing that the court decisions will remain with any stability. They must consider court decisions entirely unstable, or something. I can't see why they would write such a bill.

Mr. YOUNG. Wouldn't it better fit the category that this is another old chestnut that they dumped into the hopper in the new Congress?

Mr. WIMBERLY. I think you are right.

Mr. YOUNG. The same criticism is of course true of section 2, a part of that is case law.

I presume that the sponsors of this bill were not aware that it was unnecessary, and it had already been enacted into law by judicial determination.

Mr. WIMBERLY. They must not have known it.

Mr. YOUNG. One bill you didn't testify on here is a House bill to bring members of the Armed Forces under the protection of the present penal code, which lists certain officers of the Coast Guard, judges, attorneys, marshals, post office inspectors, secret service inspectors, at section 11 of title 14, and it adds to that members of the Armed Forces.

Is it not true that the code section that I mentioned covers only those personnel in the Government whose duties have a certain hazard attached to them? They are engaged in investigatory work of one kind or another, and there is a hazard attached to their work, and so there is a statute to protect them.

I will name them for you: United States attorneys and their assistants; marshals and their deputies; post office inspectors; Secret Service personnel; FBI; immigration officers; narcotics personnel. Personnel in that category are engaged in hazardous duties, and there is a Federal law to protect them.

Is that not true?

Mr. WIMBERLY. It looks like there is a clear distinction there.

Mr. YOUNG. Now, are the personnel of the Armed Forces in the continental United States in peacetime engaged in that type of duties?

Mr. WIMBERLY. They wouldn't have that type of personal danger or personal animosities that they would create by their duties.

Mr. YOUNG. There is no more need to include them than there would be the postman on his beat or a civil-service worker or the personnel of Congress, is there?

Mr. WIMBERLY. I don't see that there would be any more need, at all.

Mr. YOUNG. Thank you, sir.

That is all.

(Whereupon, at 3:25 p. m., the committee adjourned.)

79992—56——20

CIVIL RIGHTS PROPOSALS

FRIDAY, JULY 6, 1956

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

The committee met, pursuant to adjournment, at 2:40 p. m., in room 424, Senate Office Building Senator John L. McClellan, presiding.

Present: Senators McClellan and Dirksen.

Also present: Robert B. Young, professional staff member, and Richard F. Wambach, assistant to counsel.

Senator MCCLELLAN. The committee will come to order. The witness is Mr. Taylor. Come around, please, sir.

All right, Mr. Taylor, you may proceed. I believe you have a prepared statement, have you?

Mr. TAYLOR. Yes, sir.

Senator MCCLELLAN. Do you wish to read it?

Mr. TAYLOR. Yes, sir.

Senator MCCLELLAN. All right, sir, you may proceed.

STATEMENT OF TYRE TAYLOR, GENERAL COUNSEL, SOUTHERN STATES INDUSTRIAL COUNCIL, NASHVILLE, TENN.

Mr. TAYLOR. I appear on behalf of the Southern States Industrial Council, the headquarters of which are in the Stahlman Building in Nashville, Tenn. My own address is 917 15th Street here in Washington.

The council was established in 1933. Its membership is comprised of industrial and business concerns in the 16 southern States including Maryland, West Virginia, Missouri, and Oklahoma. This membership represents all lines of manufacturing and processing, mining, transportation, and related industries and accounts for very substantial employment throughout the region.

On January 6, 1956, in his state of the Union message, President Eisenhower said:

> It is disturbing that in some localities allegations persist that Negro citizens are being deprived of their right to vote and are likewise being subjected to unwarranted economic pressures. I recommend that the substance of these charges be thoroughly examined by a bipartisan commission created by Congress.

That was the extent of the President's recommendation.

On April 9, 1956, the Attorney General wrote the President of the Senate and the Speaker of the House submitting four proposals in

the field of civil rights. In addition to the study commission already recommended by the President, these included—

1. A proposal to create a Civil Rights Division in the Department of Justice;

2. A proposal to give additional Federal protection to the right to vote and to provide civil remedies in the Department of Justice for its enforcement; and

3. The addition of civil remedies in the Department of Justice.

As I understand it, this is the program now before you and that is the administration program, and to it I shall address my remarks.

Of course the Executive already has the power to appoint a civil-rights commission. President Truman did in fact appoint such a commission. The reason why the administration wants a commission created by Congress was explained by Mr. Brownell in his appearance before this committee on May 16, 1956. He said:

> For a study such as that proposed by the President, the authority to hold public hearings, to subpena witnesses, to take testimony under oath, and to request necessary data from executive departments and agencies is obviously essential. No agency in the executive branch of the Government has the legal authority to exercise such powers in a study of matters relating to civil rights.

So, what you are asked to create is a Federal commission with full subpena powers which would investigate not only the matters referred to by the President in his state of the Union message, but in the words of Mr. Brownell to this committee—

> It will study and collect information concerning economic, social, and legal developments constituting a denial of equal protection of the laws. It will appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Federal Constitution.

That, gentlemen, would seem to be about as broad a delegation of authority as even the NAACP could want. Under it, the Commission could require persons to appear before it and produce records in Washington or any other place the Commission might choose to hold hearings.

If past experience is to serve as a guide, most of the voluntary witnesses would be representatives of the NAACP, the American Civil Liberties Union, Americans for Democratic Action, and similar left-wing organizations. And as a minority of the House Judiciary Committee has pointed out—it is a well-known fact that more unreasonable complaints are made in the field of civil rights than in any other field. A study by Tom Clark shows that in 1940, 8,000 civil rights complaints were received, with prosecutions recommended in 12 cases, including Hatch Act violations. In 1942, 8,612 complaints were received, with 76 prosecutions. In 1944, 20,000 complaints were received and 64 prosecutions undertaken, but it is not known how many were convicted.

There is no indication as to what this Commission will cost the taxpayers. It is to be provided with a paid staff and the Commissioners themselves under most of the bills are to be paid $50 a day.

So much for the proposed Commission. It would appear to be merely another Federal agency designed primarily for harassment and propaganda purposes. And it goes without saying that its primary interest and activities would be directed at the South.

The provision for an additional Assistant Attorney General and the creation of a Civil Rights Division in the Department of Justice is a

further invasion of a field which has been traditionally reserved to the States.

The approach here is the usual one by which bureaucracy expands and proliferates.

First, a Civil Rights Section of the Criminal Division is to be expanded into a Civil Rights Division. The Attorney General in his statement to his committee said this was necessary because the Justice Department had been obliged to engage in activity in the civil-rights field which is noncriminal in character. In support of this proposition, he cited the case of where the Department intervened—

to prevent by injunction unlawful interference with the efforts of the school board at Hoxie, Ark., to eliminate racial discrimination in the school in conformity with the Supreme Court's decision.

Of course, if—as is proposed in other parts of the Attorney General's recommendations—the United States Government is to become the legal guardian of all the groups covered by this legislation and is to invade the States and localities and become the enforcer of all the Supreme Court decisions and decrees of recent years relating to integration, education, primary elections, and so on, then not only is an additional Assistant Attorney General necessary, but he will require the help of a veritable army of lawyers, investigators, hearing examiners, and clerical staff members.

Mr. Maslow, general counsel of the American Jewish Congress, said last year in the hearing before the House Judiciary Committee that this division should have 50 lawyers in it. In view of the enormous scope of the duties to be assigned to it, this would seem to be a conservative estimate.

We hear—and you have heard—a great deal about the overworked Federal judiciary, the backlog of cases, sometimes extending back for 3 years, and the need for additional judges. All I can say is that if you provide that the Attorney General can, without exhausting State judicial and administrative remedies and with or without the consent of the complainant, go into the Federal courts on behalf of the private parties in interest, then no one can estimate how many additional lawyers and judges will be required at the taxpayers' expense.

The Attorney General's third recommendation is that section 1971 of title 42, United States Code, be amended by—

First, the addition of a section which will prevent anyone, whether acting under color of law or not, from threatening, intimidating, or coercing an individual in his right to vote in any election, general, special, or primary, concerning candidates for Federal office.

Second, authorization to the Attorney General to bring civil proceedings on behalf of the United States or any aggrieved person for preventive or other civil relief in any case covered by the statute.

Third, express provision that all State administrative and judicial remedies need not be first exhausted before resort to the Federal courts.

The purpose of these recommendations is crystal clear. It is to permit the Federal Government to enter into a field which heretofore has been reserved to private persons and to do this without complying with the usual requirement that State administrative and judicial remedies be exhausted before resort to the Federal courts.

How would this operate in practice? Let's take the Lucy case. In that instance, the complainant sought to enter the University of Alabama under a court order obtained for her by the NAACP. All the expenses of this proceeding were borne by the State of Alabama and the NAACP. However, if the Attorney General's proposal had been law, we can imagine then what would have happened.

The NAACP would have been camping on the doorstep of the Department of Justice seeking direct intervention—at the expense of the taxpayers—just as was done in the Hoxie, Ark., school case.

This would relieve the NAACP of a large part of its present expense and release funds for fomenting other cases in which the United States would be called upon to intervene.

At the same time, the cost to the States for legal services and litigation would be greatly increased. In practice, this added cost would, of course, fall mainly on the States of the South at which this legislation is aimed.

However, taxpayers everywhere should be interested in this effort—in effect—to subsidize the NAACP by making the Department of Justice its enforcement arm.

The Attorney General's final recommendation is that he be authorized to institute a civil action for redress or preventive relief whenever any persons have engaged or are about to engage in any acts or practices which would give rise to a cause of action under the present provisions of the law. He says that such an amendment would provide a procedure for the enforcement of civil rights which would be far simpler, more flexible, more reasonable, and more effective than the criminal sanctions which are the only remedy now available.

Granted that the right to vote is one of the most important rights of any American and that all the Attorney General says about the virtues and advantages of a civil action is true, the question nevertheless remains as to the propriety of the Federal Government entering this field at all.

Up to now the right to vote has been controlled by the States. If this historic principle is to be abandoned and additional broad powers to regulate elections are to be vested in the Federal Government, surely this should be accomplished by a constitutional amendment as the President recognized in his recommendation that 18-year-olds be given the vote.

As a minority of the House committee observed—

> * * * Assuming, for the sake of argument, that the Supreme Court would overturn recognized constitutional doctrine and uphold (such an) expansion of Federal power, this is no reason for Congress in the first instance to fly in the face of the traditional and historical American policy of leaving the control of elections to the States and to the people.

In conclusion, may I raise a question that troubles me? Why all this unfriendly Federal preoccupation with the South? Or to put it another way, why is it that some northerners—not all or even the majority, but some—seem to hate the South and to be determined to destroy its civilization and way of life?

I don't think this hostility is a hangover from the Civil War. After all, that war is almost a full century behind us. Furthermore, the North won the Civil War and it is not in American character to

hold a grudge against the losers—as witness our generous and continuing aid programs for our late enemies, the Japs and the Germans.

Nor do I think this hostility can be attributed to the South's great industrial advances of recent years and the fact that, in many fields, it is a tough competitor of the North.

I say this for two fairly obvious reasons: One, ordinary business competition does not engender—at least it does not normally engender—animosities of the kind that are here involved; and two, the South haters do not include more than a corporal's guard of northern businessmen who are the ones who would feel this competition most severely.

Could this animosity perhaps arise from some sort of inferiority complex—or possibly unconscious envy of the South's milder climate and gentler, less pushing and less ruthless way of life? Or could it be a product of resentment of the South's conservatism and a knowledge on the part of the northern so-called liberals that on this, the South is eternally right and will be proved so by history?

I don't know. It is a problem that both bothers and fascinates me. I think it would be a good subject for a research project by the Fund for the Republic or some other equally unbiased foundation or organization. That concludes my statement. I thank you.

Senator McCLELLAN. Senator Dirksen, any questions?

Senator DIRKSEN. No questions.

Senator McCLELLAN. You appear here as attorney for this organization, I believe?

Mr. TAYLOR. Yes, sir.

Senator McCLELLAN. And has the organization passed any resolution opposing these bills?

Mr. TAYLOR. Yes, sir.

We held a board meeting in Ponte Vedra, Fla., in May and reaffirmed a resolution that they had on this very subject.

Senator DIRKSEN. Generally speaking, Mr. Taylor, you are opposed to any Federal action in this field?

Mr. TAYLOR. That is correct.

Senator DIRKSEN. That sums up your position in a nutshell?

Mr. TAYLOR. Right.

Senator McCLELLAN. Any other witness?

Mr. YOUNG. No.

Senator McCLELLAN. Thank you very much, sir.

The committee is adjourned.

(Whereupon, at 2:55 p. m. the hearing in the above-entitled matter was adjourned.)

CIVIL RIGHTS PROPOSALS

FRIDAY, JULY 13, 1956

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

The committee met at 9 a. m. in room 424, Senate Office Building, Senator James O. Eastland, presiding.

Also present: Robert B. Young, professional staff member and Richard F. Wambach, assistant to counsel.

Senator EASTLAND. The committee will come to order.

Mr. YOUNG. The witness, Mr. Chairman, is Hon. Eugene Cook, attorney general from the State of Georgia.

Senator EASTLAND. We are honored to have you as a witness, General Cook, and you may proceed with your statement.

STATEMENT OF EUGENE COOK, ATTORNEY GENERAL OF THE STATE OF GEORGIA

Mr. COOK. My name is Eugene Cook. I am the attorney general of the State of Georgia. My address is Judicial Building, State Capitol, Atlanta, Ga. I am appearing before this committee in my capacity as the attorney general of Georgia.

THE CIVIL RIGHTS BILLS

Mr. Chairman, gentlemen of the committee, I appreciate the opportunity to submit to you my views respecting the so-called civil rights bills. I am here in opposition to all of them in general.

As of July 13, 1955, there were over 50 of these bills pending before Subcommittee No. 2 of the House Committee on the Judiciary.[1] There are 10 such bills before this body now to which my remarks will be hereinafter addressed. The only inference to be drawn from this vast array of highly punitive, far-reaching legislation is that the idea prevails in certain quarters that the several sovereign States of this Union constitute inherently evil, oppressive, callous, and tyrannical wielders of power which must be checked and regulated in much the same fashion as pool halls, beer parlors, houses of prostitution, and other entities having like potentialities for wrongdoing.

It is certainly a sad commentary that the same congressional body which once hesitated to enact the Smith Act designed to protect against the most subtle and dangerous conspiracy of international gangsters ever known now proposes to summarily enact a code of laws which goes much further in policing and restraining States rights and individual liberty than was done with respect to the Communist Party, which itself undoubtedly rejoices at suggestion of the instant centralization of power.

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[1] See the printed report of the committee, p. 1.

The total white population of the United States is 134,942,028, or almost 135 million. The total Negro population is 15,042,286, or roughly, 15 million, or approximately 11 percent. However, according to a report [2] released recently by the FBI, approximately 29 percent of all arrests made during 1955 in cities of over 2,500 population were of Negroes. In the field of arrests for crimes of violence, the percentage of Negro arrests was even greater, being approximately 42 percent of all arrests for rape, over 63 percent for narcotic-drug violations, approximately 63 percent for aggravated assaults, and almost 60 percent for murders and nonnegligent homicides.

Although Negroes comprise 30.8 percent of the population of Georgia, there are 4,724 Negroes in the Georgia penal system as compared to only 3,065 whites.[3]

Notwithstanding the foregoing statistics, indicating a great disparity between the number of Negro law violators as compared to the percentage of Negro population, no one has even remotely suggested the need for Federal legislation to protect the white people against the disproportionate number of Negro criminals.

Although there are very few reported crimes of violence committed by whites against Negroes in Fulton County, Georgia's most populous county, hardly a day goes by without some report of a white person being raped, robbed, assaulted, or murdered by a Negro in the Atlanta area, and yet here again, in spite of this deprivation of the most fundamental of all civil rights, the right to protection against personal violence, we are nevertheless confident that the State can adequately protect the rights of all, in keeping with repeated holdings of the Supreme Court that it is the States who are the primary guarantors of all civil rights under our form of government.

In 1955 there were 65 murders committed by Negroes as compared to only 14 by white persons; 29 rapes by Negroes as compared to 8 for whites; 574 aggravated assaults by Negroes as compared to 181 for whites, and 77 robberies by Negroes as compared to 56 by whites.[4]

On the other hand, no one seems to dispute the fact that the number of so-called lynchings and incidents of mob violence are now at an alltime low, and continue on a course of steady decrease.

When Attorney General Brownell appeared before the Judiciary Committee of the House on April 10, 1952, he referred to the fact that there had been no lynchings since 1951, and that Tuskegee Institute had recorded a steady decline year by year.[5] The lack of need for such legislation was further illustrated in the failure of all Government agencies to appear and testify in response to invitation.[6] The lone agency which did apear, the Housing and Home Finance Agency, appeared not to testify for any of the bills, but rather to caution against legislation aimed at discrimination in housing which might upset the mortgage market.[7]

In Georgia, my office has not hesitated to take quick action to protect all citizens against lawlessness. Several years ago, we revoked the charters of the Ku Klux Klan and another organization which

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[2] Uniform Crime Reports, No. 2, p. 117, released by the FBI on April 30, 1956.
[3] Annual Report of the Georgia State Board of Corrections, covering period from July 1, 1954, through June 30, 1955, p. 50.
[4] See 1955 Annual Report of the Atlanta Police Department, pp. 17, 19.
[5] See pt. 2, p. 24 of transcript of hearing.
[6] See transcript of hearings before Subcommittee No. 2, July 13, 14, and 27, 1955, p. 131.
[7] Id., pp. 214–228.

styled itself the "Columbians,"[8] both of which were found to be advocating private assumption of governmental powers. The only reports of incitement to violence we have had in Georgia recently have come not from the foes of racial amalgamation, but from its proponents. In a speech delivered on February 13, 1956, at Paine College in Augusta, Ga., the chairman of an interracial committee appointed by a leftwing organization named the Southern Regional Council, whose predecessor, the now defunct Southern Conference for Human Welfare, which was years ago exposed by the House Committee on Un-American Activities as subversive, advised all Negroes in Georgia to use crowbars on the heads of white citizens in order to enforce their respect.

Moreover, the Federal courts in Georgia have functioned effectively under existing laws, and have gone further in protecting against police brutality than the United States Supreme Court was inclined to go. In *Screws* v. *United States* (325 U. S. 91, 103), decided in 1945, the Supreme Court reversed the conviction of a Georgia sheriff under the civil-rights statute who had needlessly killed a Negro prisoner while making an arrest. Although the Court of Appeals for the Fifth Circuit had upheld the conviction, the Supreme Court held that the only way the statute (now 18 U. S. C. A. 242, making penal any deprivation of due process under color of law) could be held valid as against assertions of unconstitutional vagueness, was by requiring a jury finding that the defendants acted with the specific intent of depriving the victim of a Federal right, regardless of the existence of a general evil intent or purpose. It goes without saying that this decision was based on constitutional grounds and I am sure no one would ever advocate that in a suicidal endeavor to secure due process to one person, an accused be denied due process by being subjected to the vagaries of judicial construction as to whether the acts charged against him violated "due process." In other words, criminal statutes should not go too far in dispensing with the mens rea requirement particularly where the offense is based on such a continual expanding concept as due process, as to which even the courts are in dispute.

Within the past year or so, a Federal district judge in the middle district of Georgia has in effect held that the requirement of specific intent enunciated in the Screws case does not apply in a civil action for injunction under title 42, United States Code Annotated, section 1985 (3), which was brought complaining of an erroneous interpretation by the registrars of the State voters registration law which resulted in some voters being deprived of the right to exercise their franchise.[9] The court simply excluded good faith as a defense.

I think it is also not without significance that the multitude of these civil-rights proposals are systematically ignored for long periods and then suddenly resurrected with unerring faithfulness during election years, apparently in a mad scramble to corral the minority bloc vote. This fact alone is sufficient to indicate that the majority of Congress realizes there is no need for such legislation, but on the contrary, is tacit recognition of the existence of blocs and pressure groups which are concerned only with their self-interests, and have no respect for

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[8] See Opinions Attorney General of Georgia, 1945–47, p. XIX.
[9] See *Thornton* v. *Martin*, civil action No. 520, filed August 1954, middle district of Georgia, Macon, Ga.

the dual system of government conceived by the Founding Fathers and which is largely responsible for the freedoms we now enjoy.

That all of this election year agitation is politically inspired is further evidence by recent newspaper reports that the public relations director of Citizens for Eisenhower has announced their strategy to be exploitation of the race issue during the coming campaign. The Supreme Court decision on segregation in the public schools has already set us back 50 years in race relations, and I earnestly and respectfully urge this body and all political candidates not to take any action that would further impair the excellent understanding that has prevailed between the two races in the South for so long and is now being seriously threatened.

Turning now to the proposed legislation, S. 900, the so-called antilynching bill is so revolutionary and contrary to our established Federal-State scheme of government that I for one marvel that anyone would propose such a measure. Briefly, section 5 of this bill defines a lynching as action by two or more persons in committing or attempting to commit violence upon any person because of his race, religion, or color, or secondly, the exercising or attempting to exercise by two or more persons of the power of punishment for crime against any person held in custody on charges or after conviction. It is to be noted that this new version of the antilynch statute, unlike some of its predecessors, does not contain the express exemption as to violence arising out of labor disputes, but is carefully phrased in such a subtle manner as to accomplish the same objective without language which would be apparent to the casual reader. It is hypocritical, to say the least, for the labor union leaders who have so vigorously advocated this legislation to completely ignore their own problem and secure exemption from the bill's coverage. Murder committed against innocent people trying to make a living for themselves during a labor dispute is no less despicable than murder committed because of one's race, and it is only necessary to read the daily newspapers to perceive which occurs most frequently.

Under the wording of this bill, where a member of a minority commits violence against a member of the majority race, such action would merely constitute assault and battery under State law, but if a member of the majority similarly violated the rights of a member of the minority, it would ipso facto rise to the level of a Federal offense, and the accused could be punished not only under Federal law, but also in State courts. For committing identical acts, the white man would be tried in two courts and given two prison sentences whereas the Negro would be tried only in State court and receive only one. This bill does not guarantee equal protection—it assures unequal protection.

But this is only a milder feature of this radical proposal. Provision is made whereby any aggrieved person can sue for damages not only the police officers—State or Federal—who it is alleged failed to take necessary action to afford protection, but the municipality, State, and United States as well.

Under the pretense of vindicating the Constitution, the sponsors of S. 900 would justify legislative defiance of the 11th amendment's commands that suit may not be brought in Federal court against a State without its prior consent. As early as 1828 it was settled that an action to recover money from a State treasury is a suit against the

State and not maintainable in Federal court. *Sundry African Slaves* v. *Madrazo* (1 Pet. 110, 7 L. Ed. 73). See also *Larson* v. *Domestic & Foreign Commerce Corp.* ((1949) 337 U. S. 682, 93 L. Ed. 1628, 69 S. Ct. 1457). While counties and municipalities have never been considered the "State" and accordingly are not subject to the 11th amendment's immunity against suit (*Lincoln County* v. *Luning* (1890) 133 U. S. 529, 33 L. Ed. 766, 10 S. Ct. 363 [county]; *Old Colony Trust Co.* v. *Seattle* (1926) 271 U. S. 426, 70 L. Ed. 1019, 46 S. Ct. 552 [municipality]), it has been held that the existing civil-rights statutes were not intended to confer damage claims against a municipality itself, as distinguished from its agents. *Charlton* v. *City of Hialeah* ((C. A. Fla. 1951) 188 F. 2d 421); *Hewitt* v. *Jacksonville* ((C. A. 5th 195) 188 F. 2d 423, cert. den. 342 U. S. 835); *Shuey* v. *State of Michigan* ((D. C. Mich. 1952) 106 F. Supp. 32).

Although section 10 of the act provides as a defense to suit for damages the fact that police officers in the area where the "lynching" occurred took all possible action to prevent same, the mere abstract existence of this defense affords little consolation to anyone familiar with the practicalities of civil rights litigation. Within the past 10 years or so, probably more damage suits have been brought under title 42, United States Code Annotated, sections 1983 and 1985, than in all the previous years since adoption of the 14th amendment. A review of the reported decisions will disclose some of the most absurd, far-fetched and groundless claims ever conceived of. Frequently, these complaints are home drawn by individuals who have heard so much about civil rights that they have come to believe every minor grievance they have—real or imaginary—to constitute a matter of grave constitutional concern. It is not enough that the complaint may eventually be dismissed or the relief prayed for denied. The defendants who would have to defend these suits should not be required to undergo the expensive burden of litigation in Federal court.

Moreover, the State courts have historically and traditionally been the proper place for determination of damage claims, and the proposed bill is in effect an attempt to create a Federal wrongful death statute. If the State courts commit error of a Federal nature, and only matters of a Federal nature could be litigated in Federal district courts anyway, it should not be assumed that the United States Supreme Court will ignore its duty on certiorari or appeal.

The most fundamental infirmity in S. 900, however, is that it applies not only to State officers, but to private individuals as well.

When the 14th amendment was under consideration in Congress, the preliminary drafts were phrased in terms of prohibition against denial of due process or equal protection by any person, whether State officials or otherwise. This language was later changed to its present form, which is that—

> no State shall deny * * * due process * * * or equal protection of the laws (See Flack, Adoption of the 14th amendment, pp. 60–62).

This change in language was referred to in the debates on the later civil-right statutes as being indicative of the fact that the final draft was intended only as a limitation on State action (Flack, supra, p. 239).

In the classic case defining the scope of the due process and equal protection clauses of the 14th amendment (Civil Rights cases (1883) 109 U. S. 12, 27 L. Ed. 839, 3 S. Ct. 22), the Court had under review several convictions under sectons 1 and 3 of the Civil Rights Act of

1875 (18 Stat. at L. 335) which made it a Federal offense for any person to deprive any other person of equal accommodations in inns, public conveyances, and theaters, the indictment alleging that defendants had refused certain Negroes, because of their race, admission to an inn and theater.

In holding the statute unconstitutional as exceeding the powers of Congress under the 14th amendment, it was said:

> **It is State action of a particular character that is prohibited. Individual invasion of individual rights is not the subject matter of the amendment.**
>
> * * * * * * *
>
> **It does not invest Congress with power to legislate upon subjects which are within the domain of State legislation; but to provide modes of relief against State legislation or State action, of the kind referred to. It does not authorize Congress to create a code of municipal law for the regulation of private rights; but to provide modes of redress against the operation of State laws, and the action of State officers * * * (id., p. 11).**
>
> * * * * * * *
>
> **In this connection it is proper to state that civil rights, such as are guaranteed by the Constitution against State aggression (due process and equal protection), cannot be impaired by the wrongful acts of individuals, unsupported by State authority in the shape of laws, customs, or judicial or executive proceedings. The wrongful act of an individual, unsupported by any such authority, is simply a private wrong, or a crime of that individual; an invasion of the rights of the injured party, it is true, whether they affect his person, his property or his reputation; but if not sanctioned in some way by the State, or not done under State authority, his rights remain in full force, and may presumably be vindicated by resort to the laws of the State for redress * * ***

In *United States* v. *Harris* ((1883) 106 U. S. 629, 27 L. Ed. 290, 1 S. Ct. 601) section 5519 of the Revised Statutes was before the Court for consideration. This section declared it a crime for two or more persons to conspire to deprive any person or class of person of the equal protection of the laws. Its language, as pointed out recently by the Supreme Court in *Collins* v. *Hardyman* ((1951) 341 U. S. 651, 657, 95 L. Ed. 1253, 1257, 71 S. Ct. 937), is indistinguishable from a civil provision now known as title 42, United States Code Annotated, section 1985 (3).

In the Harris case, the defendants were charged under the penal provision, to wit, section 5519, with having assaulted and beaten several prisoners who were being held in custody of State police officers. The Supreme Court held the statute unconstitutional in that it was—

> **not limited to take effect only in case the State shall abridge the privileges or immunities of citizens of the United States, or deprive any person of life, liberty or property without due process of law.**

As recently as 1948, in *Shelley* v. *Kraemer* (334 U. S. 1, 13, 92 L. Ed. 1161, 1180, 68 S. Ct. 836), the Supreme Court declared with respect to the scope of the 14th amendment:

> **Since the decision of this Court in the Civil Rights cases (109 U. S. 3, 27 L. Ed. 835, 3 S. Ct. 18 (1883)) the principle has become firmly embedded in our constitutional law that the action inhibited by the first section of the 14th amendment is only such action as may fairly be said to be that of the States. That amendment erects no shield against merely private conduct, however discriminatory or wrongful.**

Even so vigorous a proponent of civil rights as Mr. Justice Douglas, writing for the majority in *Screws* v. *United States* ((1945) 325 U. S. 91, 89 L. Ed. 1495, 65 S. Ct. 1031), held that—

> **The fact that a prisoner is assaulted, injured, or even murdered by State officials does not necessarily mean that he is deprived of any right protected or secured by the Constitution, or laws of the United States.**

It is therefore clear beyond all question that S. 900 cannot be sustained under the 14th amendment as a due-process or equal-protection measure. It only remains to be seen whether the bill could be upheld as an exercise by Congress of its powers to protect federally secured rights.

In *United States* v. *Cruikshank* ((1876) 92 U. S. 542, 23 L. Ed. 588) it was said:

> **We have in our political system a Government of the United States and a government of each of the several States. Each one of these governments is distinct from the others, and each has citizens of its own who owe it allegiance, and whose rights, within its jurisdiction, it must protect. The same person may be at the same time a citizen of the United States and a citizen of a State, but his rights of citizenship under one of these governments will be different from those he has under the other.**
>
> * * * * * *
>
> **The Government of the United States is one of delegated powers alone. Its authority is defined and limited by the Constitution. All powers not granted to it by that instrument are reserved to the States or the people. No rights can be acquired under the Constitution or laws of the United States, except such as the Government of the United States has the authority to grant or secure. All that cannot be so granted or secured are left under the protection of the States.**

In the *Slaughter House* cases ((1873) 16 Wall. 36, 21 L. Ed. 394), which was the first decision construing the 14th amendment, it was held that the amendment's reference to "privileges and immunities of citizens of the United States" only operated as a prohibition against State encroachment on rights and privileges which devolved upon a citizen by virtue of his status as a citizen of the United States, as distinguished from his status as a citizen of the State. In so holding, the Court declared:

> **Of the privileges and immunities of the citizens of the United States, and of the privileges and immunities of the citizens of the State, and what they respectively are, we will presently consider; but we wish to state here that it is only the former which are placed by this clause under the protection of the Federal Constitution, and that the latter, whatever they may be, are not intended to have any additional protection by this paragraph of the amendment.**

Moreover, it was determined that it was not the intention of Congress in submitting, and the intention of the people in ratifying, "to transfer the security and protection of all the civil rights which we have mentioned from the States to the Federal Government" (id., 21 L. Ed at p. 409). As stated by the Court:

> **But, however, pervading this sentiment, and however it may have contributed to the adoption of the amendments we have been considering, we do not see in those amendments any purpose to destroy the main features of the general system. Under the pressure of all the excited feeling growing out of the war, our statesmen have still believed that the existence of the States with power for domestic and local government, including the regulation of civil rights, the rights of person and of property, was essential to the perfect working of our**

complex form of government, though they have thought proper to impose additional limitations on the States, and to confer additional power on that of the Nation.

In distinguishing between the privileges and immunities that arise from State citizenship, and those that arise from national citizenship, the Court gave as examples of the latter, the rights "to come to the seat of Government to assert any claim he may have upon that Government, to transact any business he may have with it, to seek its protection, to share its offices, to engage in administering its functions"; the "right of free access to its seaports, through which all operations of foreign commerce are conducted, to the subtreasuries, land offices, and courts of justice in the several States"; the right "to demand the care and protection of the Federal Government over his life, liberty, and property when on the high seas or within the jurisdiction of a foreign government"; the "right to peaceably assemble and petition for redress of grievances"; the "privilege of the writ of habeas corpus"; the right to "use navigable waters of the United States, however they may penetrate the territory of the several States, and all rights secured to our citizens by treaties with foreign nations"; and the right of a citizen of the United States to become a citizen of a State merely by residing therein.

On the other hand, the rights recognized by the courts as arising from relation of the citizen to the State, are much broader, to wit: "protection by the Government, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the Government may prescribe for the general good of the whole."

In *United States* v. *Powell* (CC. Ala. 1907, 151 F. 648), the defendant had been indicted under sections 5508 and 5509 of the Revised Statutes, the indictment alleging that the accused had participated in a mob which overpowered the sheriff of Huntsville, Ala., and lynched a Negro prisoner being held in custody by the sheriff on charges of murder. It was further alleged in the indictment that such action deprived the deceased of the "right, privilege, and immunity of a citizen of the United States" to have his case tried regularly in the courts according to prevailing modes in conformity to due process.

The circuit court reasoned that it was well within the power of Congress to punish individuals who committed such acts, on the ground that since the 14th amendment required the States to afford due process, which unquestionably is not satisfied by execution without trial, action by private individuals, which prevented the States from doing their constitutional duty was, in effect, interference with the Constitution's command, and hence the proper subject of congressional action. However, the court noted that what was considered obiter dictum by the Supreme Court in *Hodges* v. *United States* ((1906) 203 U. S. 1, 51 L. Ed. 65, 27 S. Ct. 6), would require a different result, and hence determined that the appropriate course would be to sustain a demurrer to the indictment and give the Supreme Court the opportunity of adopting or rejecting its statements in the Hodges case, rather than for it, an inferior court, to hold that the Supreme Court's language had gone further than the facts there justified.

On appeal, the Supreme Court affirmed in a per curiam opinion which merely stated:

The judgment is affirmed on the authority of *Hodges* v. *United* * * *.

United States v. *Powell* ((1909) 212 U. S. 564, 53 L. Ed. 653, 29 S. Ct. 690).

This disposition of the Powell case puts at rest the argument that the "right to be free from lynching is a right of all persons" and "citizens" as declared in section 4 of S. 900. The broad assertion in section 4 that "such right * * * accrues by virtue of such citizenship" is in direct conflict with the Powell decision, and constitutes defiance of the Supreme Court from the same quarter which delights in accusing others of such action.

S. 901 would outlaw the poll tax as a condition of voting in a national election. Here, however, unlike S. 900, the draftsman apparently was aware of the distinction between privileges and immunities of a citizen of the State and those of a citizen of the United States. In *Breedlove* v. *Suttles* ((1937) 302 U. S. 277, 82 L. Ed. 252, 58 S. Ct. 205), it was held that no privilege or immunity attributable to national citizenship was violated by a poll-tax requirement.

It was expressly recognized that there is nothing evil or unusual in this form of taxation, for it was there said:

> Levy by the poll has long been a familiar form of taxation, much used in some countries and to a considerable extent here, at first in the Colonies and later in the States (id., p. 281).

While Georgia repealed its poll-tax law in 1945 (Ga. Laws 1945, p. 129), on the general issue of States rights, I would preserve the rights of the States to conduct elections as they may deem advisable.

While our constitution still authorizes the legislature to levy a poll tax (art. VII, sec. 1, par. II; Code Ann., sec. 2–5402 [4]), so far as I know, there is no likelihood in Georgia of such legislation but in view of the rising costs of government and the tendency of the Supreme Court to dry up sources of State taxation, it may some day in the not too distant future become necessary for all States to levy such taxes to defray election expenses. In view of the Supreme Court's decision in *United States* v. *Classic* ((1941) 313 U. S. 299, 314, 85 L. Ed. 1368, 1377, 61 S. Ct. 1031), I will concede that the right to vote for a national officer is one derived from the Constitution and hence the qualifications of voters, etc., may be dealt with by appropriate congressional action under article I, section 2, of the Federal Constitution, providing for the election of Congressmen. This authority, of course, is separate and distinct from Congress' power under the 14th and 15th amendments, for, under the latter, Congress would not be empowered to prohibit a poll tax, since the Supreme Court held in the Breedlove case, supra, that such a tax does not deny equal protection, even when certain classes of citizens, such as women and young and old people, are exempted therefrom.

However, the fact that Congress may possess the power as to elections for national officers does not mean that it would be proper or desirable that it be exercised. Congress has always depended upon the States to conduct elections for National as well as State offices, and so long as the expense and responsibility are placed on the States, they should not be deprived of one of the possible means of paying therefor.

At a time when national income is at an all-time high, it is difficult to see how the small exaction represented by a poll tax could prevent anyone who so desires from voting. In any event, the tax falls on everyone alike, and if it be said that those with lower incomes are less

able to absorb the costs, I submit that Congress had best clean up its own backyard first, by reducing the almost prohibitive costs of litigation in the Federal courts. Also, the jurisdictional amount requirement is a far more glaring discrimination against the average and lower income litigants, whose claims seldom rise to the $3,000 class. These practical considerations make it evident to me that this proposed bill is nothing less than another political gesture toward the pressure groups accustomed to insistent wailing about the poll tax.

S. 902, proposed to elevate the civil-rights section of the Department of Justice to the status of a Civil Rights Division, and provides for an additional Assistant Attorney General to direct its activities. In the report accompanying the bill, it is said that this will give the civil-rights enforcement program "additional prestige, power, and efficiency which it now lacks."

In view of Mr. Brownell's own admission that civil-rights complaints are at an all-time low, it seems difficult at this time to justify expanding this phase of the Justice Department's activities. This very fact will encourage meddling and baseless suits by the new board of bureaucrats who will surely perceive that they must stir up litigation to justify the expense of their existence.

In addition, as mentioned in the report, it is anticipated that additional personnel will be required should other proposed civil-rights measures be enacted, this apparently having reference to the bills which would confer unheard-of injunctive powers on the Attorney General. Reduced to simple language, the police state must have an adequate supply of storm troopers to keep the States and their citizens under constant fear of being enjoined, sent to jail, called up before some commission in far-off places in a hostile surrounding, and kept in a general state of intimidation to appease the vociferous minorities which by their militant organizations have now apparently wrested control of our Government from the people.

This brings me to S. 903, which relates to voting. The first provision amends the Hatch Act (18 U. S. C. A. 594), by adding to the section penalizing attempts to interfere with voting by anyone in a national election, the words "primary election," so as to include same within the section's coverage.

A similar amendment is made with respect to title 8, United States Code, section 31, now codified as title 42, United States Code Annotated, section 1971. This section is also amended, apparently in an attempt to give its application to title 18, United States Code Annotated, section 242, the criminal provision, and title 42, United States Code Annotated, section 1983, the section conferring a civil cause of action for damages. Laying aside the fact that no need for these changes have been shown, the type of legislative drafting here utilized is to be frowned on. If sections 242 of title 18 and 1983 of title 42 are to be amended, they should be amended directly, rather than by adding a catchall clause to the end of another section which makes it almost impossible to predict how these two sections will be interpreted.

The section here amended directly, title 42, United States Code Annotated, section 1971, was intended only to be a declaration of principle, which would invalidate any State law in conflict therewith, while title 18, United States Code Annotated, section 242, was intended to prescribe a criminal penalty, and title 42, United States Code Annotated, section 1971, was intended to give a civil cause of action.

However, laying aside all other questions, the amendment here sought to be added is not necessary. In *Terry* v. *Adams* ((1953) 343 U. S. 461, 468, 97 L. Ed. 1152, 1160, 73 S. Ct. 809), the Supreme Court has already construed title 42, United States Code Annotated, section 1981, as being applicable to primaries, in a decision which is recognized as going as far as possible in protecting the right to vote without amending the Constitution. Perhaps the Congress, like Mr. Justice Minton and I, believe the Court's decision to have gone too far, but it is strange for Congress, many Members of which have expressed the greatest respect for even the more questionable of the Court's opinions, to now manifest doubt as to the Court's ability by legislation to uphold its decision. Traditionally, under our system of government, the Court decisions have followed the legislation, but apparently some believe that procedure to be old fashioned, and that now, the courts are empowered to legislate initially to be then followed by congressional recognition in the form of statutory enactment.

The most disturbing part of S. 903, however, is the last, which gives the Attorney General power to institute injunction suits on his own election, and without regard to whether the party whose rights are affected actually desires such litigation. Such a procedure is contrary to every recognized principle of English and American jurisprudence.

In *McCabe* v. *Atchison, T. & Santa Fe R. Co.* ((1914) 235 U. S. 151, 162, 59 L. Ed. 169, 174, 35 S. Ct. 69), it was said:

> It is an elementary principle that, in order to justify the granting of this extraordinary relief, the complainant's need of it, and the absence of an adequate remedy at law, must clearly appear. The complainant cannot succeed because someone else may be hurt. Nor does it make any difference that other persons who may be injured are persons of the same race or occupation. It is the fact, clearly established, of injury to to the complainant—not to others—which justified judicial intervention.

This salutory principle—that one cannot litigate the constitutional rights of another—has received frequent application in the courts, particularly in the field of so-called discrimination cases. (See *Missouri ex rel Gaines* v. *Canada* (1938) 305 U. S. 337, 351, 83 L. Ed. 208, 214, 59 S. Ct. 232; *Brown* v. *Board of Trustees* (CA 5th 1951) 187 F. 2d 20, 25; *Cook* v. *Davis* (CA 5th 1949) 178 F. 2d 595, 599; *Williams* v. *Kansas City* (D. C. Mo. 1952) 104 F. Supp. 848, 857 (7, 8); *Brown* v. *Ramsey* (CA 8th 1950) 185 F. 2d 225.)

Constitutional rights have always been considered vital, personal rights, and to permit others to come into court asserting them can only result in their cheapening and the worsening of Federal-State relations.

When Attorney General Brownell testified before the House Judicial Committee on April 10, 1956, he attempted to justify the grant of injunctive powers on the ground that criminal proceedings always produce strong public indignation and promote friction. He stated:

> And another point. Criminal prosecution for civil-rights violations, when they involve State or local officials, as they often do, stir up an immense amount of ill feeling in the community and inevitably tend to cause very bad relations between State and local officials on the one hand, and the Federal officials responsible for the investigation and prosecution on the other. And we believe that a great deal of this could be avoided, and should be avoided if Congress would authorize the Attorney General to seek preventive relief from the civil courts in these civil-rights cases.[10]

[10] See transcript of hearing, p. 15.

The Attorney General then proceeded to refer to the strong indignation which was provoked in one county as a result of an FBI investigation regarding alleged discrimination in jury service. Although the specific case was not referred to, he undoubtedly had reference to *Reece* v. *Georgia*, supra, in which protest was justifiably made by members of the Georgia delegation as well as local officials, when an FBI investigator suggested to the Cobb Solicitor General that the State not retry this brutal, twice convicted rapist, although the issue of jury service by Negroes had nothing to do with the accused's guilt, and the Court's decision itself merely reversed a judgment sustaining a demurrer to the motion to quash.

We have information that about this time a militant pressure group had been critical of Mr. Brownell's prosecution of civil-rights cases, and since this was the first alleged incident to arise during this period, Georga was picked as the victim to appease the political-action zealots. Needless to say, the FBI finally gave Cobb County a clean bill of health.

However, if, as Mr. Brownell admits, criminal proceedings always cause strained feelings in any given area, it would seem that injunctive proceedings would cause even more friction. When injunctions are issued, it puts the Court in a more or less administrative position, and ultimately may involve criminal proceedings as well as civil. Whereas regular criminal proceedings are always against an individual, injunctions are brought against officials requiring official action, and brings the State and Federal Government into sharper conflict than any isolated criminal prosecution ever could.

S. 904 amends 18 United States Code Annotated, sections 1581, 1583, and 1584, relating to returning or placing one in peonage, by enlarging coverage of the section to cover attempts to do such acts. While I see no immediate objection to this amendment, I likewise see no need for it, since the number of prosecutions under these laws are becoming progressively smaller.

S. 905 would amend 18 United States Code Annotated 241 so as to extend its coverage to persons and not just citizens. This section relates only to rights and privileges "secured" to a person, i. e., those that devolve directly on the person from the Constitution rather than the State-conferred rights which the 14th amendment merely require be given equal to all, and subject to the due process clause.

Paragraph (b) would extend section 241 to cover similar crimes committed by only one person, whereas paragraph (a), the original provision, only covers conspiracies.

Here again, the cumulative effect of this extension of Federal power is unjustified at a time when its need is least felt. As pointed out in the Slaughter House cases, the Federal-State balance has already been upset enough by the 14th Amendment and existing laws. In the nature of things, it is impossible to predict accurately the effect of any one law, but it is unquestionable that each successive whittling down of State authority, whatever the intervening time between steps, will eventually lead to one strong centralized government which, in a country as large and powerful as ours, will be uncontrollable.

The same reasoning applies to the amendment to section 242 of title 18, relating to deprivations, under color of law, of rights secured or protected, by increasing the punishment to fine of $10,000, and imprisonment up to 20 years, where maiming or death of the victim re-

sults. This, of course, is an attempt to enact a Federal statute on murder.

It is material to note here that Attorney General Brownell expressly declared before the House committee that he was not proposing any amendments to section 241 and 242 of title 18, which indicated the administration's belief that no such amendments were needed.[11]

Section 3 of S. 905 attempts to do exactly what the Court in the Slaughter House cases, supra, said could not be done, and that is to make every violation of law a Federal offense. This section undertakes to usurp the functions of the Court by defining what shall be considered deprivations of due process and of immunities and privileges. For example, it is declared that "the right to be immune from exactions of fines without due process of law" shall be included within the protection of 18 United States Code 242.

Under this unlimited definition, a judge who makes an error in deciding a case in State court could be prosecuted in Federal court and sentenced to jail because of his honest mistake of judgment as to what constituted a denial of due process. Within recent years, the Supreme Court has consistently expanded the meaning of due process to invalidate State court procedures which theretofore were upheld. This section would require a State court judge to outguess the Supreme Court by predicting what it would eventually hold, on pain of imprisonment.

Paragraph 3 makes the illegal obtaining of confessions likewise subject to prosecution. At the 1956 annual meeting of the National Association of Attorneys General, held in Phoenix, Ariz., one of the top executives in the FBI discussed the numerous decisions of the Supreme Court relating to confessions during the last 20 years or so, and after noting the division in the Court itself in this field, declared that the resulting uncertainty imposes an almost impossible burden on FBI agents to ascertain what the law is. He concluded by remarking that the Court, together with sociologists, had succeeded in taking the handcuffs off the criminals and placing them on law-enforcement officers.

The Court has already held that section 242 applies to the willful extraction of confessions by force and violence (*Williams* v. *U. S.* [1951] 341 U. S. 97, 95 L. Ed. 774, 71 S. Ct. 576), and the purpose of the amendment could only be to enlarge this construction to cover situations where there was no willful act, as required in the Screws decision, supra. Otherwise, the amendment is redundant.

Paragraph (4) would make every illegal arrest a Federal offense. In *Snowden* v. *Hughes* ((1944) 321 U. S. 1, 11, 88 L. Ed. 497, 504, 64 S. Ct. 397), *Screws* v. *United States*, supra, and in *Hebert* v. *Louisiana* ((1926) 272 U. S. 312, 316, 71 L. Ed. 270, 273, 47 S. Ct. 103), it was held that not every violation of State law constitutes a denial of due process—that the question of State law is immaterial in determining whether there has or has not been a denial of due process.

The legality of an arrest is determined under State law, and the effect of this proposed paragraph will be to make one arrest a Federal offense in one State while the same arrest would not constitute such an offense in another State. This persuasive factor was expressly referred to in the Hebert case, supra, as being one reason why the ques-

[11] Transcript, p. 17.

tion of violation of State law vel non was constitutionally irrelevant in evaluating due process questions.

In *Yglesias* v. *Gulfstream Park Racing Ass'n.* ((CA 5th 1953) 201 F. 2d 817, cert. den. 345 U. S. 993), it was held that a mere false and malicious arrest, whatever its legal consequences under State law, did not rise to the level of deprivation of those "fundamental rights" which alone are included within due process. See also *Charlton* v. *City of Hialeah* ((CA 5th 1951) 188 F. 2d 421).

S. 906 would create a commission on civil rights, to be composed of five members to be appointed by the President with the approval of the Senate. As pointed out by Congressman Walter in the hearings on the House version of this proposal, it is contradictory for this measure to recite the need for study, evaluation, and recommendation as to remedial legislation, while contemporaneously therewith are submitted accompanying bills which go about as far as conceivably possible in enacting the legislation about which it is said further study is needed.[12]

In view of this, it is only reasonable to conclude that the proponents urging passage of S. 906 desire the creation of a Gestapo which will hold needless investigations, pry into the affairs of the States and their citizens, and intimidate a majority of our citizens solely to appease the politically powerful minority pressure groups, inspired by the communistic ideologies of the police state.

For example, as noted in the minority report on H. R. 627, an omnibus bill embracing this and other proposals, it was pointed out that the Commission would have a right to hold hearings in some far-off remote place and require attendance of witnesses at their own expense, as no travel or per diem expenses are provided for. Similarly, the report noted that what is section 5 of S. 906 authorizes the Commission to utilize the "services, facilities, and information of other Government agencies, as well as private research agencies", and concluded with the observation that these "private agencies" would probably be the NAACP, the American Civil Liberties Union, and other like partisan political-action groups.

Thus, the situation would be created where governmental powers would be delegated to these private groups to investigate and harass other citizens and organizations. The awful power of the state would thereby be given to a few as against the many.

No one can imagine what this Commission will cost the taxpayers, as no limitation is put upon its expenditures, but on the contrary, section 5 (b) authorizes the Commission "to make such expenditures, as in its discretion, it deems necessary and advisable." Presumably, the Commission might donate public money to the Communist Party, if it determined that such would promote the cause of racial amalgamation.

Before the Congress authorizes the Government to enter into such an unholy partnership with these minority groups, it would do well to study some of their pronouncements.

Save only the Communist Party, with its "Southern Manifesto" of 1928, the most aggressive proponent of these civil rights measures is the NAACP, and while this self-proclaimed pious group fervently crusades against prejudice and race bigotry out of one side of its mouth, it conducts a conspiracy against the white man out of the other.

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[12] See transcript of House committee of April 10, 1956, p. 19.

In its national publication, The Crisis, volume 62, page 493 (October 1955) quotes are made gleefully predicting the downfall of the white race, and urging the colored people to revolt and take up arms against their white brothers. It was said specifically:

> **Give him a little more time and the white man will destroy himself and the pernicious world he has created. He has no solutions for the ills he has foisted upon the world. None whatever, he is empty, disillusioned, without a grain of hope. He pines for his own miserable end.**
>
> **Will the white man drag the Negro down with him? I doubt it. All those who he has persecuted and enslaved, degenerated and emasculated, all of whom he has vampirized will, I believe, rise up against him on the fateful day of judgment. There will be no succor for him, not one friendly alien hand raised to avert his doom. Neither will he be mourned. Instead there will come from all corners of the earth like the gathering of a whirlwind, a cry of exultation: "White man, your day is over! Perish like the worm! And may the memory of your stay on earth be effaced!"**

In its issue of November 1955 (vol. 62, p. 552–553), the magazine vehemently justifies the merciless slaughtering and raping of innocent white French inhabitants in Ouad-Zem by the colored Berber tribesmen on the ground that the Frenchmen deserved such treatment.

S. 907 is an omnibus bill which includes in one bill all the others, and adds provision for a Joint House-Senate Committee on Civil Rights. There is no reason apparent as to just why the question of civil rights requires creation of a joint committee, any more than other subjects of legislation. This bill would also add provisions outlawing segregation in interstate commerce. In view of the recent action of the ICC, it is difficult to see how this law is needed, unless the proponents, like I, believe the ICC to have exceeded its statutory powers.

S. 3605 is the administration version of the "Civil Rights Commission", and is even more explicit in authorizing payments to private individuals and organizations. This bill is otherwise similar to S. 907, and the remarks previously made with regard thereto will apply here also.

I have tried to summarize briefly my objections to the proposed legislation. There are many others which time does not permit me to cover. Beyond this, there are undoubtedly many additional quirks and objectional features which can only be ascertained by judicial application, and particularly is this to be expected from the broad, loose language employed in these bills.

However, the one overriding reason which prompts me to appear here today is my concern for continued existence of this country as one of a national government with limited powers on one hand, and an association of sovereign states on the other which are more responsive to the will of the people in the vast majority of governmental affairs which do not require unity of action. This was the formula conceived by the founding fathers to preserve our liberties.

All of these bills come before the Congress concealed in a hyprocritical cloak of self-righteousness and pious protestation against bigotry and prejudice by those who would wave the Constitution on high whenever it suits their purpose, but who to achieve this purpose would destroy the Constitution by destroying the States. A leading constitutional scholar from the North has written that the 14th amendment itself was adopted by speeches which "aroused the passions of the people, increased their prejudices and hatred and appeal to selfish motives", and that all these appeals were clothed in terms of

"rights and justice." See Flack, *Adoption of the Fourteenth Amendment*, p. 209.

A study of the many and all embracing Civil Rights laws presently on the books will readily demonstrate the absence of need for the proposed legislation. The most far-reaching of these statutes today is 42 U. S. C. annotated 1985. So recently as 1951, in *Collins* v. *Hardyman* (341 U. S. C. 651, 656, 95 L. Ed. 1253, 1257, 71 S. Ct. 937), the Supreme Court criticized the unbalance wrought upon our Federal-State system by this statute in the following language:

> This statutory provision has long been dormant. It was introduced into the Federal statutes by the act of April 20, 1871, entitled "An act to enforce the provisions of the fourteenth amendment to the Constitution of the United States, and for other purposes." The act was among the last of the reconstruction legislation to be based on the "conquered province" theory which prevailed in Congress for a period following the Civil War.
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> * * * * * * *
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> The act, popularly known as the Ku Klux Act, was passed by a partisan vote in a highly inflamed atmosphere. It was preceded by spirited debate which pointed out its grave character and susceptibility to abuse, and its defects were soon realized when its execution brought about a severe reaction.
>
> The provision establishing criminal conspiracies in language indistinguishable from that used to describe civil conspiracies came to judgment in *United States* v. *Harris* (106 U. S. 629, 27 L. Ed. 290, I. S. Ct. 601). It was held unconstitutional. This decision was in harmony with that of other important decisions during that period by a Court, every member of which had been appointed by Presidents Lincoln, Grant, Hayes, Garfield, or Arthur—all indoctrinated in the cause which produced the 14th amendment, but convinced that it was not to be used to centralize power so as to upset the Federal system.

The bill now before this committee would go even further than section 1985. If these measures succeed, it will be only a matter of time before the next move will be Federal legislation touching the substantive law of tors, property, and the administration of estates.

I do not conceive it to be the proper function of this Congress or any other branch of the Federal Government to be constantly sniping at the powers and sovereignty of the States, for it is by their remaining sovereign that the liberties of all our people will be best preserved.

We must never forget the great words of Chief Justice Chase, rendered during the heat of reconstruction in the case of *Texas* v. *White* ((1869) 7 Wall. 700, 725, 19 L. Ed. 227, 237), to wit:

> Not only, therefore, can there be no loss of separate and independent autonomy to the States, through their union under the Constitution, but it may be not unreasonably said that the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National Government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States.

Senator EASTLAND. Thank you, Mr. Cook, for your timely and eloquent statement. I appreciate the efforts you have made to present your views on these legislation bills.

Mr. YOUNG. Our next witness, Mr. Chairman, is Judge Perez of Louisiana.

Senator EASTLAND. We are happy to have you with us this day, Judge Perez, and look forward to your testimony.

STATEMENT OF JUDGE LEANDER H. PEREZ, DISTRICT ATTORNEY, PLAQUEMINES-ST. BERNARD DISTRICT

Judge PEREZ. As a citizen of Louisiana I am grateful for the opportunity to express my opposition to each and every one of the proposed civil rights bills now pending.

I am proud, indeed, to have been accorded the same privilege this committee granted Congressman James C. Davis, of Georgia, who filed with you on June 26, 1956, a statement in opposition to proposed civil rights legislation. I have read his analytical presentation and fully concur in every basic principle he asserts, and I am sure his supporting episodes are accurate in detail.

I wish also to humbly congratulate Attorney General Herbert Brownell for the attitude he has taken. He shows no enthusiasm whatsoever for this cause, which he knows has no merit. His silence is golden. He doesn't even exhilerate over the possibility of hiring for his Department some three or four hundred more lawyers. Perhaps past performance has something to do with his nonchalance.

Records furnished by Mr. Brownell's predecessor show that out of 8,000 civil rights complaints received by that Office, only 12 cases were prosecuted, including Hatch Act violations.

Gentlemen, with such a record as that, I wouldn't dare go before the voters of my district and ask them to reelect me district attorney of Plaquemines and St. Bernard Parishes, La.

We don't know how many convictions were had out of those 12 victims. But even if generous taxpayers were to assume there were 100 percent convictions, they wouldn't see the justification of hiring 300 more lawyers.

I am pleased that in voicing my opposition to the civil rights bills I am associated with such men as Congressman James C. Davis. But I have no words of commendation for many others who have appeared before this committee, and my vanity gets no stimulant from being cast in the same role with them. My only consolation is that my thinking is so opposed to theirs that "never the twain shall meet."

You gentlemen know them. It would be a waste of your time for me to call all their names and the organizations they represent. But I would like for the record to show that I have particularly in mind the NAACP, the American Civil Liberties Union, the ADA, and the National Lawyers Guild.

In a statement by Roy Wilkins, executive secretary of the NAACP, filed with your committee on May 28, 1956, he refers to a couple of political quarrels in Louisiana, one at Monroe, the other at Minden, Webster Parish. His statements concerning both episodes are utterly ridiculous. Those quarrels were between the police juries of each parish and their registrar of voters. Negroes and citizens councils were not involved at all. In fact, these fights occurred several months after State and local elections were over.

So if you know the facts and you know that such charges are false, you begin wondering if, after all, the record of the Attorney General's Office of 12 out of 8,000 wasn't pretty good. Yet you still can't believe that Mr. Brownell needs the services of 300 more lawyers, plus a lot of experts at $50 a day to tell the lawyers what to do.

Gentlemen, I have deep reverence for the founders of this country. I have profound admiration for the men who wrote the Declaration of Independence and for the authors of the Constitution. They wrote into our law the greatest document on civil rights that ever sprang from the minds of men. We call those civil rights laws the Bill of Rights. They consist of the first 10 amendments to the Constitution.

Amendments I to X are really a part of the Constitution. The prevailing feeling at the Convention of 1787 was that the new Government had no authority to interfere with the inalienable rights of individuals which already existed under English common law. It was also felt that the proposed Constitution was not sufficiently clear in its reservations to the States of all power not specifically delegated to the National Government. Hence, the 10th amendment actually became a part of the Constitution, even before that document was ratified by the various States.

Many States felt it necessary that definite provision should be included in the Constitution which specifically made safe the rights of individuals. For this reason, many of the States ratified the Constitution with the recommendation that a Bill of Rights be added by the amending process when the new Government was established.

Twelve amendments were proposed. Ten of them were ratified.

The liberties guaranteed by the Bill of Rights included freedom of religion, speech, and press; the right of petition; liberty to assemble peaceably; the right to bear arms; protection against the quartering of troops; the right to a jury trial; immunity from unreasonable search and seizure; self-incrimination, and double jeopardy, cruel and unusual punishment, and excessive bail.

But the most important pronouncement in the Bill of Rights was:

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

No one can deny that this Nation came into being because of the uniting of free, sovereign, and independent States. To refresh your memories, permit me to read the first sentence of the treaty of peace after the Revolutionary War. The contracting parties to this treaty of peace were His Britannic Majesty on one side and Thirteen Colonies on the other. I read that first sentence:

His Britannic Majesty acknowledges the said United States, viz, New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, and Georgia.

This historic background shows conclusively what was meant and what was intended by the 10th amendment, although the clear, concise language of that important sentence permits of no erroneous interpretation.

Gentlemen, there is the barrier that prevents the Socialists, the left-wing group, and the Communists from completely undermining the basic fundamentals of our governmental structure. If that barrier is not removed or destroyed those groups may as well go out of business. Until State sovereignty and local government are destroyed, those groups can never accomplish their purpose.

I have said that the greatest civil-rights laws ever written are embraced within the Bill of Rights.

Now, let us compare. No, we can't compare—there is not comparison. But let us contrast the intents and purposes of those great men

who authored the Bill of Rights and the 13 States and the citizens of those States who ratified them, with the intents and purposes of those who are today sponsoring a score of civil-rights bills now pending.

The first 9 sections of the Bill of Rights built a wall of protection around the individual, and believing that protection could best be maintained by State and local government, the people of those 13 united Colonies ratified 10 of the 12 proposed amendments, the last, the sustaining and the most important of them all, being the 10th amendment.

These civil-rights laws, better known as the Bill of Rights, did not reduce or minimize the functions of the States ant their local governments, but clearly reserveed to the States, or to the people, all powers not specifically delegated to the United States by the Constitution.

Now let's take a look at the ultramodern proposed civil-rights laws. Every one of them, every one of them of whatsoever nature, attempts to destroy State and local government; every one of them takes jurisdiction from the State courts and places more power in a centralized government.

Somewhere, gentlemen, there is a primal cause for this sudden sinister attempt to destroy the effectiveness of State laws and deprive State courts of jurisdiction they have had for more than a century. Somewhere a master mind is directing these onslaughts, and with evil intent.

A few months before a national election an alluring bait has been set for Democrats and Republicans alike, and both sides are diving headlong in gluttonous effort to swallow it without first examining its offensive odor.

Certainly you are not impressed by the groups that are sponsoring these civil-rights bills. Certainly you are not affirmatively impressed by the indifference which directors and administrators of Government agencies have accorded your hearings.

A delectable lure has been cast upon the placid waters that run past the Attorney General's Office. But he's been too busy to look, smell, or listen. On several occasions he failed to appear when invited by this committee and also the House committee, and when he did come before you he showed no enthusiasm for the proposed Civil Rights Commission.

Perhaps, again, past performance discouraged him. President Harry S. Truman set up a Civil Rights Commission. What did they achieve? Do you know of any commendable accomplishment of that Commission? Being a Democrat, I tried assiduously to find some little item to which I could point with pride.

If another such Commission is needed, there is nothing to keep President Eisenhower from following Mr. Truman's example.

If a civil-rights bill had been introduced to set up a commission in the Attorney General's Department to study two certain evils that are embarrassing to all the good people of America, I would be here fighting night and day with all the vim and vigor I possess, pleading with you gentlemen and with everyone else who would listen that the youth of America must be protected against the horrors of narcotics. In my opinion, there is need for a commission to study juvenile delinquency in this country, and it could well be that such a commission should be set up in the Attorney General's Office.

Proponents of these numerous civil-rights bills are abashed over what foreign countries might think of us because both major political parties in this country have prescribed rules and regulations that govern suffrage within their own ranks. I haven't read or heard of a case that would cause any American to blush with shame. I mean, of course, a case in which the evidence proved that someone or some quasi-governing body was guilty of depriving a qualified voter of his rights. On the other hand, I can understand the mortification of American visitors to foreign countries when they read, almost daily, stories of atrocious crimes, particularly those in which juveniles are involved. I can well imagine foreign countries, even those comprising NATO, wondering about our negligence of the youth of this country.

It is my purpose here to examine several of the civil-rights bills in order to call your attention to the fact that they, and all of them, are designed to achieve destruction of States' rights by minimizing the jurisdiction of State courts.

I call your attention to S. 1089 and H. R. 5205.

The purpose of S. 1089 is:

> To extend to uniformed members of the Armed Forces the same protection against bodily attack as is now granted to personnel of the Coast Guard.

H. R. —— is identical with 1089 except the word "uniformed" is eliminated.

Law enforcement is one of the functions of the Coast Guard, and that is the reason for the Coast Guard Act.

The Army, Navy, Air Force, and Marine Corps perform no functions of law enforcement within the respective States.

Let us look at a glaring inconsistency in our present philosophy of government. While every effort is being made to reduce and circumscribe the jurisdictional sphere of State courts, we are granting to foreign courts the right to charge, try, and punish our servicemen operating overseas.

A treaty, known as the Status of Forces Agreement, ratified by the Senate, allows our soldiers, who are serving abroad, to be tried, and if found guilty, punished, according to the laws of the country in which the charge is made.

Do we have less confidence in and less respect for the courts of the respective States than in foreign laws and courts?

Is not the real purpose of S. 1089 and H. R. 5205 to take jurisdiction from the State courts? Is it not another step toward more centralized government?

Louisiana people are proud of the fact that more servicemen have received basic training there than in any other State of the Union. I know of no case in which a soldier has been denied justice by the courts of that State. To use the phraseology of these bills, I know of no case in which a soldier has not received "protection" of the laws and the courts.

Local and State law-enforcement officers are in proximity to military establishments and are always in better position to render protection to servicemen against bodily attack by civilians than are Federal officers.

Under the Status of Forces Agreement we have effected treaties with all the NATO countries, some of which inflict "cruel and unusual treatment" of persons convicted of crime. Is not this a violation of

our Bill of Rights which guaranteed to all American citizens immunity from "cruel and unusual punishment"? Sentenced to a term of imprisonment on Devil's Island would certainly be cruel and unusual punishment for our boys who have been sent abroad at no behest of their own, and where they are denied the privilege of being tried before a jury of their peers, also a right guaranteed to them by the Bill of Rights.

And yet, under S. 1089, if a civilian in any State of this Union engages in an argument with a serviceman, the civilian may be charged and tried by a Federal court, with no guaranty that a jury of his peers will hear his case.

And may God pity "two or more" civilians who may engage in an altercation with a soldier or with any Government employee or among themselves if they aren't all of the same color, breeding, and religious faith.

Now, your attention, please, to S. 905, which is a bill to amend and supplement existing civil rights statutes.

In this bill the authors have defined "two or more persons" as constituting a mob. If two or more persons are found guilty they are to be fined "not more than $5,000 or imprisoned not more than 10 years, or both." But, "If any person goes in disguise on the highway, or on the premises of another," and commits the same described offense, "such person shall be fined not more than $1,000 or imprisoned not more than 1 year, or both."

Since the founding of this country each State has been allowed to enact laws for the punishment of manslaughter or murder. Some of the States provide capital punishment; others do not.

But it is provided in S. 905 that if any person "shall cause the death or maiming of the person so injured or wronged * * * he shall be fined not more than $10,000 or imprisoned not more than 20 years, or both."

Under S. 905, if any person should "cause death or maiming," the county and State in which the crime was committed would be denied the right to assert its own laws. The Bill of Rights guarantees that a person shall not twice be put in jeopardy.

The proposed law further provides that "any person" violating its provisions "shall be subject to suit by the party injured, or by his estate, in an action at law * * * for damages."

Again, we find that the States are to be pushed aside and their laws abrogated; that the county and State courts have no jurisdiction, for the proposed law says: "The (United States) district courts * * * shall have jurisdiction of all proceedings * * * without regard to the sum or value of the matter in controversy."

And S. 905 further declares, "The term 'district court' includes any district court of the United States."

If Senate bill 905 were to become a law, any State law enforcement would be in jeopardy. Any judge, prosecuting attorney, any police officer, any justice of the peace, or any juror would be subject to prosecution if he had participated in a case wherein one person received a heavier penalty than some other person of a different color or a different creed. He—any one of those elected officers—would be subject to a fine of $1,000 or imprisonment for not more than 20 years, or both.

If a "different punishment" should cause death of the aggrieved person, any or all of the officers participating in the trial of his case would be subject to a fine of not more than $10,000 or imprisonment for not more than 20 years, or both.

Under such a law no sane man would aspire to be a judge or a prosecuting attorney for fear he might become party to the conviction of a person who was a little whiter or a little blacker than some other fellow convicted of the same crime. No citizen would welcome a call for jury duty for fear he might be called upon to decide the guilt or innocence of an alien who might drag said juror into a distant United States district court to answer a suit for damages.

No man or woman would take an oath to "tell the truth, the whole truth, and nothing but the truth" for fear he'd be testifying against a person whose religious faith was different from that of his own, thereby subjecting himself to be dragged into some distant United States court to fight a lawsuit.

Kindly permit me to pass on to S. 904, whose title is: "To strengthen the laws relating to convict labor, peonage, slavery, and involuntary servitude."

A person is mortified to learn that the 84th Congress is called upon to consider a bill that pertains to slavery, or one that purports to strengthen the laws on kidnaping. It is my opinion, however, that the words "kidnap" and "slavery" were infused into this proposed bill merely for the purpose of complementing the word "peonage."

There are customs in the South that grew up with our agricultural economy and in some States those customs have been sanctioned by statutory law. Mechanized farming is rapidly changing our economy. Example: The southern planter is now finding that the cost of modern tools and implements is not nearly so much as the losses he formerly sustained by supplying food and clothing while a crop was being planted, cultivated, and harvested.

Nowhere but in the South has a person been able to borrow on his potentiality as a laborer. With a mere promise of future labor he has, in the South, been able to obtain food and shelter for himself and family, while the other contracting party—the planter—gambled his money on a future crop, governed largely by weather conditions and the honesty of his tenants.

A sharecropper who, in the late autumn of 1 year, moves himself and family to a plantation and borrows enough money to feed and clothe himself and family the ensuing winter and through the following crop year, with no collateral but a promise of his labor, is dealing with the most liberal loan system in the world, and for the planter the most hazardous.

A farm tenant who accepts such loan and then violates the terms of it by slipping away under cover of darkness is considered in my country a very despicable character. Other tenants and sharecroppers condemn him as bitterly as do the planters themselves. Customs and laws to protect the planter from such characters have grown up in the South as the only means by which the planter can continue to deal with farm tenants and sharecroppers.

The most abused person in America is the southern planter. For a hundred years he has been maligned in song and story. In novels and so-called factual books about the South, the sharecropper is always

the protagonist in contrast to the planter who is always villain in the piece.

During the depression when brinery tears flooded the Nation on behalf of the sharecropper, a Government agency set up a Commission to work out a proper contract between planter and farm tenant. The result of the Commission's sweat and tears was an agreement that embraced the precise terms that had been used in the South for three-quarters of a century.

The Antidefamation League of B'nai B'rith, CIO unions, the ADA, the American Civil Liberties Union, the National Lawyers' Guild, and other leftist groups have heard about the laws and customs of the South and have labeled them "peonage," without observing that this planter loan system has enabled thousands of men and women to live on a much higher standard than you will find in many sections of your Nation's Capital.

The lawbooks are full of cases in which the courts have enforced "specific performance." The customs of the South—those now called peonage—merely permit a contracting party to insist on the performance of labor already paid for.

To solace the bleeding hearts of those who are so disturbed about the South's treatment of Negro tenant farmers, permit me to say that in my long experience as a law enforcement officer in Louisiana, I have never participated in a slave case, nor in a peonage case.

After reading the telegrams and letters you receive from members of leftist groups, I know you can scarcely believe me when I say I have never been involved in a case where a person had been "held in or sold (I'm quoting the proposed law now) into involuntary servitude, or held as a slave."

Believe it or not, I don't even own a slave.

I am discussing these bills categorically rather than chronologically.

I call your attention to S. 901, which announces in the title that: "* * * This act may be cited as the 'Federal Anti Poll Tax Act.'"

This proposed law attempts to abrogate the laws of all States in which a poll tax must be paid each year to qualify for suffrage. It attempts to forbid elected officers of State and county to collect such a tax, although in so doing they would be fulfilling their duties as prescribed by State law.

Section 3 of the proposed law declares "Any such action by any such person (official) shall be deemed an interference * * * with the manner of holding elections, an abridgment of the right and privilege of citizens of the United States to vote * * * an obstruction of the operations of the Federal Government."

Section 4 of the proposed law says in part: "* * * Any person aggrieved or likely to be aggrieved by such violation or threatened violation, may apply to the appropriate district court of the United States" for an injunction * * * Any such action may be instituted in any judicial district in which any defendant resides * * * Any review thereof by the Supreme Court shall be heard expeditiously, and shall, where practicable, be determined before the next national election * * *."

Section 2 of article I of the Constitution clearly leaves to the States the right to prescribe qualifications requisite for voters, which shall be the same as required by the State laws in the election of members to their State legislatures.

At the time the Constitution was written nearly all of the States required the payment of a poll tax as a prerequisite for electors, and most of those States required the ownership of real estate as an additional prerequisite.

In a speech before the Senate, on July 29, 1948, Senator Stennis said: "Instead of vesting the legislative bodies of the Government with the power to prescribe and control what shall be the qualifications of electors, the people through their organic law, have themselves prescribed those qualifications" (H. R. 29: Congressional Record, 80th Cong., 2d sess., p. 9488).

Certainly the Congress of the United States has no power to change the qualification of voters in the respective States. The power to impose qualifications on voters is vested by the Constitutions of those respective States.

Although the proponents of the Federal Anti Poll Tax Act back in 1948 did not mention the United Nations, this proposed law, S. 901, is part of the same general pattern which is designed to relieve the States of sovereignty and concentrate additional power in the Central Government and in the United Nations.

Read the debates on the floor of the Senate when this proposed law was being discussed in 1948. Proponents of the bill wasted little time in an attempt to find justification in articles of the Constitution, but their oratory was confined to impressions we might or might not make on foreign countries. It was argued that by permitting some of the States to require payment of a poll tax as a requisite to qualify for suffrage, we'd be setting a horrible example for democracy.

Yes, this bill, like all the other civil-rights bills now pending, is part of a pattern.

Speaking recently before the Inter-American Bar Association at Dallas, a former President of the United States warned that Russia's new strategy for the promotion of worldwide communism was through Socialists operating under the guise of liberals and progressives.

I wonder if these civil-rights bills have anything to do with President Hoover's thinking. I feel sure he had them in mind.

The recent decisions of the United States Supreme Court and the proposed civil rights laws are bringing on a racial revolution which seeks to undermine our whole social structure.

This racial revolution is spearheaded by the NAACP.

What is the background of this organization that is causing so much trouble?

The NAACP was organized in 1909 by 5 persons, 4 of whom were white, including a Russian-trained revolutionist.

Another of these organizers was an American social worker who is said to have left her Fifth Avenue home in order to live in a Negro settlement.

The only Negro member of this group of organizers was W. E. B. DuBois, who has long Communist, Communist-front, and subversive connections, according to the files of the Committee on Un-American Activities. DuBois is known today as the honorary chairman of the NAACP.

On its board of directors, at the present time, are several widely known white persons, including Mrs. Elenor Roosevelt, Senators Lehman and Morse; also Walter Reuther, of the CIO, and Eric Johnston, motion-picture czar.

The NAACP has enormous funds at its command and powerful allies, including the Urban League, the Antidefamation League of B'nai B'rith, the National Council of Churches of Christ.

Wealthy organizations, some of which are tax exempt, are lending aid to the NAACP. The Carnegie Foundation supplied the money for Gunnar Myrdal's study of racial problems in America. Myrdal is a Swedish socialist. But his writings provided the psychological and sociological basis for the Supreme Court's school segregation decision.

Other allies who are aiding and abetting the NAACP in its conspiracy to integrate the races are Communists and Communist-front organizations who see in this plot a means of destroying the American Republic from within.

Two other powerful allies of the NAACP are Vice President Richard Nixon and Attorney General Herbert Brownell, Jr.

In Atlantic City, at the 46th annual convention of the NAACP, Vice President Nixon is quoted as having said:

> The greatest progress since 1865 has been made toward the objectives to which this organization is dedicated * * * The most important of all is the integration of the public-school systems.

More recently, in a speech in New York before the Interfaith Movement, Inc., Attorney General Herbert Brownell denounced southern white leaders as "hatemongers who apply the whiplash of intolerance." He called organizations of the South who oppose his viewpoint an "infamous fraternity of professional bigots." He said they were "just as determined and just as destructive" as Communists and Fascists.

On a Sunday afternoon in June, Attorney General Brownell appeared on a nationally televised program called Face the Nation, in which he announced that the Justice Department is sponsoring these civil rights bills.

From an insertion in the Congressional Record of February 27, 1956, we quote an interesting paragraph:

> It may be recalled that it was Mr. Herbert Brownell, former chairman of the Republican National Committee, who flew out to California for a secret conference with Gov. Earl Warren in regard to appointment as Chief Justice of the Supreme Court. This affair had all the earmarks of a political deal in the light of the important role subsequently played by Warren in the unanimous court decision declaring public-school segregation unconstitutional. When a citizen of California appeared before the Senate Judiciary Committee to voice opposition to Governor Warren's appointment, he was arrested and jailed on some minor charge which subsequently was dismissed in his home State, according to press reports.

The Supreme Court has not only scrapped the fundamental principels of the Bill of Rights of the Constitution, but it has usurped the legislative prerogatives of the Congress and the legislatures of the sovereign States. Furthermore, the Supreme Court has ruthlessly violated the ancient common-law doctrine of stare decisis, which means that a principle established by a previous Supreme Court shall not be set aside by the Court.

Recent decisions of the United States Supreme Court, followed by a score of civil-rights bills, are helping carry into effect the purposes of the Communists who announced through the Daily Worker on May 26, 1928, that:

> The Communist Party considers it as its historical duty to unite all workers regardless of their color against the common enemy, against the master class.

The Negro race must understand that capitalism means social oppression and communism means social and racial equality.

While discussing these civil-rights bills, it seems appropriate to mention Joint Resolution 29, but in so doing I offer apology to Senators Holland, Smathers, George, Ellender, Long, McClellan, Fulbright, Ervin, Scott, and Thurmond, and I assure them that their resolution is important here in that it suggests the only constitutional method by which most of these civil-rights bills could become laws of the land.

This resolution proposes an amendment to the Constitution to eliminate payment of a poll tax as a prerequisite to voting in a national election. It proposes an amendment to the article to make it read:

The rights of citizens of the United States to vote in any primary or other election for electors for President or Vice President, or for Senator or Representative, shall not be denied or abridged * * * by reason of failure to pay any poll tax or other tax or to meet any property qualification.

Such an amendment was suggested in 1948 during the debate on the Federal Antipoll Tax Act.

It would be interesting to have in one collection all the letters and telegrams that were received by Senators at the time of this debate. Only one such telegram got into the Congressional Record. It was from Walter White, secretary of the NAACP. He and his organization vehemently opposed the suggestion of an amendment to the Constitution.

It is not the policy of the ardent supporters of these civil-rights proposals to submit anything to the people.

In addition to the Antipoll Tax Act, we have Senate 903 and Senate 3717 and 3718, all dealing with suffrage.

S. 903 is "To protect the right of political participation." It not only provides a penalty for "interfering with the right"of persons to vote, but it also provides a means of recovering damages through the auspices of the Attorney General.

This proposed law not only applies to general elections but to all primary and special elections held "by any State, Territory, district, county, city, parish, township, school district," and all municipalities "without any distinction." It covers interference or coercion based on color, creed, ancestry, etc.

The intent of S. 3717 is "to strengthen the civil-rights statutes, and for other purposes" (to amend sec. 1980 of Revised Statutes and to add to).

This bill gives the Attorney General authority to bring suit for damages on behalf of the aggrieved person whether by his sanction or not.

Under this bill "no costs shall be assessed against the United States in any proceeding hereunder," win or lose.

"For the protection of civil rights, including the right to vote," action for damages may be brought against any person "about to engage in any acts or practices which would give rise to a cause of action."

I can assure you, gentlemen, that such a law would diminish voting far beyond the number of votes gained through an antipoll tax law. Bewildered by such laws, many people would be afraid to participate in elections, even in the selection of county and State officials.

Title to S. 3718 is: "To provide means of further securing and protecting the right to vote" (to amend sec. 2004 of Revised Statutes).

This law would apply to registrar of voters and to all officials and quasi-officials who have anything to do with elections. "No person, whether acting under color of law or otherwise" shall intimidate or coerce another in the matter of his choice.

This bill, like all the others, gives full jurisdiction to the United States district courts, "without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law."

And now we come to a subject that was used as political bait until it became rancid with age. But as my fishing companion often says, "You can't ever tell when or what they'll bite."

If this antilynching bill, Senate 900, had become a law 5 years ago, the United States Attorney General's Office would have made even a poorer record than they did with those other civil rights laws now on the statute books—12 out of 8,000. I don't believe the Attorney General could have chalked up one, single, solitary conviction during the past 5 years. And, of course, I am thinking of the South where, as the Attorney General says, we are "professional bigots (and) hate-mongers who apply the whiplash of intolerance."

Except for the references made in Senate 900, I wouldn't waste your time with a discussion of it. But to me those references are fearful.

Section 2 (e) refers to the United Nations Charter.

Section 3 (c) refers to the United Nations Charter.

Section 4 refers to the United Nations Charter.

Section 2 (e) provides:

The United Nations Charter and the law of nations require that every person be secure against injury to himself or his property which is (1) inflicted by reason of his race, creed, color, national origin, ancestry, language, or religion, or (2) imposed in disregard of the orderly processes of law.

Section 3 (c) provides:

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

Section 4 provides:

It is hereby declared that the right to be free from lynching is a right of all persons, whether or not citizens of the United States, who are within the jurisdiction of the United States. As to all such persons, such right accrues by virtue of the provisions of the Constitution of the United States, the United Nations Charter, and the law of nations.

Such a law as proposed by S. 900 might give the United Nations jurisdiction over all cases in which—

Two or more persons shall knowingly in concert (a) commit or attempt to commit violence upon any person or persons or on his or their property because of his or their race, creed, color * * * or (b) exercise or attempt to exercise * * * any power of correction or punishment over any person or persons in the custody of any governmental officer or employee * * *. Any such action, or attempt at such action, by a lynch mob shall constitute lynching within the meaning of this act.

The true purport of this bill is contained in the first clause of the title:

To declare certain rights of all persons within the jurisdiction of the United States * * *.

Continuing as we are toward statism, a subsequent amendment to such a law would require only substitution of the word "all" for the

word "certain," making the clause read: "To declare all rights of all persons within the jurisdiction of the United States."

Throughout the history of this country, the South has constantly and faithfully espoused the cause of States rights as provided by the Constitution.

This proposed law, S. 900, makes no honest effort to restrain lynchings and mob violence. It merely seeks to "protect all persons from mob violence * * * because of race, creed, color, national origin, ancestry, language, or religion * * *"

In other words, a group of white Jews, white Catholics, or white Protestants could mob a score of persons of their own color and religion and this law, or proposed law, couldn't touch 'em.

The purpose of this law is to intimidate southerners in their renewed determination to maintain some modicum of States rights. The purpose of this law is to take from the States, all States within the Union, the right to execute its own laws with reference to individuals, whether they be criminal laws or laws governing the jurisdiction of courts with reference to property matters.

Whether or not the intention of this proposed law is to transfer jurisdiction to the United States courts or to the United Nations, I am not at all sure.

In section 2 of the proposed law, I find this language: "The increasing importance of maintaining friendly relations among all nations renders it imperative that Congress permit no such acts within the United States which interfere with American foreign policy and weaken American leadership in the Democratic cause."

Let us imagine a group of boys in my home parish in Louisiana getting together on Hallowe'en night. They have planned a lot of fun and some damage to property. I can well imagine that group composed of Catholics, Jews, and Protestants, and I can well imagine they would be rather equally divided in "ancestry" of French, Italian, and English.

On this night of revelry I can well imagine this group of youngsters turning over a half-dozen of my chicken coops and damaging them to the extent of—maybe $10.

If I believed a couple of those youngsters were Jews, or Italians, or, if at least two of them were Protestants, I, a Catholic, to seek redress, would call upon the Attorney General of the United States to start, at once, an investigation "to determine," and I am quoting from the proposed law, "whether there has been any violation of this act," same being the absurd Senate bill 900.

In this proposed ridiculous law I would have two alternatives: (*a*) I could file suit against the United States Government, or (*b*) the State of Louisiana, and any United States district court in the United States would have jurisdiction.

Unless you gentlemen from the North, East, and West realize that the concentration of Government, which means depriving all the States of their constitutional rights, has definitely become a nation-wide problem, even the disturbed and agitated South will not be able to stem the tide.

But I am even more distressed over the fact that three times in Senate bill 900 the authors intimate, at least, that State criminal and civil laws must conform to the tenets of the United Nations.

Out of a total of 16 bills and resolutions on civil rights now before the Senate, 3 of them are bills which seek to establish a Federal Commission on Civil Rights.

S. 906 is for the purpose of creating a "Commission on Civil Rights in the executive branch of the Government."

The authors of this bill must have been groping blindly for something that would indicate need for such a law. In a sort of preamble they say:

> The Congress finds that the freedoms guaranteed by the Constitution of the United States have contributed, in large measure, to the rapid growth, productivity, and ingenuity, which characterizes our Nation.

That statement is followed, however, by the lament that "the civil rights of some persons * * * are being denied, abridged, or threatened." And that "the executive and legislative branches of our Government must be accurately informed concerning the extent to which fundamental constitutional rights are abridged or denied."

In deep earnestness I say to you gentlemen that a commission isn't needed to inform any openminded person that these civil rights bills constitute the most brazen attempt to abridge fundamental constitutional rights than anything ever before suggested in cold print.

Senate bill 3415 was introduced by Senator Dirksen on March 12, 1956.

Title: "To establish a Federal Commission on Civil Rights and Privileges; to promote observance of the civil rights of all individuals; and to aid in eliminating discrimination in employment because of race, creed, or color."

The Commission would be given power to subpena witnesses and pay their mileage fees. Its prescribed duties are rather evangelical. It would "promote and encourage observance of, and respect for, the civil rights and privileges of all individuals * * * making specific and detailed recommendations to the interested parties."

This committee would labor in the vineyard of the labor unions "to bring about the removal of discrimination in regard to hire or tenure * * * or union membership, because of race, creed, or color."

It provides that an appropriation of $1 million be made for the Commission's use in making "grants to the States," who would set up local agencies to assist in spreading the gospel of civil rights and to help spend the money.

My only comment on this bill is that it is as harmless as it is useless.

A month later, having found a few idle dentures, the authors of the harmless and useless bill I have just discussed, attempted another bill with more teeth showing. They introduced S. 3605 to establish a bipartisan Commission on Civil Rights in the executive branch of the Government.

Some of the specified duties of the Commission would be: To "investigate the allegations that certain citizens * * * are being deprived of their rights to vote or are being subjected to unwarranted economic pressures by reason of their color, race, religion, or national origin." To "study and collect information concerning economic, social, and legal * * * denial of equal protection." To "appraise the laws and policies with respect to equal protection of the laws under the Constitution."

The Commission would be authorized to accept "and utilize services of voluntary and uncompensated personnel" and pay traveling expenses and a per diem of $12.

Any subcommittee of two or more members may hold hearings * * * "at such times and places as (they) may deem advisable."

The Commission would be given power of subpena, and charges for refusal to obey may be brought in any district court in the United States.

And being apprehensive that the duties set out in bills S. 3415 and S. 3605 would overwhelm the Attorney General, the sponsors proposed, in S. 3604, to give him relief, and so they ask:

> That there shall be in the Department of Justice one additional Assistant Attorney General, who shall be appointed by the President, who shall assist the Attorney General in the performance of his duties.

Then that other group of Senators who have been so vociferous in their demands for laws to cover civil rights came up with Senate Concurrent Resolution 8 to:

> * * * establish a Joint Committee on Civil Rights, to be composed of 7 Members of the Senate, to be appointed by the President of the Senate, and 7 Members of the House of Representatives, to be appointed by the Speaker of the House of Representatives.

The duties of the Joint Committee would be to make "a continuing study of matters relating to civil rights." It is given the power of subpena and the right to appoint "experts, consultants, technicians," and to fix their compensation.

Amid this avalanche of civil-rights bills, we find S. 902, which supports the idea of an additional "Assistant Attorney General * * * to be appointed by the President." This bill bears the title: "To reorganize the Department of Justice for the protection of civil rights."

It provides that the Assistant Attorney General shall be "in charge of a Civil Rights Division of the Department of Justice."

It further proposes that the personnel of the FBI be increased "to the extent necessary to carry out effectively the duties of such Bureau with respect to the investigation of civil-rights cases."

The report of the Subcommittee on the Judiciary to the full committee is most amazing. Here are a few statements copied from that report:

> The committee attempted to ascertain from the Attorney General his views with respect to the need for this legislation.
> To this date no reply has been received.

Then the subcommittee, in justification of S. 3604, presents to the full committee a report of the triumphant achievements of the Attorney General in his endeavor to enforce existing civil-rights laws.

Gentlemen, I am reading three paragraphs of that report:

> Approximately 10,300 complaints, letters, and documents in the nature of complaints, investigative reports, memorandums, and other items of correspondence were received and analyzed.
>
> * * * between July 1, 1953, and June 30, 1954, the FBI instituted 1,458 preliminary investigations in civil-rights cases. Of the cases prosecuted during the fiscal year, 18 convictions resulted, an increase of 8 over the previous 12-month period.
>
> To eliminate the many frivolous or misguided complaints made to the FBI offices throughout the country, a direct liaison was established with the FBI whereby the more important or urgent matters as well as doubtful complaints are quickly disposed by means of teletype communications from the field to the FBI, which in turn confers personally with the civil-rights section thus

eliminating much of the usual delay and expense involved in the preparation of formal correspondence.

After recounting this frivolous waste of money and manpower, the Subcommittee on the Judiciary makes the following amazing statement:

In view of the desirable effect which it is contemplated adoption of this legislation would have on the observance of and respect for the civil rights of all, the subcommittee recommends favorable consideration of this legislation.

Eighteen convictions out of 10,300 complaints.

I wonder how much money was spent in the process of shaking down those 10,300 complaints and coming up with a residue of 1,458. The answer to that question might interest taxpayers of this country.

Although that residue of 1,458 cases looked like they might germinate into convictions, the final result proves the absurdity of this whole idea of civil-rights laws. Out of 10,300 complaints and out of 1,458 investigations, the Attorney General gets 18 convictions.

There you see the ridiculous and ludicrous picture, gentlemen.

Forgive me if I appear sarcastic or facetious. Let's not dampen the ardor of the subcommittee as shown in their report to the full committee. They appear triumphant in their announcement to you that the batting average of the Attorney General is improving. With exuberant enthusiasm they report to you an increase of 8 convictions over the previous 12-month period. In effect, they say to you: Pass this bill; give the Attorney General more money; give him more men to work with the FBI, and give him 400 more lawyers, and maybe next year they will convict 8 more men and women of violations of civil-rights laws.

Consider the civil-rights case of Amos Reese, a Negro of Georgia. The evidence shows that he was serving a term in the penitentiary of Georgia when he attacked a woman and committed rape. He had already been convicted of burglary and attempt to rape.

His conviction of rape was upheld by the supreme court of Georgia, but reversed by the United States Supreme Court on the ground that the lower court had not appointed a lawyer to defend the accused until after he'd been indicted by the grand jury.

When the Attorney General took over, he called upon the FBI to go to Georgia and investigate the administration of criminal laws of that State.

That was wanton disregard of the 10th amendment to the Constitution and a direct insult to the duly elected officials of that State.

By passing S. 902, such contempt for the laws of a State would be blessed with legislative sanction.

There is only one more bill to discuss. The 16th. Sixteen civil rights bills now pending.

But why stop there? Why not take the final step?

Is not your concept of civil rights opposed to existing miscegenation laws on the statute books of 28 States?

Is not a law that prohibits Negroes from intermarriage with whites and Indians a positive example of segregation?

Because they have racial pride, are southern Caucasians destitute of compassion, of honor, and all the attributes of the human mind and soul?

Are Negroes of this country destitute of racial pride?

Thirty or forty years ago Booker T. Washington and Robert Moton would have resented such a question and would have angrily shouted the answer, "Yes; we have racial pride." And history of the South shows that white people of that area applauded and encouraged the Negroes' awakened determination to lift the standards of his race.

But the NAACP has been busy. They have destroyed that pride of race. They want amalgamation and mongrelization.

So, why not take the next step? Why not bring to the attention of all 3 branches of Government the fact that miscegenation laws on the statute books of 28 States are definitely in violation of integration?

Again thanking you for the opportunity to express my opposition to this array of civil-rights bills, I conclude my statement with brief comment upon S. 907.

The authors admit that "This act may be cited as the 'Omnibus' Human Rights Act of 1955."

Webster's Dictionary puts the word "omnibus" in the category of slang. So, it seems charitable to dignify S. 907 as the "Potpourri Human Rights Act." The same dictionary defines "potpourri" as a "confused collection; a miscellaneous mixture."

S. 907 is an unpalatable dish resulting from a scrambling of a half dozen separate bills on civil rights. It seeks to establish a Commission on Civil Rights, also to provide a Civil Rights Division of the Department of Justice in which an additional Assistant Attorney General shall be appointed by the President; it proposes to set up a Joint Committee on Civil Rights; it provides punishment where two or more persons go upon the highway in disguise; it seeks to deprive every enforcement officer of human instincts by forcing him to treat all accused persons precisely the same way, lest said official subject himself to prosecution and suit for damages in a United States district court. This proposed potpourri law makes it a crime for you and for me to exert efforts in behalf of a candidate for any Federal office and in violation thereof subjects us to criminal prosecution and also to civil action for damages in any United States district court.

This potpourri law seeks to implement recent decisions of the United States Court with reference to segregation, although in those decisions precedent and stare decisis were brushed aside in favor of books on social science. Prior decisions under which we had lived for almost a century were ignored in favor of psychological and psychiatric abstractions.

A certain section of the proposed potpourri law is no doubt a surprise to Abraham Lincoln who must have thought his proclamation forever ended slavery. But we must now conclude that a civil-rights law has been needed all these past 90 years, for if S. 907 is enacted a person cannot be "held in or sold into involuntary servitude, or held as a slave."

Gentlemen, you'd better get rid of your slaves.

History speaks for itself. Have we no ears for the past?

Free competitive enterprise and local self-government have made this Nation strong. So, why should we destroy either?

But the attempt is being made. The pattern of attack is clear. That some powerful force is operating in this country to undermine our system of economy and our system of local self-government is as obvious as a hunk of mud on a snowbank.

This cannonade of civil-rights bills is designed for a certain specific target. What is the target? The South is the target. Why? Because the South is now and has always been the stronghold for local self-government—for States rights.

Many years ago when the United States Supreme Court announced the doctrine of "separate but equal" facilities for Negroes, the South, although called the No. 1 economic problem of the Nation, made heroic effort to comply.

Were we commended for this? Not at all. Abuse of us continued on the floors of Congress, the press, and radio and television kept on calling us ugly names.

The Negro has always been an economic burden to the South, and now you would make of him a social problem.

With those of us who don't belong to minority groups, pressure groups, or any other sort of groups, there is a growing sentiment that it is time for other regions of the Nation to share the burden. We are ready to say: "We've done the best we could; now, you take over."

In the frantic effort to enact a conglomerate mess of civil-rights laws, why not give thought to a fair, a just, and liberal way to disperse the Negro population throughout the Nation?

If you men of the East, North, and West are so compassionate for the Negro, why not take him off our tired backs and draw him to your own palpitating bosom?

Mr. YOUNG. Mr. Chairman, Senator Lehman, of New York, has submitted a statement and wishes it printed in the hearings.

Senator EASTLAND. Senator Lehman's statement will be accepted and printed in the record at this time.

(The prepared statement of Herbert H. Lehman, a United States Senator from the State of New York, is as follows:)

PREPARED TESTIMONY OF SENATOR HERBERT H. LEHMAN BEFORE SENATE JUDICIARY COMMITTEE ON PENDING CIVIL RIGHTS BILL

Mr. Chairman, I do not suppose I need supply this committee with any special affirmation of my deep interest in civil rights legislation. I will assume that all the members of this committee are aware of my long-time advocacy of congressional action to secure and guarantee to each American citizen the rights each citizen is supposed to enjoy under the Constitution, but which are denied to some, in some States, on the basis of race or color.

I have been introducing and arguing for civil rights legislation ever since I have been a Member of the Senate and for many, many years before that. I am a cosponsor of some of the measures now pending before this committee. I am the primary sponsor of one of these bills, S. 1089, whose House counterpart, H. R. 5205, has been favorably recommended to this committee by its own Subcommittee on Constitutional Rights.

These hearings before your full committee have been going on for some time now, a very long time. I count it a privilege to be able to appear before you and to have my views included in the record which will constitute, I trust, the basis for early—indeed, I hope immediate—recommendations to the Senate.

I am sure you are aware, Mr. Chairman, that we are in the closing weeks of this session and of this Congress. There is not much more time.

A moment ago I said that for many years I have been advocating congressional action on civil rights legislation. I emphasize the word "action." It would be a pity—and a travesty on the legislative process—if these hearings you have been holding were to be so prolonged as to make action impossible.

I trust that this distinguished committee will not permit its hearing processes to be used as a means of denying the Senate the right to consider and act on some of the civil rights bills pending before you. Some of my constituents are already complaining that this committee is itself conducting a filibuster on this legislation.

I hope this committee will belie this complaint and proceed to act within further delay.

Although we do not have much time left in this session, there is still enough time for the Senate to consider, at whatever length is desired, appropriate civil rights legislation. I am not a member of this committee, but as a Member of the Senate whose agent this committee is, I ask that you do not deny the Senate a chance to legislate on this subject.

These hearings, whose record I am eager to read, have undoubtedly resulted in the submission of much useful information and many value views. Up to a point these hearings have provided a great public service. Beyond a point, in my judgment the prolongation of these hearings would constitute a threat to the democratic process in the Senate.

I am aware that the administration bears a considerable share of the responsibility for the delay in bringing this legislation on this subject before the Senate. It was April of this year—the fourth year of this administration—before the administration submitted its recommendations.

Already by that time your Subcommittee on Constitutional Rights had acted and reported some civil rights bills, with all of whose purposes I agree. One of the bills your subcommittee reported is the House companion measure to a bill I introduced and have advocated for a number of years, H. R. 5205, and S. 1089, a proposal to make it a Federal offense to assault, without provocation, a member of the United States armed services while on duty.

As I have said and as this committee knows, its Subcommittee on Constitutional Rights reported a number of civil rights bills some time before the administration even submitted its recommendations. Those bills are pending before this committee, along with the administration bills. Some of the bills reported out by the Hennings subcommittee have been pending here for 2 years and were considered in previous Congresses by the Judiciary Committee. Some were reported out in previous Congresses.

So today this committee has before it the bills already reported by the Hennings subcommittee, plus those recently introduced at the instance of the administration.

Some of the administration bills contain provisions which duplicate those in bills already reported. Some of the administration proposals are weaker in some respects than some of the provisions already approved by the Hennings subcommittee.

But, Mr. Chairman, I am not interested in the sponsorship of these bills, not even my own. I am not concerned over whether the bills to be acted upon are administration bills or bills introduced by Democrats. I hope there will be no deadlock based on any such considerations.

I am interested in seeing action taken.

I will vote for any civil rights bills—and I don't care who introduced them or who will get the credit for them—that do the job, that protect the unprotected in the enjoyment of their constitutional rights * * * that protect the physical security and the political equality of our citizens, and which improve the machinery of government established to help achieve these purposes.

The administration may have had political motives in making its civil rights recommendation in this year of 1956, in the month of April. The administration wanted to get the credit for making these recommendations without running the danger of having the legislation enacted.

But I am willing to give the administration all the political credit it can gather and put my shoulder to the wheel, even the administration's wheel, if it will result in the passage of some significant and meaningful civil rights legislation.

In so speaking, Mr. Chairman, I speak for the overwhelming majority of the 16 million people of New York State. They want action on civil rights legislation, action at this session. They want to see the constitutional rights of all our citizens protected, in every part of our country. They want a comprehensive program of legislation passed—antilynch, antipoll tax, protection of the right to vote, FEPC, a civil rights section in the Justice Department, antidiscrimination in interstate travel—and others including some bills which are not before this committee at all.

But of the bills pending before this committee at this time, we of New York will be content with a minimum program, too—an antilynch bill, an antiviolence bill, and legislation protecting the right to vote, plus provisions for enforcement of these and other constitutional rights. We shall fight for other undertakings now pending before other committees including, and above all, an antisegregation proviso on any general school-aid bill that is considered for enactment.

I know that whenever we ask for civil rights legislation with teeth in it—for legislation with sanctions and enforcement powers—the cry is heard that this is a dangerous thing; that it is an invasion of the police powers of the States, and that we propose to extend the long arm of the Federal Government into local affairs.

Mr. Chairman, we seem to have no difficulty in writing enforcement provisions into Federal statutes which make it a crime to steal automobiles, or peddle narcotics, or kidnap somebody. Why shouldn't it be a Federal crime to deprive a man of his constitutional rights, to kidnap his precious right to vote, and his vital right to be secure in his person and to enjoy equal treatment before the law and in access to public facilities?

The rights and privileges guaranteed by the Constitution of the United States are the very core of life, liberty, and the pursuit of happiness, as defined in the Declaration of Independence. In depriving any man, or any group of men, of these rights, or any of them, we are depriving that man, and these men, of the fundamentals for which our forefathers fought and which are the very essence of our nationhood.

Explicitly forbidden in the Constitution is the denial of any of these rights—any of them—on the basis of race, creed, color, or previous condition of servitude.

Admittedly, it is a difficult task fr the Federal Government, in our Federal-State system, to enact laws which will assure to every citizen these rights which are assured to him in the Declaration of Independence and the Constitution. Yet, as difficult as it is, it is not less imperative that we should do so. It is one of the legislative imperatives of this year, 1956—and we are, already, very long overdue—to enact appropriate legislation and to take all the steps that are necessary to assure these rights to all our citizens and to eliminate the criterion of race, color, or creed as a basis for discrimination against some of our citizens in the enjoyment of these rights.

I am aware that we have made progress over the past 30 or 40 years, and the Negro has made progress. He has broken down some of the walls which formerly constricted his horizons and has obtained some of the rights which were formerly denied him. But the progress he has made, as great as it has been, is very little compared to the progress which remains to be made.

You will note that I have said that the Negro has made progress. Much of the progress has been made by virtue of the efforts of Negroes themselves, in the face of the most devastating handicaps. Government has helped, to some extent, but Government has responded for the most part to the pressures exerted by Negroes themselves.

It is time now for Government, and specifically for the Congress, to recognize the inevitability of the forward movement that has been taking place and that will continue to take place.

It is a fact that Congress has not enacted a single piece of civil-rights legislation for 75 years. I think this is a shameful circumstance. I hope this Congress is going to bring to an end this legislative famine in the field of civil rights.

But progress has been made during the last two decades, progress which is a tribute to our democratic system. The fact that there has been progress shows what can be accomplished in the face of the most insuperable odds, and the most difficult obstacles. I think it is time that we in Congress take a hand in this situation—a situation in our country which is the object of all eyes throughout the world.

It is time for the Congress to act. I do not think it is any argument against congressional action to say that progress has been made without congressional action. Progress has been made despite us. Congress has been one of the obstacles to progress.

Let us now move with the tide, and give leadership to the movement, rather than to try perpetually, like old King Conute, to halt the tide with our determined inaction.

I intend to make reference in the course of these remarks to the specific bills before us, but, first, I would like to dispose briefly of a recurring argument which is made whenever the subject of civil-rights legislation comes up—the argument that the protection of civil rights against discriminatory treatment is not a proper field for legislation.

I must say, with all due deference to those who have, through the years made this argument, that it is utter nonsense. It is not only nonsense, it is contrary to fact and experience. There is actually as much legislation on the statute books of the several States and localities on the subject of civil rights as there

is on any other subject under the sun. A survey of statutory law in the various States on the subject of what we might call civil rights shows that every State in the Union, with one exception, has enacted legislation on this subject.

Some of it is good legislation; some of it is bad legislation. Some of it guarantees and assures civil rights; some of it denies and deprives certain minorities of their civil rights. The number of State statutes and local ordinances on this subject would fill many volumes. The only State which does not have legislation regulating relationships between various racial and religious groups of citizens is Vermont.

The specific subject matter of these State and local laws is extremely varied. It covers the conduct of Negro and white citizens in places of public accommodation, in public and private schools, in public housing, in the National Guard and other military services, in the conduct of insurance companies, transportation facilities, public hospitals, penal institutions, paupers' homes, mines, manufacturing establishments, in the keeping of public records and the holy bonds of matrimony.

A historical study of these laws indicates that some 40 of the 48 States are moving slowly toward the day when men and women will be protected against restriction of their action on the basis of race, color, or creed. In the other eight States there is, I believe, no perceptible advance in this direction. Quite the contrary.

In addition to these State laws, there are Federal statutes, enacted some 75 years ago, relating to the protection of civil rights. These Federal statutes have proven to be effective in only a very limited degree.

So the argument that civil rights is not an appropriate area for legislative action seems to me to be not only weak, but completely unsupported by fact and experience.

There is a related and analogous argument against civil-rights legislation, namely, that you can't legislate against prejudice.

This argument is usually advanced in connection with the thesis that prejudice and discrimination can only be overcome by education and that we should concentrate on the educational approach.

I am sure that some of those who advance this argument are sincere. Some who make it are less than sincere, and plead this aphorism as an excuse for inaction, or at least for toothless action.

Well, Mr. Chairman, I do not propose that we legislate against prejudice. Prejudice is an evil of the spirit. It is acquired from the environment, in the home, and in the school. It can be overcome only by experience or revelation.

No, Mr. President, I do not propose that we legislate against prejudice. I propose that we legislate against discriminatory practices, against action based on prejudice, which is quite another thing. A man can be prejudiced against his mother-in-law or against mothers-in-law, in general. There is nothing to be done about that. But if a man sets out to beat his mother-in-law, or all mothers-in-law, that is against the law.

The fact is that in a growing number of States, legislation has been enacted against prejudice. In all too large a number of States and localities, there is a plethora of legislation enforcing and supporting prejudice, giving teeth and legal sanction to prejudice. Such latter legislation must be set aside. Such legislation is, in my judgment, unconstitutional. Such legislation denies the spirit and the meaning of our Constitution and our Bill of Rights, and the 13th, 14th, and 15th amendments.

I turn now to the proposed legislation before this committee.

Mr. Chairman, the several bills being considered by your committee can be broken down into general groupings. Some of them are, I believe, more important in the present situation than others.

There are three bills pending before you reflecting the same proposal to create a Federal Commission to study, conduct investigations, and report on the status of civil rights in our Nation today. I myself do not give this proposal a top priority at this late stage of the congressional session.

Civil rights have been extensively studied in previous years by many congressional committees, including this one, by many private groups, and by the President's Committee on Civil Rights in 1947. All of this study material is available.

In my opinion, the creation of a study commission at this time, unless accompanied by other more positive and constructive legislative action, would be a weak excuse for a legislative program.

I must point out that if the administration is sincerely interested in creating such a commission—and it has established much less important study commis-

sions by Executive order—the President could easily proceed to appoint a commission tomorrow. I therefore hope that valuable time will not be wasted in prolonged debate on the need for a commission.

There are two proposals before your committee which are designed to strengthen the civil-rights machinery in the Department of Justice. It is my opinion that both of these proposals have considerable merit. I am a cosponsor of S. 902, which is broader and at the same time more specific in its purpose than S. 3604. I would willingly vote for either measure if reported by the committee.

I feel that this is an important area of action and it is my hope that this proposal will be given priority in view of the need for more effective action by the Department of Justice in enforcing existing civil rights laws and any new laws which may be enacted.

S. 900 is a bill designed to provide Federal penalties for mob violence against individuals and defining lynching as mob violence. While I join with others in rejoicing over the fact that there have been few actual lynchings in recent years, there is still a very strong need for this legislation as a deterrent and as a Federal definition of lynching as a crime against the Nation. Certainly it is so regarded in the eyes of the world.

I would place this bill high on the list of proposals which should be reported favorably in this session of Congress.

There are also pending before your committee, Mr. Chairman, S. 1089—and its House-approved companion measure, H. R. 5205. I have already referred to this proposal. I am the primary sponsor of the Senate bill. There are 14 cosponsors. I have been extremely pleased by the progress made by this bill in the 84th Congress. The companion measure passed the House on January 17th of this year. It has been favorably reported by your Subcommittee on Constitutional Rights.

Today we have a compulsory draft law requiring most of our young men to serve in the Armed Forces of our Nation. Some of these men must serve with the military police, the intelligence services and other policing agencies of the Armed Forces. These young men while on duty should be protected by Federal law against unprovoked violence by civilians or by local peace officers.

We should extend to the members of the Army, Navy, Air Force and Marine Corps, the same protections already afforded in title 18 of the United States Code to personnel of the Coast Guard and many different kinds of civilian officers such as game wardens, customs officers and many others.

An excellent justification for this legislation has been prepared by the House Committee on the Judiciary and I commend this report to you.

Finally, Mr. Chairman, I come to the remaining 4 bills—the 4 which I consider to be priority civil rights bills to be acted upon during this session of the 84th Congress. These bills are designed to strengthen existing civil rights statutes and to protect further the right to vote and participate in Federal elections.

I am a cosponsor of both S. 903 and S. 905. I believe these bills to be preferable to S. 3717 and S. 3718, although there are certainly desirable features in both sets of bills. Enactment of these proposals are, to my mind, so vitally necessary that I have no special concern as to which of these alternative sets of bills are adopted.

The provisions of S. 903 and S. 3717 give the Attorney General the authority to prevent voting discrimination by the use of the injunction and other devices. In my judgment this is one of the most important of all the civil rights bills before you.

Under statutes which now prevail, the Attorney General can only treat interference with the right to vote by criminal prosecution. This is unsatisfactory and ineffective, since the criminal process is too slow to correct the evil. It is much the same as shutting the barn door after the horse has been stolen. Also, in some States, where discrimination is most prevalent, it is—with only rare exceptions—impossible to impanel a jury which will convict, or even return an indictment, against those responsible for coercion or denial of the right to vote to members of racial minorities.

By contrast, injunctions can be obtained swiftly, before the close of registration and prior to election time. With this authority, if he chose to use it, the Attorney General could really enforce the right to vote.

There has been testimony before your committee, Mr. Chairman, to the effect that Negro citizens in our Southern States are fully protected in their constitutionally guaranteed right to vote in Federal elections. But the facts speak louder than words.

The best estimate I have been able to obtain with regard to the exercise of the vote shows that in some of our States today, less than 10 percent of the eligible Negro citizens of voting age are registered and able to vote.

Surely this figure cannot be accounted for on the basis of disinterest in exercising the franchise. I am convinced, on the basis of reports I have heard, that subtle threats, difficult and questionable registration practices, economic pressures and general community climate are among the factors which help to keep Negro citizens effectively disfranchised.

These practices can be thoroughly documented. They have been thoroughly documented. There are hundreds of circumstantial reports of such coercion and such intimidation. It is, I believe, a general condition in some parts of the South where there is an active discouragement of voting on the part of Negroes. In some places the discouragement is mild and passive. But it is as obvious as the difference between day and night that in some parts of the country, including some parts of the South, Negroes vote in large numbers—in as large numbers proportionately as white citizens—and that in other parts of the South, especially in rural areas, and also in some cities, Negroes do not vote. They are prevented from voting.

Whatever forms of discouragement are used, Federal statutes guaranteeing the right to vote and penalizing coercion in whatever form, will surely have the effect of permitting a free franchise to all our citizens.

I do not believe that any member of this committee will argue that Negroes should not be permitted to vote. I do not think that anyone here will dare argue that Negroes are not part of the body politic, and that elections should not reflect the views of the entire body politic to the maximum extent possible.

The disfranchisement of major segments of the population is intolerable. It results in the frustration of democracy.

The consequences of full Negro participation in voting throughout the South may be unfortunate for some political figures. But it will have a beneficent effect upon democracy itself. There can be no excuse or justification for denial to some citizens of the right to vote. You will not be able to stop the process in any event, even if you refuse to pass this legislation. It will come. The most sensible procedure is to enact this legislation; to bow gracefully to the inevitable and to adjust actions to the new circumstance that will then pertain.

Mr. Chairman, we truly stand at a crossroads of history. We can follow the intelligent course and proceed at a measured pace down the road to true democracy and to a revitalization of our Constitution. Some can, if they wish, consider themselves a Praetorian Guard of reaction, determined to block the inevitable advance. Let them not deceive themselves. They may spend themselves in resistance, but their resistance will not be successful. It will only be a delaying action in which they, themselves, will be, in the end, consumed.

Those who think to mobilize their power for a counteroffensive against the gathering forces of democracy, against the irresistible surge of men and women seeking simple justice, will bear the responsibility for the tragic consequences that have, throughout history, attended the fault of blindness. The function of intelligence is accommodation. The function of maturity is adjustment. The function of intelligent and mature leadership is to reconcile opposing forces in such a manner as to provide a solution acceptable to all, without total victory for any. There is yet time to pass this legislation before you, which represents such a reconciliation and such an accommodation.

The legislation before you, Mr. Chairman, represents gradualism in its best sense. It represents a legal solution to a problem which, if left to the naked interplay of force, can result only in disaster.

(Whereupon the hearings were adjourned subject to the call of the chair.)

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