

Punishment for the Crime of Lynching

HEARINGS
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

SEVENTY-THIRD CONGRESS

SECOND SESSION

ON

S. 1978

A BILL TO ASSURE TO PERSONS WITHIN THE JURISDICTION OF EVERY STATE THE EQUAL PROTECTION OF THE LAWS, AND TO PUNISH THE CRIME OF LYNCHING

PART 1

FEBRUARY 20 AND 21, 1934

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PUNISHMENT FOR THE CRIME OF LYNCHING

TUESDAY, FEBRUARY 20, 1934

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

The committee met, pursuant to call, at 10:30 a.m., in the caucus room, 318 Senate Office Building. Senator Frederick Van Nuys presiding.

Present: Senators Van Nuys (presiding), McCarran, and Dieterich.

Present also: Hon. Robert F. Wagner, a Senator from the State of New York; Hon. Edward P. Costigan, a Senator from the State of Colorado; Hon. Hamilton F. Kean, a Senator from the State of New Jersey; and Hon. Thomas F. Ford, a Representative from the State of California.

Senator VAN NUYS. The committee will be in order. As is perhaps well known, we have met this morning for a public hearing on the bill S. 1978 to assure to persons within the jurisdiction of every State the equal protection of the laws, and to punish the crime of lynching. A copy of the bill will be inserted in the record at this point.

The bill (S. 1978) to assure to persons within the jurisdiction of every State the equal protection of the laws, and to punish the crime of lynching, introduced by Mr. Costigan and Mr. Wagner on January 4, 1934, and referred to the Committee on the Judiciary is as follows:

[S. 1978, 73d Cong., 2d sess.]

A BILL To assure to persons within the jurisdiction of every State the equal protection of the laws, and to punish the crime of lynching

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the phrase "mob or riotous assemblage", when used in this Act, shall mean an assemblage composed of three or more persons acting in concert, without authority of law, for the purpose of depriving any person of his life, or doing him physical injury.

SEC. 2. If any State or governmental subdivision thereof fails, neglects, or refuses to provide and maintain protection to the life or person of any individual within its jurisdiction against a mob or riotous assemblage, whether by way of preventing or punishing the acts thereof, such State shall by reason of such failure, neglect, or refusal be deemed to have denied to such person the equal protection of the laws of the State, and to the end that the protection guaranteed to persons within the jurisdictions of the several States, or to citizens of the United States, by the Constitution of the United States, may be secured, the provisions of this Act are enacted.

SEC. 3 (a) Any officer or employee of any State or governmental subdivision who is charged with the duty or who possesses the power or authority as such officer or employee to protect the life or person of any individual injured or

put to death by any mob or riotous assemblage or any officer or employee of any State or governmental subdivision having any such individual in his charge as a prisoner, who fails, neglects, or refuses to make all diligent efforts to protect such individual from being so injured or being put to death, or any officer or employee of any State or governmental subdivision charged with the duty of apprehending, keeping in custody, or prosecuting any person participating in such mob or riotous assemblage who fails, neglects, or refuses to make all diligent efforts to perform his duty in apprehending, keeping in custody, or prosecuting to final judgment under the laws of such State all persons so participating, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding \$5,000 or by imprisonment not exceeding five years, or by both such fine and imprisonment.

(b) Any officer or employee of any State or governmental subdivision, acting as such officer or employee under authority of State law, having in his custody or control a prisoner, who shall conspire, combine, or confederate with any person to injure or put such prisoner to death without authority of law, or who shall conspire, combine, or confederate with any person to suffer such prisoner to be taken or obtained from his custody or control for the purpose of being injured or put to death without authority of law shall be guilty of a felony, and those who so conspire, combine, or confederate with such officer or employee shall likewise be guilty of a felony. On conviction the parties participating therein shall be punished by imprisonment of not less than five years or for life.

Sec. 4. The district court of the judicial district wherein the person is injured or put to death by a mob or riotous assemblage shall have jurisdiction to try and to punish, in accordance with the laws of the State where the injury is inflicted or the homicide is committed, any and all persons who participate therein: *Provided*, That it is first made to appear to such court (1) that the officers of the State charged with the duty of apprehending, prosecuting, and punishing such offenders under the laws of the State shall have failed, neglected, or refused to apprehend, prosecute, or punish such offenders; or (2) that the jurors obtainable for service in the State court having jurisdiction of the offense are so strongly opposed to such punishment that there is no probability that those guilty of the offense can be punished in such State court. A failure for more than thirty days after the commission of such an offense to apprehend or to indict the persons guilty thereof, or a failure diligently to prosecute such persons, shall be sufficient to constitute prima facie evidence of the failure, neglect, or refusal described in the above proviso.

Sec. 5. Any county in which a person is put to death by a mob or riotous assemblage shall forfeit \$10,000, which sum may be recovered by suit therefor in the name of the United States against such county for the use of the family, if any, of the person so put to death; if he had no family, then of his dependent parents, if any; otherwise for the use of the United States. Such action shall be brought and prosecuted by the district attorney of the United States of the district in the United States district court for such district. If such forfeiture be not paid upon recovery of a judgment therefor, such court shall have jurisdiction to enforce payment thereof by levy of execution upon any property of the county, or may otherwise compel payment thereof by mandamus or other appropriate process; and any officer of such county or other person who disobeys or fails to comply with any lawful order of the court in the premises shall be liable to punishment as for contempt and to any other penalty provided by law therefor.

Sec. 6. In the event that any person so put to death shall have been transported by such mob or riotous assemblage from one county to another county during the time intervening between his seizure and putting to death, the county in which he is seized and the county in which he is put to death shall be jointly and severally liable to pay the forfeiture herein provided.

Sec. 7. Any act committed in any State or Territory of the United States in violation of the rights of a citizen or subject of a foreign country secured to such citizen or subject by treaty between the United States and such foreign country, which act constitutes a crime under the laws of such State or Territory, shall constitute a like crime against the peace and dignity of the United States, punishable in like manner in its courts as in the courts of said State or Territory, and within the period limited by the laws of such State or Territory, and may be prosecuted in the courts of the United States, and upon conviction the sentence executed in like manner as sentences upon convictions for crimes under the laws of the United States.

SEC. 8. If any provision of this Act or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Senator VAN NUYS. The authors of the bill are the Senator from Colorado, Mr. Costigan, and the Senator from New York, Mr. Wagner. The hearing today is to be devoted to those who are in favor of the passage of the measure. We have quite a large number of out-of-town visitors who desire to be heard and I shall not consume the valuable time of the committee by any extended remarks of an introductory nature.

I take pleasure at this time in calling upon the distinguished Senator from New York, Mr. Wagner, the coauthor of the bill, who will explain the same and its purposes and provisions.

STATEMENT OF HON. ROBERT F. WAGNER, A SENATOR FROM THE STATE OF NEW YORK

Senator WAGNER. Mr. Chairman, I shall make only a very brief statement and leave to my distinguished colleague and coauthor a more detailed explanation of the provisions of the bill.

In mankind's long struggle to attain a civilized mode of life no gain has been more dearly won, and no gain has been more worth winning, than the subordination of mob law to constituted authority, and the guaranty of a fair trial to any person, no matter what the charges leveled against him. The crime of lynching thus constitutes the most serious assault on civilization.

In an age when many humane people question the righteousness of painless capital punishment even for those judged guilty by their peers, the lyncher inflicts a torturous and brutal death upon those who have not been judged at all. Of the 452 people lynched between 1918 and 1928, 42 were burned alive and another 32 were subjected to treatment equally ghastly. Only the merciful lyncher is satisfied to drag a victim from his home and to riddle his body with bullets.

Anyone who attempts to envisage the evils of lynching cannot stop short with the 25 to 50 human beings who are done to death every year. It is necessary to contemplate the devastating effect upon their families. It is necessary to read about the instance, not many years ago, where a wife and daughter were forced to stand and watch their husband and father being burned at the stake. Above all, it is necessary to realize that lynching is directed primarily against a single group.

We cannot blink the fact that out of the 554 people lynched between 1918 and 1934, 503 were members of the Negro race. This is a matter of common knowledge. It is a mockery of the principle of political equality that has been sealed with the blood of countless Americans of every race and creed. It is an outrage against the Negro race, whose progress since release from slavery has been one of the most inspiring episodes of modern times.

The poisonous effects of the crime reach further still. It would be futile to attempt to measure its effects upon those who instigate or lead a maddened mob. But there are thousands of people, swept into the current by the frenzy of the moment, who suffer a moral

relapse from which recovery is almost impossible. Children present at a lynching, as is frequently the case, or even living in an environment where a lynching is the chief topic of public interest, are inoculated with a virus that may course through their veins as long as they remain on earth.

The locality and the State are inevitably drawn into the picture. A lynching is such a horrible strain upon the repute of a section that every effort is made to efface it. And the only method of effacement is apology. These apologies include a mass of dogmas, prejudices, and falsifications that exercise a pernicious effect upon the public welfare. It is a tragic spectacle to watch people who abhor lynching forced by the pressure of events to make extenuating pleas for the evil in their midst.

Viewed in these broader aspects, the lynching problem is not confined to individuals, nor to a single race, nor to a section of the country. It is a stigma upon our Nation, which must be removed if we are to achieve our own high ideals and avoid the scorn of enlightened countries.

The argument is made frequently that the lynching problem must be left to the States. The answer is that it has been left to them, and with what results? There have been 91 lynchings since the beginning of 1928. There were 28 lynchings in 1933, of which 17 occurred during the last 5 months of the year. Of these 28 victims, 15 were charged with only minor offenses, and the record ended with the brutal killing of a person whom a grand jury had refused to indict. Two more were added to the list in January 1934.

To insist upon only State relief overlooks the essential character of the lynching problem. The very States that should do the most are in a position to do the least. Where the largest number of lynchings occur, it is hardest to prosecute the perpetrators or to indict officers who have been derelict in their duties. The crucial test of local authority comes at the very time when the air is heavily laden with hate, and when the sober elements in the population have been subdued by the passions of the mob.

To advocate with sincerity a real attack upon lynching is to advocate a Federal law. The bill that Senator Costigan and I have introduced imposes a fine not exceeding \$5,000, or imprisonment not exceeding 5 years, or both, upon any State or local officer whose duty it is to protect an individual, and whose lack of diligence contributes toward the injury or death of such individual at the hands of a mob of three or more people.

The same penalty is provided for any State or local officer who fails to exercise all diligence in performing his duty to apprehend, keep in custody, and prosecute to final judgment, any person participating in a mob which injures or kills a victim. If any officer having a prisoner in his custody or control actually conspires with the mob or participates in its activities, he is subjected to a term of imprisonment ranging from 5 years to life. In addition, an absolute liability of \$10,000 is imposed upon any county in which an individual is murdered by a mob.

In any case where the officers of a State or locality have failed to apprehend, prosecute, or punish those who have, by mob action, injured, or killed a victim, or in any case where the jurors obtainable for service in the State court having jurisdiction are so strongly

opposed to punishment as to make a genuine trial improbable, the Federal court in the district where the outrage has occurred is vested with authority to try and punish the offenders in accordance with State law.

Finally, the bill makes any crime against State law which violates the treaty rights of a foreigner a like crime against the United States, punishable in the Federal courts.

It is clear that the bill involves no desire to supplant State action with Federal action, or to remove from the States their primary responsibility for the protection of their citizenry. It provides for Federal action only where the State has failed, and I am confident that its first effect will be to awaken the States to a keener realization of their own duties.

The constitutional objections to this bill do not impress me. The fourteenth amendment forbids any State to deny any citizen the equal protection of the laws, which includes the right to a fair trial. Congress is empowered to enforce this provision by appropriate legislation. The power to enforce must include the power to punish, and therefore the validity of a fine is clear. Of course, the State is responsible for the action of its officers, and can be penalized for their misdoings. Likewise, Congress may penalize the officers themselves, as the constitutional prohibition against a State denying equal protection is also a prohibition against its agents.

The power of the Federal courts to try citizens of States, where such trial is necessary to preserve constitutional guarantees that the State courts are not preserving, is equally clear. In the famous case of *Moore v. Dempsey* (261 U.S. 86), the Supreme Court reversed an Arkansas court which had dismissed a writ of habeas corpus granted to Negroes because their trial had been dominated by a mob.

The "times which try men's souls" often quicken their sense of justice and their aspiration for betterment. The only benefit of the depression, so far as I can see, is that it has brought into sharper relief the salient evils of our political and economic system, and impelled us into a sweeping campaign for reform. There is no evil greater than mob violence, and there is no reform for which I have pleaded with greater certainty of its wisdom than favorable action upon this bill.

Senator VAN NUYS. We have with us this morning the other co-author of the bill who needs no introduction to the committee or the audience, the eminent Senator from Colorado, Mr. Costigan. We will now hear from him.

STATEMENT OF HON. EDWARD P. COSTIGAN, A SENATOR FROM THE STATE OF COLORADO

Senator COSTIGAN. Mr. Chairman and gentlemen of the committee, late last November a tidal wave of resentment and indignation swept across America when Governor Rolph, of California, publicly defended inaction by himself and other peace officers in that State, and, without proven knowledge of the guilt or innocence of the victims, sought to glorify in his jurisdiction preventable and typically barbarous lynchings of two white youths. In a flash our people's wrath,

visioning the cumulative horror of two generations of such slaughter, spread from sea to sea. In its advance it submerged the law-abiding technicalities of State lines. It emphasized unavoidable national power and self-respect and drove its appeal past local official anarchy to our land's highest legislative and judicial temples where citizenship and justice can, when necessary, be protected. In every section of the country a demand for a new deal of law enforcement, rooted in equal rights, fed the flames of resolute intelligence.

The criminality and ever-smouldering menace of this age-old evil has led to the joint submission to Congress by my able New York colleague, Senator Wagner, and by me of the carefully considered draft of today's proposed legislation. The issues it raises in the present Congress and the facts and principles which vitally inspire it are simple. America, in spite of all its contributions to civilization, stands today both unique and impaired in reputation as a country in which governmental officials are permitted, with the sanction of local opinion, to surrender on demand those whom the law has taken into custody to the holiday blood lust and torture of irresponsible and riotous mobs.

The bare statistical recital begins and should suffice to end the discussion. In 1933 twenty-eight human beings were lynched in the United States. In the lifetime of various persons present in this room the aggregate number of persons lynched in this country has been not less than 5,050, of whom at least 1,450 victims were white men and women and 3,600 Negroes. If one can mention, much less picture, such appalling facts without being sickened into permanent protest, he is indeed hardened beyond all sensibility to mercy. Such happenings destroy our claim to civilized life. They must not be permitted to multiply.

One curative step lies in the direction of Federal antilynching legislation. With respect to its constitutionality, let it be merely said at this moment that we may confidently enact national remedies for such wrongs prompted, as they are, with indifference or lawlessness by State agents in defiance of equal legal protection for those whose national citizenship is as undisputed as their State citizenship.

Every repetition of mob brutality denies its victims the speedy and impartial trial and equal protection of the laws guaranteed by the Constitution. No man touched by the limitations of this world can be permitted to disregard the safeguards of fair trial and to usurp the combined functions of prosecutor, judge, juror, and executioner of his fellowman. Whenever, therefore, any State in our Union fails to protect such basic and equal rights, the Federal Government, in obedience to the Constitution and our natural and inalienable inheritance, should do its utmost to repair the damage which then is chargeable to us all.

These affirmations rest on living American principles, which, as they are applied or rejected, will make or mar history. One is that ours should be fundamentally a government of equal laws and not of tyrannical men. Another, that justice to human beings—not to some, but to all—is the foremost concern of the State. The manner in which we practice these principles fixes our choice between democracy and despotism; between Washington and Lincoln on the one side and Hitler and Mussolini on the other.

Authoritative spokesmen of this and other days may be summoned as absent witnesses. We have just closed our wealth of annual birthday tributes to the name and fame of Abraham Lincoln. It is fitting to recall that his inspired voice, about three quarters of a century ago, denounced lynching as "dangerous in example and revolting to humanity."

In 1918 another famous American, President Woodrow Wilson, solemnly appealed to "the governors of all the States, the law officers of every community, and above all the men and women of every community in the United States, all who revere America and wish to keep her name without stain or reproach, to cooperate, not passively, but actively and watchfully, to make an end of this disgraceful evil. It cannot live", President Wilson added, "where the community does not countenance it."

A little more than two weeks ago, while the echoes of the California tragedy were still reverberating, our honored present President, Franklin Roosevelt, spoke by radio to millions of Americans these vital words:

This new generation is not content with preaching against that vile form of collective murder—lynch law—which has broken out anew. We know that it is murder, and a deliberate and definite disobedience of the commandment "Thou shalt not kill." We do not excuse those in high places or in low who condone lynch law.

For these and other unanswerable reasons, Senator Wagner and I are looking to the American people at the present session of Congress to throw the overwhelming weight of public opinion behind the prompt enactment of a Federal antilynching law.

Mr. Chairman, perhaps the committee will desire a more specific reference than has so far been given to the pending bill. I assume that it has been placed in the proceedings of the committee this morning. Copies of it are in the hands of the members of the committee. It, of course, speaks for itself and is the best evidence of its safeguarding provisions. It may, however, be helpful to summarize its various sections.

The enacting clause declares that the act is designed to secure to persons within the jurisdiction of every State the equal protection of the laws and to punish the crime of lynching.

Section 1 defines a mob or riotous assemblage as an assemblage of three or more persons, acting in concert, without authority of law, for the purpose of depriving any person of his life or doing him personal injury.

Section 2 declares that, if any State or governmental subdivision fails, neglects, or refuses to provide and maintain protection to the life or person of any individual within its jurisdiction against mob violence, it will be deemed to have denied such person the equal protection of the laws. The provisions of the law are enacted to the end that the protection guaranteed to persons in the several States and to citizens of the United States may be secured.

Section 3 (a) provides that where an officer or employee of any State or governmental subdivision, charged with the duty of protecting life or person who has an individual in his charge as a prisoner, fails, neglects, or refuses to make all diligent efforts to give such protection, or any officer or employee responsible for ap-

prehending, keeping in custody, or prosecuting any person participating in such a mob, who fails, neglects, or refuses to make all diligent efforts to perform such duties, shall be guilty of a felony, and, on conviction, punished by a fine not exceeding \$5,000 or by imprisonment not exceeding 5 years, or both such fine and imprisonment.

Section 3 (b) declares that if any officer or employee, having in his custody or control a prisoner, conspires with any person to put such prisoner to death, without authority of law, or to suffer such prisoner to be taken from his custody or control to be so injured or put to death, he shall be guilty of a felony, and those who so conspire with such officer or employee shall likewise be guilty of a felony, the participating parties, on conviction, to be punished by imprisonment of not less than 5 years or for life.

Section 4 extends jurisdiction to Federal district courts to try and punish, in accordance with the laws of the State where the offense is committed, all participants, provided it is shown that the State officials have failed, neglected, or refused to act or the jurors in the State courts are so strongly opposed to such punishment that there is no probability that the guilty can be punished. Failure for more than 30 days after the offense is committed to apprehend or indict persons charged with being guilty or failure diligently to prosecute such persons, shall constitute prima facie evidence of such failure, neglect, or refusal.

Section 5 provides a forfeiture of \$10,000 by any county in which a person is put to death by such a mob. This sum may be recovered by suit brought by the United States for the use of the family, and, if there is no family, for his dependent parents; otherwise for the use of the United States. Action is to be brought in such cases and prosecuted by the United States district attorney in the United States district court for such district, and, if the forfeiture is not paid on recovery of judgment, the court is to have jurisdiction to enforce payment by a levy of execution upon any property of the county or may otherwise compel payment by appropriate process; and any officer or other person of such county who fails to comply with any lawful order of the court shall be liable to punishment as for contempt and to any other penalty provided by law.

Section 6 provides that, where a person put to death has been transported by the mob from one county to another between his seizure and death, the county in which he is seized and the county in which he is put to death shall be jointly and severally liable to pay the forfeiture provided.

Section 7 deals with the violation of the rights of a citizen or subject of a foreign country. It provides that any act in a State or territory in violation of rights of a citizen or subject of a foreign country secured by treaty, which act constitutes a crime under the laws of such State or Territory, shall constitute a like crime against the United States, punishable in like manner in its courts as in the courts of said State or Territory within the period limited by the laws of such State or Territory and may be prosecuted in the courts of the United States, and, upon conviction, the sentence executed in like manner as sentence upon conviction for crimes under the laws of the United States.

Section 8 is the customary legislative declaration that if any provision of the law is held invalid, the application of the remainder of the act shall not be affected.

Senator VAN NUYS. Thank you very much, Senator Costigan. I believe that Senator Dieterich would like to ask you a question.

Senator DIETERICH. Directing your attention to section 5 of the bill, Senator Costigan, which provides that any county in which a person is put to death by a mob or riotous assemblage shall forfeit \$10,000, and providing for recovery and payment to the family, what would you think of a provision that would make the forfeiture recoverable in case the officers have not used due diligence? Do you think that could be enforced regardless of whether the officers of the county have used due diligence in trying to prevent mob violence?

Senator COSTIGAN. My answer would be in the affirmative, Senator Dieterich. There may be some question raised as to the constitutionality of such a provision, but the rest of the bill proceeds upon the assumption that the Federal jurisdiction attaches when the State or local officials fail to extend protection at least to the extent of using due diligence in that direction.

Nevertheless it seems to me that an undoubted right should attach to the victim of mob violence even though, under the guise of due diligence or with actual diligence, the State fails to extend protection.

Senator DIETERICH. The suggestion I made, I think, is proper if the forfeiture should be as to a county where the county is at fault. But I am wondering if it would not strengthen the bill at least to make the county produce evidence to show that it had endeavored to prevent mob violence, because unless they have done that the county should not be penalized, but the perpetrator should be penalized.

Senator COSTIGAN. It is obvious that the person who is the victim of mob violence, regardless of whether due diligence has been employed or not, has been denied the equal protection of the law. In view of the wide extension of the practice of extending safeguards to labor in industrial accidents, without reference to the old defenses of contributory negligence, the common-law defences which in earlier days attached, I am impressed in answer to your conclusion with the conviction that it is not asking anything which might be deemed inappropriate to have the counties subjected to this liability under such circumstances.

Senator DIETERICH. I thank you, Senator Costigan. I wanted to get your view on that particular phase of the matter.

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

Senator VAN NUYS. We have also present Mr. Walter White, who probably needs no introduction at this time. He is an author, a nationally known social-welfare worker, who represents the National Association for the Advancement of Colored People and who is secretary of that organization. He has interested himself in legislation of this kind for many years. I take pleasure in introducing Mr. White at this time.

Mr. WHITE. Mr. Chairman and gentlemen of the committee, since 1882, when first reasonably complete figures began to be kept, through 1934, to date, there have occurred in the United States a total of 5,053 authenticated lynchings. Of this number, 1,438 victims have been white, 3,513 Negro. Among the victims have been 94 women of whom 17 have been white and 77 Negro.

I appear toady as a representative of the National Association for the Advancement of Colored People with national headquarters at 69 Fifth Avenue, New York, and with 378 branches with a total membership of 85,000. Both the membership and the national board of directors of this organization, which celebrated its twenty-fifth anniversary on February 12, 1934, are interracial.

It is difficult to find words which need be added in condemnation of lynching. There are, however, certain misconceptions which need again to be corrected, untruths and half truths being as persistently long-lived as they are.

The first of these misconceptions which is still believed by otherwise well-informed and fair-minded persons is that there is some connection between lynching and sex offenses by Negroes on white women. In a statistical study of the crime, *Thirty Years of Lynching in the United States—1889-1918*, of 3,224 lynchings only 528 of the victims were even accused by the mobs themselves of rape. Of the 2,522 Negroes lynched during that period only 477 were charged with rape. Thus less than one fifth of the colored men done to death by lynching mobs were even accused of "the usual crime." It should be remembered that a mob's accusation is by no means equivalent to conviction or even to an indictment by a regularly constituted jury.

Prof. James H. Chadborn, of the University of North Carolina, author of that able study, *Lynching and the Law*, gives an even lower percentage of lynchings for rape when he states that "alleged rape is given as the offense in only one sixth of the cases." Dr. Arthur Raper of the Commission on Interracial Cooperation, with headquarters at Atlanta, Ga., in his penetrating study, *The Tragedy of Lynching*, also affirms that "less than one sixth of whom (Negroes lynched from 1889 through 1930) were accused of rape."

A second misconception is that mob victims are usually guilty. In a study made under the auspices of the Southern Commission for the Study of Lynching, of which Dr. George Fort Milton, editor of the *Chattanooga News*, is chairman, of the 21 lynchings of 1930 Dr. Raper asserts that "2 of the 1930 mob victims were innocent of crime (they were not even accused), and there is grave doubt of the guilt of 11 others. In 6 of these 11 cases there is considerable doubt as to just what crimes, if any, were committed, and in the other 5 in which there is no question as to the crimes committed, there is considerable doubt as to whether the mobs got the guilty man." Thus 13 of 21 persons lynched in 1930, according to this impartial and southern authority, were innocent victims of the mob's rage. As the mouths of the lynched persons are closed forever by death, there is probably no way of determining whether or not the 8 other victims during 1930 might also have been innocent not only of sex crimes but of any crime whatsoever.

It has been my experience to investigate personally 41 lynchings and 8 race riots. In the majority of these cases investigation has

shown that the victims were either wholly innocent of any crime whatsoever or at most were guilty of a lesser crime than that for which an insane mob had taken their lives.

Defenders of or apologists for lynching are fond of asserting that though lynching is wrong, it is necessary occasionally because of the slowness of judicial procedure. The assertion is made that mobs spring into being because they fear that guilty persons may, through the aid of overly intricate legal procedure and unscrupulous lawyers, escape penalty for brutal crimes. It is impossible to imagine a more fallacious assertion. The majority of the victims of lynching mobs are friendless, penniless individuals, wholly without political or other influence which might aid them in escaping swift punishment for crimes with which they are charged or of which they are suspected. Three fourths of the victims have been Negroes and most of these lynchings have taken place in southern or border States. I challenge any reputable and honest person to assert that there is any lack of speed whatsoever in apprehending, indicting, trying, and convicting Negroes charged with crime in these States or anywhere else in the United States. So deeply into American life and morals has lynching sunk its roots that we have witnessed in the United States within recent months the humiliating spectacle of the Governor and attorney general of a sovereign State—that of Maryland—wholly impotent in the face of a mob on the Eastern Shore which lynched George Armwood on October 18 last, but we have seen as well State troops run out by the mob and the attorney general himself threatened with lynching because he sought their arrest.

In California, the Governor brazenly extolled the mob which lynched two white men charged with kidnaping and promised executive pardon to any person who might be convicted for the lynching. One cannot escape a sense of profound shame, particularly since evidence has been adduced since this double tragedy which establishes that one of the victims at least of this lynching was innocent and that a widow with two small children have been left without support because of the insanity of the mob which murdered the father.

In Missouri, recently, despite efforts on the part of the Governor and other law-enforcement officials of that State to convict the lynchers of Lloyd Warner at St. Joseph on November 28, these efforts have been abandoned following the acquittal of 1 of the 17 men arrested.

On last July 4 while America was celebrating Independence Day, Norris Dendy, a young colored man, the son of a law-abiding, prosperous, and respectable citizen of Clinton, S.C., was taken from the jail where he had been lodged following a minor altercation with a white man in which Dendy had struck the white man when called a "damned black nigger", and lynched. Eye witnesses have testified in affidavits that they positively identified not only civilian members of the mob but officers of the law who opened the jail doors to permit the prisoner to be taken and who actively participated in the lynching. These affidavits have been placed in the hands of the Governor of South Carolina and on yesterday these witnesses appeared before the grand jury of Laurens County. I wish to introduce into the record at this point certified copies of the affidavits of

Ernest Mimms, William Crawford, and Clara Bell Peak which positively identify 16 members of the mob that lynched Norris Dendy. Governor Blackwood of South Carolina and his subordinates are making efforts to secure indictments or convictions. I have been informed by 2 State detectives that a written confession has been secured from 1 of the lynchers. It is exceedingly doubtful, however, whether or not indictments will be returned despite the positiveness of the evidence, and even more doubtful that there will be convictions.

(The said affidavits of Ernest Mimms, William Crawford, and Clara Bell Peak are filed with the committee's records.)

A vast number of additional instances could be cited at this point in support of the contention that in many of the States there has been a complete break-down of the machinery of Government in preventing lynchings or punishing lynchers.

In 1922 the House of Representatives passed by a vote of 230 to 119 the Dyer Anti-Lynching bill which was similar in many respects to the Costigan-Wagner bill. This bill was defeated by a long drawn out filibuster in the Senate, led by Senators from States which had the worst lynching records. Repeatedly during that filibuster the assertion was made with great vehemence that the States themselves could suppress lynching and that the Federal Government should not interfere. What has been done since 1922? Only six States, according to Professor Chadbourn of the University of North Carolina, have passed new laws or strengthened old ones against lynching. Three of these are in northern States where lynchings are infrequent. Two of these are border States where lynchings have been few. Only one of these States is in the deep south where the majority of lynchings take place. The States which have passed legislation since 1922 are: Pennsylvania, New Jersey, Nebraska, Virginia, Kentucky, and Alabama. But during the years 1922-34 there have occurred 277 lynchings, 28 of whites and 249 of Negroes.

Full credit should be given to these States for this action. We urge enactment of the Costigan-Wagner Federal bill not only that it may supplement this commendable State action, but to reach those States which will neither pass adequate State laws against lynching nor make genuine effort to enforce them should they be passed. This applies particularly to those States where lynchings are most frequent and where the majority of lynchings have occurred.

But many far-reaching and subtle changes have taken place since 1922. Particularly have such changes occurred among thoughtful southerners. The presence at this hearing of distinguished white southerners who represent thoughtful opinion of large elements of the church, press, educational institutions, and particularly of the fine, courageous youth of the South, is of the highest significance.

Perhaps the most noticeable shift has been that of the southern press. Practically every important paper has not once, but repeatedly denounced lynching in unqualified terms. All, with a few exceptions and those in rural, backward areas, have abandoned even mention of "the usual crime" as excuse for lynching. The majority have discarded as well appeals to "States' rights." Those which are uncertain of the wisdom of Federal legislation now rely not on "States' rights" but on "delays in the law" which, we have already

seen, are equally, if not more fallacious and misleading in considering means of curbing lynching. A great many southern as well as northern papers have come out without reservation for Federal legislation and I wish here to introduce for the information of the Committee on the Judiciary and the Congress a few of these recent editorials.

I wish to leave the names of a number of these papers. I have editorials here from the Atlanta, Ga., Constitution; Brunswick, Ga., News; Norfolk, Va., Pilot; Bradenton, Fla., Herald; Lynchburg, Va., News, two editorials from that paper; Roanoke, Va., World; Macon, Ga., Telegram; Newport News, Va., Press; Winter Haven, Fla., Chief; Knoxville, Tenn., News Sentinel; El Paso, Tex., Herald Post; Houston, Tex., Post, two from that paper; Charlottesville, Va., Progress; New Orleans, La., Item; Trenton, N.J., Times; Springfield, Mass., Republican; New York, N.Y., New Leader; Waterbury, Conn., Republican; Leavenworth, Kans., Times; Cleveland, Ohio, Press; Portland, Oreg., Oregonian; Portland, Maine, Evening News; Cincinnati, Ohio, Post; Indianapolis, Ind., Times; Cleveland, Ohio, Plain Dealer; and an article by H. L. Mencken in the Baltimore Sun.

Many more could have been presented, but these, coming from every section of our country, will indicate the very widespread support by the press of this bill.

Senator COSTIGAN. Mr. Chairman, may I ask the gentleman a question?

Senator VAN NUYS. Certainly.

Senator COSTIGAN. May I ask whether the editorials referred to and the article by Mr. Mencken are of recent date?

Mr. WHITE. Yes, sir. Most of them have been written and published since January 1, 1934.

Senator COSTIGAN. Mr. Chairman, is there any objection to having them inserted in the record following the testimony of the witness?

Senator VAN NUYS. With the consent of the committee that may be done. It is so ordered.

(The newspaper editorials and articles referred to are set forth in full at the close of the testimony of this witness.)

Senator KEAN. Have you not submitted a considerable number of newspapers, such as the Newark News, the Brooklyn Eagle, the New York Times, and various other New York papers, as well as numerous local papers throughout New Jersey?

Mr. WHITE. Senator Kean, I was trying to follow the plan of the President for economy, and trying to save printing bills for the Senate. I just took these articles from all over the country. I could have furnished a very large number of them.

Senator VAN NUYS. You may proceed.

Mr. WHITE. "State rights" should not and must not be permitted to deter prompt passage of this bill. To those who may attempt to use this argument on the floor of either House of Congress I should like to point out that no "State rights" arguments are ever raised when States seek financial aid for relief, public works, education, and other boons from the Federal Government. We hear such arguments in the main when the Federal powers are invoked

to restrain some element in the States which seeks to impose its will on another, and usually helpless, element.

In providing for Federal action only when States shall have failed, neglected, or refused to act, the Costigan-Wagner bill deprives the States of no single right which they now have. It is my profound hope that the time will come when the Costigan-Wagner bill, if enacted into law, will never have to be enforced because all of the States of the country will, through the enactment and enforcement of laws, act so speedily and effectively to prevent lynchings and punish lynchers as to make it unnecessary to invoke the powers invested in the National Government by the Costigan-Wagner bill.

There are persons, some of them quite honest in their opinions, who doubt the efficacy or the wisdom of Federal legislation because they feel it will cause the States to feel that they are thereby relieved of responsibility. This argument is, in my opinion, an unsound one. The Costigan-Wagner bill should serve and will serve to stimulate action by the States themselves if only to prevent Federal action.

The provision for a financial penalty upon the county which permits a lynching to take place within its borders will materially stimulate that frequently apathetic better element of property-owning citizens to take action to prevent lynchings in order that the financial penalty may not be imposed.

Lynching is no longer either a sectional or a racial issue. The United States today stands at the crossroads. If Negroes can be lynched with impunity and without fear of punishment today, white people can be lynched tomorrow—in fact, that is already occurring. Should there be continuance of physical suffering through unemployment and maladjustments of the economic, social, and political order, it is not at all impossible nor improbable that lynching mobs will extend their activities to Communists, Socialists, the foreign-born and members of whatsoever groups which happen to incur popular disfavor, whether justly or not, in any part of the country. This spirit of anarchy and of lawlessness is the gravest question facing the American people today. Passage by the Congress of the Costigan-Wagner bill will add, in the words of President Roosevelt in his opening address to Congress, “the strong arm of government for immediate suppression” and will help to replace orderly processes of the law for the present dangerous anarchy.

Lynching is but one of the manifestations of economic, political, and racial maladjustments. Enactment of the Costigan-Wagner bill will not solve all of these problems but it will be a step not only in assuring to all citizens, regardless of race or color, in all parts of the country, the fair and impartial trial guaranteed by the laws and Constitution of the United States and the several States, but it will help toward saner and more just consideration of the evils from which lynching springs.

It was the hope of many of us that the gratifying decrease in the annual toll of lynchings since 1922 when Congress almost passed this legislation would be continued until lynching was eradicated from our national life. The increase of 180 percent in the known lynchings during 1933 when 28 persons were lynched, as compared with but 10 in 1932, provides all the argument necessary for passage of this bill.

There are lawyers who seem unaware of our expanding Constitution who maintain that no constitutional antilynching bill can be drafted. There are other lawyers equally eminent who believe that the present bill does meet the test of constitutionality. No lawyer or group of lawyers, however eminent, can, however, decide that a bill is or is not constitutional. Only the Supreme Court of the United States can make that decision. So critical is the situation that there is no other procedure which is honorable or humane for the Congress in this era of the "new deal" to pursue than to pass this bill and place the responsibility for determination of its constitutionality before the only body which has the authority to pass upon this question—the United States Supreme Court.

Twelve million Negroes who have been the chief sufferers from this evil are today anxiously looking to this committee and to the Congress for speedy and favorable action on this bill. Energetic and long-continued efforts have been made by certain radical movements to convince the American Negro that his hope of justice under the present form of government is useless, and that he must lend his aid in helping to overthrow this Government and to establish a new one. This propaganda has not succeeded as well as it might have for two reasons only. The first of these is the ineptitude and lack of wisdom and honesty with which some of these radical movements have been led. The other reason is that a majority of American Negroes still hope, though with less assurance than in the past, that eventually justice and freedom from the mob may be possible under the present system. It is for this committee and for this Congress either to demonstrate that this hope is not a futile one, or else to give weight to those who contend that such a hope is idiotic. No longer is the Negro the carefree, happy-go-lucky, laughing individual pictured by minstrel shows and vaudeville comedians. Swift, deep currents of unrest, of bitter resentment against the lynching mob and every other form of proscription surge through the life of those who form one tenth of America's population. Refusal based upon figments of expediency or constitutionality to afford Federal aid against lynching will inevitably result in a deepening of this resentment which America would do well to consider. I urge prompt and favorable consideration by this subcommittee, by the full Committee on the Judiciary, and by both Houses of Congress of this sorely needed legislation.

Senatort NAN NUYS. Mr. White, I should like to ask you a question or two. Is it true that several States have similar statutes imposing penalties upon the counties under the conditions described in this bill?

Mr. WHITE. Yes, sir.

Senator VAN NUYS. Is it true that the courts of last resort in those States have upheld those statutes, have held them to be constitutional?

Mr. WHITE. In South Carolina they have a statute providing for a financial penalty upon the county, which is automatically placed upon it.

Senator VAN NUYS. And that has been held constitutional?

Mr. WHITE. It has been upheld by the Supreme Court.

Senator VAN NUYS. Is it not also the opinion of the best authorities that the State and Federal Governments have concurrent juris-

diction, and that both Federal and State courts might enforce similar statutes at the same time?

Mr. WHITE. It is my impression that it is.

Senator DIETERICH. You have referred to the laws of some States that inflict a penalty upon the county. Do they do that regardless of whether or not the county officers have used diligence in the enforcement of the law?

Mr. WHITE. Without regard to the actions of the officers?

Senator DIETERICH. I think we have a law in my own State of that kind, where property is destroyed by mob violence.

Mr. WHITE. Yes, sir.

Senator VAN NUYS. Are there any other questions?

Senator McCARRAN. Mr. Chairman, I have been interested in these discussions, both those by Senator Wagner and Senator Costigan and the witness now on the stand. But I want to hear sometime during the course of the hearing before this committee some argument or brief on the subject of the constitutionality of this law. I can see how a law enacted by a State would be held constitutional by the court of last resort of that State, but I must confess to you now that I am in doubt, and I want to remove that doubt, if possible, because I am in sympathy with the measure—I am in doubt as to a Federal law of this nature being held constitutional.

I make the assertion that, if a law of that nature can be held constitutional as coming from a Federal authority, which in itself transposes the Federal court into a novel situation, giving it a novel jurisdiction, and laying the hand of the Federal Government upon an individual State for the enforcement of a Federal law, without any sanction in the organic law itself, I should be glad to be relieved of my doubt. I favor the principle, but I think that is the most questionable feature of the entire bill. I am willing to go further than that, as stated by Mr. White. I am willing to hand it up to the court of last resort and let it decide it, but I am not willing to lend myself to that position without first being advised as best I may be on the question of the constitutionality of such a law. I have very grave doubts on that subject and have had ever since the bill came before the Senate. I hope someone will devote himself to a study of the law on the subject as a question of utmost importance and present it before the committee.

Senator COSTIGAN. Mr. Chairman, may I say to the able Senator from Nevada that there will be one or more witnesses at this hearing who will discuss the question of constitutionality. Furthermore, let me say that during the argument on the Dyer bill in 1922 there was a more or less elaborate discussion of the law. The Senator from Nevada will find among the briefs presented in that connection ample citations of authority in support of the constitutionality of the measure. I venture to refer members of the committee to the report submitted in 1922 on the Dyer bill by Representative Dyer, of Missouri, and Senator Shortridge, of California.

Senator VAN NUYS. In that connection, Senator McCarran, I think the most exhaustive brief was prepared by Hon. Guy D. Goff, then Assistant Attorney General.

Senator COSTIGAN. And later United States Senator from West Virginia.

Senator VAN NUYS. Yes; later United States Senator from West Virginia. I have read that brief with much interest, and I think it is very convincing as to the constitutionality of this bill. I shall be very glad to put that into your hands, Senator McCarran.

Have you anything further, Mr. White?

Mr. WHITE. I would just like to add that I have here expressions of opinion from 12 Governors of States regarding this legislation, which I shall be very glad to present for the consideration of the committee.

Senator VAN NUYS. To be made a part of the record?

Mr. WHITE. To be made a part of the record.

Senator VAN NUYS. If there are no objections, it will be so ordered.

Senator KEAN. From the Governors of what States?

Mr. WHITE. Ohio, Wisconsin, Wyoming, Kansas, Colorado, New Jersey, New York, Minnesota, Pennsylvania, North Dakota, Florida, and Utah.

Senator VAN NUYS. They may be made a part of the record.

(The letters above referred to, and the various newspaper editorials and articles heretofore referred to by the witness, are here set forth in full, as follows:)

STATE OF OHIO,
OFFICE OF THE GOVERNOR,
Columbus, February 14, 1934.

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

MY DEAR MR. WHITE: I have your recent communication with reference to a proposed law which would enlist the aid of the Federal Government in stamping out the institution known as "lynching."

I have publicly stated that I am for the most stringent kind of legislation to correct and prevent this abuse and I am glad of the opportunity to express my approval of Federal legislation having this effect.

Sincerely,

GEORGE WHITE, *Governor.*

STATE OF WISCONSIN,
EXECUTIVE OFFICE,
Madison, February 13, 1934.

MR. WALTER WHITE,
Secretary National Association for Advancement of Colored People,
New York City.

DEAR SIR: Permit me to inform you, in response to your letter of February 3, that I am heartily in accord with the antilynching measure introduced by Senators Costigan and Wagner.

Very truly yours,

A. G. SCHMEDEMAN, *Governor.*

THE STATE OF WYOMING,
EXECUTIVE DEPARTMENT,
Cheyenne, February 6, 1934.

MR. WALTER WHITE,
Secretary National Association for the
Advancement of Colored People,
New York.

DEAR MR. WHITE: I am in receipt of your communication of February 3 in which you ask me for an expression of opinion with regard to the bill introduced in the United States Senate by Senators Edward P. Costigan, of Colorado, and Robert F. Wagner, of New York, proposing to enact national legislation against the crime of lynching.

In reply I am glad to say to you that I am in entire sympathy with the fundamental thought underlying this proposed legislation. I listened with a great deal of interest to President Roosevelt's statement to the church people a few weeks ago which remarks were given to the country over the radio and I agreed whole-heartedly with the sentiment he expressed. Feeling as I do on this question, I shall be glad to lend whatever support may be at my disposal to the passage by Congress of the said bill.

With best wishes, I am

Sincerely,

LESLIE A. MILLER, *Governor.*

STATE OF KANSAS,
OFFICE OF THE GOVERNOR,
Topeka, February 7, 1934.

Mr. WALTER WHITE,
New York City.

DEAR MR. WHITE: The Governor wishes to acknowledge a copy of the Costigan bill relating to lynching. The Governor's recent statement emphasizing the need for a public conscience and emphatic enforcement of law at the time of the recent California lynchings, points out his own position in this regard.

He appreciates the copy of the bill. Best personal wishes.

Yours very truly,

WILLARD MAYBERRY,
Secretary to the Governor.

THE STATE OF COLORADO,
EXECUTIVE CHAMBERS,
Denver, February 8, 1934.

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

DEAR MR. WHITE: Lynch law has no place in America!

Therefore, I am glad to endorse most heartily the Costigan-Wagner anti-lynching bill. If I can be of any service in aiding its passage, do not fail to call upon me.

Very truly yours,

ED. C. JOHNSON, *Governor.*

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
February 6, 1934.

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

MY DEAR MR. WHITE: This is to acknowledge receipt of your letter, and in reply thereto would say that while I have not read the bill, yet I can assure you that I am whole-heartedly with you in your endeavor to rid our country of this terrible thing, and wish to cooperate with you in every way possible.

Sincerely yours,

HARRY MOORE, *Governor.*

STATE OF NEW YORK,
EXECUTIVE CHAMBER,
Albany, February 12, 1934.

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

MY DEAR MR. WHITE: I acknowledge your letter of February 2. I have read with much interest the bill sponsored by Senator Edward P. Costigan and Senator Robert F. Wagner.

It is my firm belief that lynching is such a heinous and outrageous exhibition of an unreasoned defiance of law and order that legislation and other plans to curb and ultimately destroy lynching should be vigorously supported by all.

Very sincerely yours,

HERBERT H. LEHMAN.

STATE OF MINNESOTA,
EXECUTIVE DEPARTMENT,
St. Paul, February 8, 1934.

Mr. WALTER WHITE,
New York City, N.Y.

DEAR MR. WHITE: Replying to your recent letter, I wish to say that I agree with President Roosevelt in his unequivocal condemnation of lynching as "mass murder."

I am glad to commend you and your associates in your efforts to secure the passage of a Federal act controlling this outlaw practice.

Sincerely yours,

FLOYD B. OLSON, *Governor.*

COMMONWEALTH OF PENNSYLVANIA,
GOVERNOR'S OFFICE,
Harrisburg, February 7, 1934.

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

DEAR MR. WHITE: I approve most heartily the passage of a Federal anti-lynching bill.

I cannot too strongly condemn lynching and the failure by any State to punish it promptly and effectually.

Sincerely yours,

GIFFORD PINCHOT.

STATE OF NORTH DAKOTA,
OFFICE OF THE GOVERNOR,
Bismarck, February 5, 1934.

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

DEAR MR. WHITE: I am in receipt of your favor of the 2d this morning and wish to thank you very much indeed for sending me a copy of the bill introduced in the United States Senate by Senators Edward P. Costigan, of Colorado, and Robert F. Wagner, of New York, against the crime of lynching.

I am very much in accord with the provisions of this bill, as I believe legislation of this kind would certainly suppress such violence as has been used by citizens of this country in lynching persons whom they believed guilty of crime.

I certainly appreciate your writing me in this respect, and you may rest assured that I shall do all that I possibly can to help out.

Sincerely yours,

WILL. LANGER, *Governor.*

STATE OF FLORIDA, EXECUTIVE DEPARTMENT,
Tallahassee, February 15, 1934.

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

DEAR SIR: This is to acknowledge receipt of your letter with reference to the bill introduced in the United States Senate by Senators Edward P. Costigan of Colorado and Robert F. Wagner of New York.

I am unalterably opposed to lynching and shall use the full powers of my office at all times to bring about the proper punishment of those guilty of

this unlawful practice. As soon as I have more time I will go into this bill thoroughly.

Very truly yours,

DAVID SHOLTZ, *Governor.*

STATE OF UTAH,
OFFICE OF THE GOVERNOR,
Salt Lake City, February 14, 1934.

Mr. WALTER WHITE,
New York City.

DEAR MR. WHITE: I feel that any Federal act which might eliminate or minimize lynching in the United States should be beneficial to the entire country.

These acts of lawlessness on the part of impassioned mobs are not conducive to the best wishes of our Nation. Therefore, I am in favor of any measure which may tend to reduce the number of such crimes.

Very truly yours,

HENRY H. BLOOD, *Governor.*

[From the Brunswick (Ga.) News, Dec. 19, 1933]

Lynchings have become so numerous throughout the country lately that it looks like the Federal Government will have to step in and take a hand in its prevention.

[From the Bradenton (Fla.) Herald, Feb. 1, 1934]

WHAT PRICE SAFETY

Although we haven't the slightest idea what the Governor-ordered investigation of the Tampa lynching that took the life of a negro who was charged with nothing more serious than chicken stealing will disclose, the outrage appears to have been the crudest outburst of violence ever written into the records. It is hard to see how the stain the act left can be rubbed out.

We've no suspicion nor opinion in the matter and are content to let the official probe take its course, only hoping that the bottom will be scraped by the information seekers, but we can't help realizing that this is one of the few instances, if not the only one, when mob violence was unprecedented by community unrest that pointed to the possibility of mob-law assertion.

Why the prisoner was being transferred from one jail to another by a single officer during the quiet of the early morning hours, how the mob learned of the transfer, and why the assembly of so many cars at the hour of the outrage did not arouse a suspicion in a supposedly well-policed town are among the questions that need to be cleared up. Certainly this is an instance in which all the facts should be disclosed. We can't assume that it is unimportant because the victim was a friendless Negro. Surely human life hasn't lost that much in the scales.

[From the Norfolk (Va.) Pilot, Jan. 2, 1934]

LYNCHING TOTAL WORST IN 10 YEARS

The lynching curve took an alarming leap upward during the past year, but so did the national awareness of its challenge to American civilization. If there is more tolerance in the South than there has been in many years for the suggestion that lynching be made the special concern of the Federal Government, it is because of the conviction that has formed in 1933 that this kind of crime must be wiped out—by local and State effort if that is possible, by the mobilization of the whole power of the National Government if that is necessary.

[From the Miami (Fla.) Daily News, Jan. 31, 1934]

FLORIDA LYNCHING RECORD

Florida has averaged one lynching every 3 years for the last 45 years, during which records are available, but its record in recent years has been worse than that. There was one Florida lynching in 1932, another in 1933 and now, in the first month of 1934, Tampa reports another such outrage, the second in the Nation this year.

The Negro victim in this case was only hazily identified with the assault for which he was killed. Subsequent investigation may prove his innocence, as frequently has happened after a mob has exacted the irrevocable penalty of death. We recall that only last year it was clearly established, following a lynching, that the supposed attack that infuriated a mob to murder had never happened. In the same year the record of lynchings included the killing of one man whose only offense was stealing a cow, another for quarreling with a passer-by, a third for threatening to sue the son of an officer of the law and four others for reasons too vague to be determined.

Too often, investigators have found, there has been collusion between men charged with law enforcement and those who have defied the law to satisfy their own lust for blood. The State properly calls for a full and immediate report on the Tampa lynching. There is every reason to suspect, in this case, that the lynchers had advance notice of the plan to transfer the prisoner from city to county jail or it would not have been ready to seize the deputy constable and his prisoner between 2:30 and 3 a.m. Vigilant officers might be expected to know of the gathering of such a mob in the downtown area. If they did, why was one lone deputy constable guarding the prisoner?

Florida cannot afford to be classed with the section of Maryland where moronic hoodlums have disgraced a State, nor with the California Governor Rolph would have you believe exists.

Slowly the Nation, as a whole, has advanced its control over crime and punishment by duly constituted courts. Until 1902 there had never been less than 100 lynchings every year since these crimes were first recorded. During the next 10 years the trend was improved, but there were never less than 60. The "low" in lynchings for the next decade was 39 and in 1923 a relatively excellent record of 33 lynchings was reported. In the decade just ended the highest number for any year is 30 and twice during this period only 10 cases were revealed in annual totals. Last year there were 28 lynchings, or seven more than the combined total of the 2 previous years. Kentucky and Florida have blackened the page for the first month of 1934—an ominous beginning.

Granting that the normal processes of law are often slow and sometimes end in miscarriage of justice—a condition urgently demanding remedy—the courts are infinitely superior to infuriated mobs as agencies of justice. When they fail, society fails. It is futile at such a time as this to plead their shortcomings as excuse for such an outrage as that at Tampa. The dignity and security of the State demand unflinching prosecution of those responsible for the lynching.

[From the Lynchburg (Va.) News, Dec. 10, 1933]

A WEAK DEFENCE OF MOBS

The afterthought of defenders of lynchings that outbreaks of lawlessness and of mob killings are the result of the law's delays and the ease with which defendants often slip through the clutches of the law by means of technicalities and appeals doesn't stand up under a little consideration of the facts. The News has often asked why it is, if this contention of the defenders of lynching is true, that those who get lynched are usually those who lack the wealth or the influence to beat the law, while those who have this wealth and influence are those who are never in danger of being lynched. Dr. King D. Beach, pastor of First Methodist Church of Baltimore, asks the same question. In an article in the Baltimore Sun he points out that 95 percent of the fatal mob outbreaks between 1880 and 1930 were directed against Negroes, who are not notorious for their ability to carry legal fights through to the highest courts and who are not ordinarily tenderly regarded by white juries, especially when accused of "the usual crime", or of the murder of a white person. Dr. Beach concludes

in the words of the Sun, that "mobs were not so much concerned as the defenders of mobs would have us believe, with the redressing of the law's delays and the law's failures."

If it be pointed out that of recent years white persons in larger numbers have been victims of the mob, the point is not blunted. These white persons have not been the wealthy and the influential. They have not been gangsters with their defense funds and their political power. They have not been embezzlers and crooks in high places. They have been the defenseless or the friendless and the unknown—men who more than any other, except Negroes in certain sections, are most certain to meet the penalty provided by law if found guilty and the most likely to be found guilty by juries if the evidence is sufficient.

Dr. Beach's conclusion is that is difficult to escape. It is that mobs are not, except in rare instances, the product of defects in the law, but of the lawlessness of the American people, the laxness of the law in dealing with mob murders, the craving of men and women of certain type for the kind of excitement that goes with lynchings, and the desire to take revenge personally without waiting for the law to move.

There are many defects in the law. There are many technicalities. There is too much delay in the administration of justice. And these defects should be cured, these loopholes plugged. But when that is done we will still have lynchings. The only cure for that American evil is public sentiment, and public officials do not condone vile murder.

[From the Roanoke (Va.) World, Jan. 12, 1934]

THE LYNCHING EVIL

It is to be hoped that President Roosevelt and the various Governors and Congressmen petitioned will pay more than passing notice to the resolution, adopted recently at a meeting of southern white women in Atlanta, urging that immediate attention be given to the lynching evil. A cooperative plan, looking toward "eradicating this evil", is advocated in the resolution.

The recent wave of lynchings which has swept over the country is sufficient evidence of the need of such cooperation. Time after time within the past few months, men suspected of some crime have been the victims of mob violence, and yet practically nothing has been done to bring to justice the men who participated in the atrocity. As the assembled women pointed out, "past experience has demonstrated that State and local authorities and public opinion on which they depend have failed to bring to justice members of lynching mobs in spite of the fact that their identity was well known."

Local law-enforcement officers, after all, reflect the sentiment prevailing in their community. Even though they know the men participating in a lynching they are afraid to take action against them because they know that by doing so they would antagonize the community which pays them their salaries. By pretending that they do not know the members of the mob, they play safe with their own jobs, but at the same time they play havoc with justice.

The situation would be quite different if State or Federal officers were assigned to the task of enforcing antilynching laws. Since they would be responsible to the State or Federal Government for their actions, they would have less regard for the sentiment in any particular community, and more for the outraged feelings of citizens throughout the State or Nation. Instead of losing their jobs if they did bring charges against the members of the mob, they would be much more likely to suffer if they failed to take action when it was obvious that evidence could be obtained if sought.

The opposition of the women to the Costigan-Wagner bill, under the terms of which a county in which a lynching occurred would have to pay \$10,000 to the family of the victim, seems somewhat unaccountable, however. It might perhaps be better to make the amount of the indemnity variable, according to the population and wealth of the county. But the disagreement of the women is not with the size of the indemnity, but rather with the principle of levying such an indemnity. And since they are seemingly intent upon stamping out the lynching evil, it seems strange that they should oppose the bill.

Fear was expressed by the women that the establishment of such a principle would prove a barrier to the enforcement of the law. First impulse, however,

is to believe that the setting up of such an indemnity would actually aid in the enforcement of the law, since it would tend to fill the more responsible citizens in any county with a sense of concern as to the actions of their more irresponsible neighbors.

It is encouraging, though, to find a united demand for action, and there is reason to believe that as antilynching sentiment grows, the Federal and State governments will become increasingly concerned with stamping out the practice. That, coupled with a more tolerant attitude on the racial question, should do much to end the evil.

[From the Macon (Ga.) Telegraph, Feb. 6, 1934]

LYNCHING TO BECOME UNPOPULAR

When the Federal Government has considered bills for prevention of lynching much has been said in protest about State rights. But with the refusal of the States to put into effect any measure that is half-way effective, it is quite natural that the matter should again be brought out in Congress.

Representative Thomas F. Ford, of California, has introduced in the House of Representatives at Washington an antilynching bill similar to the one introduced in the upper House by Senator Edward P. Costigan, of Colorado, and Senator Robert F. Wagner, of New York.

It seems likely that the bill will pass. That is, no suggestion of a fight has been heard.

Doubtless Representative Ford has moved in the matter as a protest from his State for the California Governor's sensational approval of a lynching that occurred there some time ago.

The bill agreed upon by the sponsors provides Federal interference only when a county or State has refused or failed to arrest and prosecute "a mob or riotous assemblage" composed of three or more persons acting in concert without authority of law, for the purpose of depriving any person of his life, or doing him physical injury. A lapse of 30 days constitutes failure.

Any officer or employee of the State or subdivision thereof shall be held guilty of failure to give due protection to a person in his keeping under the law unless he makes all diligent efforts, and in case of defeat in those efforts he shall prosecute to final judgment all persons participating as a mob. or be fined not more than \$5,000 or be imprisoned 5 years, or both.

And if it can be shown that he conspired with any of the mob he and they can be imprisoned (not fined) for not less than 5 years, or for life.

The Federal court can assume jurisdiction when it is shown that proper efforts have not been made to discover the members of the mob and to bring them to justice; or when it is shown that jurors might not find against members of the mob if the local courts should attempt prosecution. Thirty days' failure to do anything definite and effective against a mob shall be deemed prima facie evidence that nothing is likely to be done by the State court; and this will give the Federal authorities jurisdiction.

The United States shall sue the county for \$10,000 in behalf of the family of any person murdered by a mob. If no family, the dependent parents are entitled to the money. If no parents, the United States Government gets it. Any State officers resisting the necessary processes of the Government may be punished for contempt of the Federal court.

If a mob victim is seized in one county and carried to another, both counties jointly and severally shall be held liable for the damages. Another section refers to the protection that must be given to a citizen of a foreign country. Such foreigner shall have the benefit of the same protection as that afforded citizens of the United States.

It is probable under such a Federal law no more wild lynchings will occur, or if they do, the local officers will be obliged to take action. No more verdicts will be accepted reading, "Came to his death at the hands of party or parties unknown."

The \$10,000 damage penalty will not be enforced in many counties before public sentiment in those counties will turn against lynchers. The public is now prone to think, "Oh, well; the man lynched was a bad actor, and these lynchers had merely a spell of patriotic aberration. Why not let the matter drop there?" And it does drop there. The country is breaking out with another lynching epidemic this year. Twenty-five lynchings occurred in Janu-

ary. It is not necessary to go on toward chaos in this way. The lynching spirit is the murder spirit, if we look at it in the best light possible. And it reflects the fiendishness in our natures rather than the bravery. It gives sway to our basest passions, and there is no end to them unless they are curbed.

A Federal lynching law will do some needed curbing. If the people in the several States will not do it for themselves, the Federal Government will have to do it for them. And thus will pass another State function along with so many other State rights that have been discarded.

[From the Newport News (Va.) Press, Jan. 6, 1934]

LYNCH LAW

There now is pending in Congress an antilynching bill, the measure having been presented as a result of the numerous lynchings during the past year. It takes little or no account of State rights. But this was to be expected. Several of the States have refused to make the slightest attempt to stop lynchings. And the Governor of California has gone so far as to commend lynch law and promise pardon for murderers under certain circumstances.

The bill defines a mob or riotous gathering as "an assemblage composed of three or more persons acting in concert without authority of law for the purpose of depriving any person of his life or doing him physical injury."

The means by which such acts within a State are brought within the jurisdiction of the Federal Government is through a section which provides:

"If any State or governmental subdivision thereof fails, neglects, or refuses to provide and maintain protection to the life or person of any individual within its jurisdiction against a mob or riotous assemblage, whether by way of preventing or punishing the acts thereof, such State shall by reason of such failure, neglect, or refusal be deemed to have denied to such person the equal protection of the laws of the State and to the end that the protection guaranteed to persons within the jurisdictions of the several States or to citizens of the United States, by the Constitution of the United States, may be secured, the provisions of this act are enacted."

This measure, or something like it, seems to be the only answer to the lynching problems. Where the States refuse to uphold the law the Federal Government must act if civilization is to survive. The proposed Federal antilynching law will meet vigorous opposition. But in the light of recent events it should be enacted with a minimum of delay.

[From the Lynchburg (Va.) News, Jan. 9, 1934]

STATES MUST ACT

The year 1933 closed on a note of optimism as regards business and industrial and financial conditions and could boast of events that meant progress in less material matters, but there is one record established during the year that is nothing less than a shame to the Nation. The increase in the number of lynchings was, as the Greensboro Daily News declares, one "over which the citizenry or that portion of them who are not acknowledged Rolphians, may not only hang their heads in shame, but give serious pause to the sentiment, the disregard for law and order in its fundamental principles, which it reflects", and continues:

"The jump from 10 lynchings in 1932 to 28 in 1933, an increase of 200 percent, is shocking enough in itself. But the inference, in several instances the direct charges, of official collusion, certainly in the broadest acceptance of that word with its inclusion of condonement, sympathy, and noninterference, is even more abhorrent to those, which means all of us, who depend upon organized society, represented by the Government, for protection and the pursuit of happiness, or what there is left of it.

"Heading the list of these horrible examples is the encouragement which California's Governor, 'Sunny Jim' Rolph, gave mobbery: the victims got what was coming to them, he did not leave the State because he feared somebody else might order out troops to give protection; anyone arrested and convicted of participation in the double killing would receive a pardon. In Mary-

land local authorities refused to cooperate in an investigation or to arrest accused mobsters upon orders from the attorney general's office. In South Carolina a police officer, charged with having left the jail doors unlocked, faces formal indictment as a lynching accomplice. In North Carolina no progress has been made, or at least revealed, in the identity of mobsters who months ago took a Negro from a sheriff who subsequently issued a long string of 'I don't know's.'

"It is no wonder, in the face of these circumstances, that announcement is made that a vigorous effort will be undertaken at the present session of Congress to secure enactment of Federal antilynching legislation. The Nation-old question of States' rights, considerably battered about in these latter days, is already being paraded. But somewhere in the argument, it is quite likely that inquiry will be pointedly made whether States' rights include the prerogative to pass or gloss over a lynching, to countenance inability and indifference of local officers, to tolerate a chief executive who congratulates lynchers and promises them pardons, or to connive in furtherance of a flouting of law and order in a manner which undermines its own strength and reveals virtually no brakes this side of Washington. There are States' rights, undeniably. But what about States' wrongs?"

The News has as much respect for States' rights and for local selfgovernment as any, and has as great horror as any of Federal usurpation of police powers, but none can overlook the fact that the extension of lynching and continuance of State failure to prevent or even to punish after the event will give strong impetus to the already strong movement for a Federal lynch law.

[From the Winterhaven (Fla.) Chief, Jan. 11, 1934]

SOUTHERN WOMEN PROTEST LYNCHING

We are glad to note that a conference of southern white women has requested President Roosevelt to take action to eradicate the evil of lynching. If such an appeal had come from the North or the West—or even from California where "Rolphing" is the new form of lynching—there might have been protests from certain sections on the ground that these people were interfering in a matter that was not their concern. But coming from the South it carries added weight and should be productive of speedy and decisive action on the part of the President and Congress. The appeal of the conference was based on the contention that "past experience has demonstrated that State and local authorities and public opinion on which they depend have failed to bring to justice members of lynching mobs in spite of the fact that their identity was well known." Mrs. Atwood Martin, of Louisville, Ky., chairman of the Association of Southern Women for the Prevention of Lynching, and Mrs. Jessie Daniel Ames, of Atlanta, director of the organization, and a third member to be selected by them will be the committee to take the resolution and request to the President. They represent the finest culture and traditions of the South. May their request be heard and the Federal Government take speedy action to remove this stigma from the land.

[From the Knoxville (Tenn.) News-Sentinel, Jan. 11, 1934]

STAMPING OUT LYNCHING

A conference of southern white women meeting in Atlanta on the lynching problem has requested the President, Governors, and Congressmen to work out a cooperative plan between Federal and State Governments for "eradicating this evil."

"The women made it plain," says the Associated Press, "that they did not want to shift responsibility for stamping out lynching from the State government entirely to the Federal Government. Some voiced the opinion that the proposed Federal antilynching law now before the Senate (the Costigan-Wagner bill) appeared to coerce the States."

The ladies, we fear, are too optimistic. Past experience has shown that State governments too frequently do not live up to their responsibility by bringing the lynchers to justice. It is only in such cases that the Costigan-Wagner bill

would have the Government take charge of such prosecution, and also penalize the State and the local officials whose negligence permitted the lynching.

No compromise such as the women's conference suggests will do when the situation gets as bad as it is now. As President Roosevelt termed it, lynching is "collective murder." To stop it, a law that would have the Federal Government with all its power take charge would be none too drastic.

At the recent congressional committee hearing on racketeering held in Chicago, one witness after another, including notorious racketeers themselves, testified that the one agency the criminal dreads is the Federal Government. With its power to cross State and county lines and to use its conspiracy statute, which makes any person aiding or even having knowledge of the commission of a Federal offense a party defendant, the Government and it alone effectively can bring lynching mob members to justice.

"Cooperation" from State governments, in view of past experience, is hardly to be expected unless it is forced.

[From the El Paso (Tex.) Herald-Post, Dec. 4, 1933]

AN ANTILYNCHING LAW

Unless Governors and local officials display more courage in curbing blood lust of mobs, Senator Costigan of Colorado will find the sentiment of the United States rolling up behind his promised Federal antilynching bill by the opening of Congress.

None believes that the Federal Government is repository of the Nation's conscience. We are not ready for the federalization of police powers. But just as it took the Federal Government to make effective war on kidnapers, so it is necessary to invoke Federal power to stop lynching.

Civilized America will not, cannot brook these barbarous outbreaks against the law. If sheriffs fail to hold their prisoners secure the State governments must move in and help them. If Governors, like California's Rolph, invite and condone rabble rule, or, like Maryland's Ritchie, delay adequate State protection, what is left but Federal action?

A Federal antilynching law has been discussed for years. The Dyer bill almost passed Congress in 1922 when it went through the House on a vote of 230 to 119, to be filibustered to death in the Senate. In recent years the old evil of lynching appeared to be gradually diminishing. This year the embers of lawlessness have flamed. There have been 27 lynchings already this year, compared with 10 for the whole year of 1932.

Since only a few States have passed adequate antilynching laws a Federal law seems to be required. If it is passed, it should have teeth enough to insure that the lowliest American, regardless of his race or the charge against him, gets the protection of due process of law as guaranteed by the Constitution.

[From the Newport News (Va.) Times-Herald, Jan. 10, 1934]

THE REACTION TO ROLPHISM

The indifference of some State enforcement officers toward lynchings, plus the actual commendation by Governor Rolph of the lynching of two men in California, has had its inevitable result. Senators Costigan and Wagner have introduced in the United States Senate a drastic Federal antilynching bill, providing for Federal, rather than State, jurisdiction over lynchings under certain circumstances and imposing drastic penalties on State officials who fail to exercise their full authority to block mob violence. Under the provisions of the proposed law, Governor Rolph, who promised immunity from punishment to the lynchings at San Jose recently, could be given a prison term of from 5 years to life.

According to the proposed Federal law: "For any State officer to abet such outrages affirmatively, is made a Federal crime punishable by imprisonment from 5 years to life." So runs a joint statement of the patrons of the bill.

Such is the reaction to Rolphism. If State authorities are impotent, dilatory, or antagonistic to the administration of justice for mob murderers, the Federal Government proposes to step in and see that justice is done. It is no compli-

ment to the State at which the legislation is primarily aimed that this condition exists, this reaction to Rolphism. For the United States Government ought not to find it necessary further to supplant State rights on a question such as this. There appears a need for Federal machinery to insure the proper action against lynching in extreme cases. Let us hope, however, that it will never need to be invoked, if the Costigan-Wagner legislation passes.

[From the Houston (Tex.) Post, Dec. 11, 1933]

FEDERAL ANTILYNCH LAW

That the demand for Federal legislation designed to suppress lynching will be pushed with new vigor in the coming session of Congress is certain. The wave of mob action that has swept over the country in recent weeks cannot fail to revive the agitation for Federal action. And it may as well be admitted now that such legislation will have a good chance of passing, if the people of the States do not make their opposition to it definitely known.

Several years ago a strong effort was made in Congress to pass an anti-lynching bill. The measure was not passed, largely because of opposition to it on the ground that it brought the Federal Government into a realm of law enforcement that should lie exclusively with the States.

Since that time the powers of the Federal Government have been greatly expanded. The Federal Government now takes cognizance of some phases of kidnaping. There is a greater tendency to look to the central Government for action in suppressing certain crimes. Notwithstanding a Democratic administration is in power, the chances of an antilynch law to pass Congress now are greater than they were a few years ago, both because of the recent violent outbreaks of mob violence, and because of a growing custom of looking to Washington to solve serious problems.

Passage of a Federal antilynch law would constitute a serious new invasion of the domain of the States, and as such should be resisted by adherents of the principles of State's rights and local self-government. Federal interference in such matters is not desirable. But, it should be remembered, if it is the right of the States to have jurisdiction over lynchings, it is the responsibility of the States to suppress lynching. If they fail to meet that responsibility, they may expect to see it transferred to the Federal Government. Most of the rights the States have lost slipped away because the States dodged a responsibility.

They now have fair warning. It is either assume the responsibility of suppressing mob murder, or step aside and permit the Federal Government to take on the task. In simpler words, it is a case of put up or shut up.

[From the Houston (Tex.) Post, Jan. 6, 1934]

ANTILYNCHING BILL

Opponents of Federal antilynch legislation will have to step lively if they succeed in heading off passage of the bill that has been introduced in the Senate to make lynching a Federal offense.

Opponents of such proposed legislation in the past have prevented its enactment by pressing the plea that giving the Federal Government jurisdiction over mob murder would be an inexcusable invasion of the rights of the States and by contending that it was partisan legislation aimed at humiliation of the South, where, admittedly, many lynchings have occurred.

The plea against a Federal antilynch law on the ground of invasion of the rights of the States is as sound today as ever, but conditions in and out of Congress have changed. This must be obvious to everyone.

The antilynch bill that claimed attention several years ago was introduced by a Republican. The bill of similar nature introduced in the Senate of this Congress has for its authors two outstanding Democratic Senators, Wagner, of New York, and Costigan, of Colorado, both rated as liberals. Democrats are in control of both branches of Congress, but many of the influential leaders are from sections outside the South where the State rights doctrine is held lightly.

President Roosevelt has taken cognizance of the crime of lynching in recent utterances and condemned it in scathing terms. In his message to Congress Wednesday he included it among the crimes that must be suppressed by the strong arm of the law. He did not say the Federal law. But his statement naturally is an encouragement to those pushing the Wagner-Costigan bill.

The wave of lynching last fall, and the increase in cases of mob violence to 28 in 1933, the highest number in many years, has aroused public sentiment against this form of lawlessness to a high pitch. It is logical that this popular indignation should find expression in the national lawmaking body.

The Wagner-Costigan bill makes a concession to the State rights adherents by providing that the Federal Government shall act in lynching cases where the State governments fail to act. That clause may facilitate passage of the proposed law. It leaves it up to the States to say whether they shall have Federal action when lynching occurs within their borders. It gives them a chance to ward off an invasion of the province of criminal law enforcement. Under the terms of this bill there need never be any Federal interference. The question would be, however, what Federal authorities considered adequate effort on the part of the States to apprehend and punish lynchers.

In practice, the probability is that in many of the States, suppression of lynching would be left to the Federal Government if the sort of arrangement provided for in the Costigan-Wagner bill were to become law. Some of the States, unfortunately, have not been excessively diligent in their efforts to suppress mob violence. This measure would offer them a chance to shift their responsibility. It will be recalled that under the eighteenth amendment the Federal and State Governments were given concurrent jurisdiction over violation of liquor laws, but the States quite generally left enforcement up to the Federal Government. The same situation likely would develop in the event of the enactment of a Federal law to bring lynching under Federal jurisdiction.

[From the Charlottesville (Va.) Progress, Dec. 13, 1933]

TWO INSTANCES OF FALLACIOUS REASONING

Discussing the recent outbreaks of lynching, the Washington Post very aptly draws a comparison between the advocates of a Federal lynch law and those who insisted upon, and got, a national prohibition act. Such things, the Post concludes, cannot be shifted totally upon the Federal Government with hope of successfully eradicating them. They are local in their inception and consequently should be disposed of through local effort. The saneness of the following observations cannot fail to be plain:

"Those who are advocating a Federal lynch law upon the contention that Federal power alone is sufficient to control mob outbreaks, are falling into the same fallacious line of reasoning as that which produced the National Prohibition Act * * *

"To enact a Federal lynch law and shift the responsibility to the National Government would be to relax that strong cordon of sentiment that has been built up and to break down the sense of local responsibility and local shame that attach to lynchings. It would be making the same sort of fictitious expediency that the advocates of temperance made when they persuaded themselves that the Federal Government should undertake to enforce prohibition."

All this is true, but the people in their sane moments very generally have the same abhorrence to lynching. This terrible act of lawlessness occurs when temperate thought has been swamped in a stampede of indignation. It is a time when the sense of local responsibility and shame have been thrown to the winds. There must then be help—particularly help for what follows. The responsibility for such occurrences, however, is no less a burden upon localities, but their ability to bring mob leaders to justice needs the able assistance of the National Government's forces. A properly constituted Federal law, which the people should regard as supplementary and supporting, would be of the greatest aid in putting down the evil of lynching as such a one has already operated upon that of kidnaping.

But, as the Post says, the real remedy is contained in the local sense of justice and law observance.

[From the New Orleans (La.) Item, Jan. 6, 1934]

THE LYNCH RECORD

An ugly record is complete—lynchings rose 180 percent in this country last year. The 1932 total was 10, that for 1933 was 28. The National Association for the Advancement of Colored People reports for 1933 “a surprisingly large number of instances of apparent collusion between law officers and mobs.” In this it sees “an ominous tendency likely to grow to threatening proportions unless curbed by drastic legislative action.”

Immediately following the San Jose outrage we heard much talk of a national antilynch law. Passage of such legislation may be advisable. It must not be forgotten, however, that the final responsibility for extirpating lynching rests upon the people of our individual American communities.

In the era before prohibition many communities decided that they would have done with the liquor traffic. By local option they put it outside their town and city limits. This undoubtedly has been the most effective ban upon intoxicants ever applied in America. State prohibition was less effective, national prohibition abjectly failed.

This same scale of diminishing returns upon governmental edicts is likely to hold true with lynching. Any county, village, or town which the leaders of thought and government determine shall be guiltless of lynching will usually be free of it, whether State or Federal Government act toward that end or not.

The lowbrows and roughnecks almost invariably do all the lynching. But the better class of citizens can usually control them if they really try. Occasional exceptions appear. But the intelligent elements control most communities.

[From the Trenton (N.J.) Times, Dec. 8, 1933]

ANTILYNCHING LAW NEEDED

Mob crimes in Maryland, California, and Missouri have accentuated the need for a Federal antilynching law. There have been 27 lynchings in the various States this year, an increase of 17 over the number recorded in 1932.

Twelve years ago, the Dyer antilynching bill almost passed Congress. It was favored in the House by a vote of 230 to 119, but was filibustered out of existence in the Senate.

Vigorous enforcement of the criminal code would make a Federal law unnecessary. But the trouble is that there are all too many State officials disposed to condone lynchings. A national statute, accordingly, looms as a vital necessity.

People are properly protesting against laxity and inefficiency in criminal procedure. They rightly demand that kidnapers, murderers and other violators be treated to swift, sure justice and adequate punishment.

Virtually all sensible persons are agreed, however, that orderly processes of law are preferable to mob action. A Federal antilynching law would be altogether beyond criticism if it were accompanied by the kind of relentless justice to which the Nation is entitled.

[From the Springfield (Mass.) Republican, Jan. 7, 1934]

FEDERAL ATTACK ON LYNCHING

The Federal antilynching bill, sponsored by two Democrats, Wagner, of New York, and Costigan, of Colorado, would put a governor like Governor Rolph, of California, in jail for a term of not less than 5 years. At least, this seems a reasonable inference from the section providing such a penalty for any State officer who affirmatively countenances a lynching. Governor Rolph did all that and more.

The bill is an attempt to avoid constitutional obstacles inherent in States' rights and, therefore, provides for Federal intervention only when a State has failed to safeguard its system of criminal administration from the violence of the mob. That failure might be due either to feebleness amounting to inability

to function, or to actual unwillingness. Penalties not exceeding 5 years imprisonment or \$5,000 fine, or both, could be imposed on any State officer who had failed to exercise due diligence in protecting prisoners from mobs.

If States through their own fault fail to safeguard within their jurisdiction a person's right under the fourteenth amendment to "life, liberty, or property without due process of law"—in this case, life itself—after having enjoyed ample opportunity to enforce the guaranty of "the equal protection of the laws," nothing stands between society and anarchy but Federal intervention. The enactment of the Wagner-Costigan bill and its practical application would at least serve as an offensive against the national lynching disgrace on a new front.

[From the New York City New Leader, Jan. 20, 1934]

LYNCH LAW

An increase in the number of recorded lynchings from 10 in 1932 to 28 in 1933 is excessively alarming. Moreover, the lynchings were peculiarly outrageous. At Tuscaloosa, Ala., and in California they implied a vicious collusion between authorities and the mob. No mere change of law can deal with a situation deep rooted in national passions and prejudices of the social structure. Nevertheless, a Federal antilynching law would be of help. The Federal Government through the income-tax law has been able to reach racketeers who have gone untouched by local authorities. It has also made a better record in regard to kidnaping. In dealing with lynching, the Government would have a support from a widely spread public opinion, whereas local authorities are dependent upon the very regions in which the mobs have operated. Even in the South it is encouraging to observe a growth of feeling that the Federal Government ought to have some power in this connection. Such power certainly could be set up under the fourteenth amendment.

[From the Waterbury (Conn.) Republican, Jan. 9, 1934]

A FEDERAL ANTILYNCHING BILL

Following the adoption by the House at Washington of the Dyer antilynching bill several years ago, there was a marked downward tendency in the number of lynchings. In 1932 there were only 8. But last year the number rose to 28. The downward tendency vanished in a wave of mob criminality that reached its apex in California, where the Governor of the State was found taking a lynching mob to his bosom. Hence Senator Wagner and Senator Costigan have introduced a new Federal antilynching bill, designed to make good the constitutional guaranty of the equal protection of the law to all persons.

The bill would expose to a 5-year jail term or a \$5,000 fine, or both, any State officer who failed properly to protect prisoners against mobs, or neglected to do his part in arresting and convicting members of mobs. It would also allow a sentence of from 5 years to life to be imposed on any State officer who abetted a mob outrage. Finally, it would allow the United States to recover \$10,000 from any county in which a lynching was begun or consummated, this sum to be used for the dependents of the victim, if any, and otherwise for the use of the United States.

If the threat of the Dyer bill, which failed of enactment only because of a filibuster in the Senate, had the deterrent effect upon lynching attributed to it, it would seem that the actual enactment of a Federal antilynching law would have a more powerful, as well as a permanent, deterrent effect. The great drawback to waiting for the States to wipe out lynching lies in their failure to punish either officials who weekly permit lynchings or members of mobs who perpetrate them. If there is any deterrent value in punishment it is lost with respect to lynching. A few convictions under a Federal antilynching law might well open a new and better chapter in the history of lynching in this country.

[From the St. Louis (Mo.) Star, Jan. 2, 1934]

HOW SHALL LYNCHINGS BE STOPPED

It has been more than 10 years since an antilynching law was agitated in Congress. Today it is to the fore again, and for the same reason—an epidemic of lynchings, with the public authorities either helpless, or, as in the case of the Governor of California, encouraging mob murder. Governor Rolph, by his incitement of the San Jose killing and his public defense of the killers, has done more than any other individual in the United States to create a necessity for Federal legislation.

A law such as Senator Costigan proposes, requiring a county where lynching occurs to pay a heavy indemnity to the victim's family, would, if enforceable, practically put an end to lynching. Of course, that means "another law." But those who object to "another law" will have to show how lynching can be stopped without it.

[From the Leavenworth (Kans.) Times, Dec. 4, 1933]

FEDERAL ANTILYNCHING LAW

When Congress meets next month the country will hear further discussion of the subject of lynching which will be brought to the surface through the introduction in the Senate of a Federal antilynching bill, sponsored by the National Association for the Advancement of Colored People. The association is now drafting the bill, which will be introduced by Senator Edward P. Costigan, of Colorado. Support is expected from several Senators who have urged passage of the bill.

Recent lynchings will react in favor of passage of the measure. An aroused public opinion will have much to do with favorable reaction throughout the country. A similar bill introduced in the House in 1922 by Representative Dyer, of Missouri, was passed by that body, only to be killed in the Senate.

It can be pointed out that a Federal antilynching law would go much further in stamping out mob murders than any power the State can bring against such lawlessness. States rarely go even so far as to indict members of lynching parties and seldom, if ever, are those taking part in lynchings convicted. Local politics control actions of the State judicial machinery.

With the Federal Government conducting prosecutions against those who take part in lynchings, this obstacle would be removed. Federal power is something altogether different from State power. It is held in greater fear for the reason that it functions without any local or political angle being injected.

A case in point is the fewer number of kidnappings following enactment of the so-called "Lindbergh kidnaping law" and the promptness with which the Federal Government ferreted out the Urschel and other kidnapers and prosecuted their trials.

Fear of this powerful hand would do more to end lynch law than any other agency.

[From the Cleveland (Ohio) Press, Jan. 17, 1934]

FIGHTING MOB RULE

Lynching is not the lynching of men merely, but the lynching of law and justice. You have either law or anarchy. There is no middle road.

Thus Rabbi A. H. Silver sums up strongly against a historic blight on the nation, a peril to the whole system of government as we know it.

Rabbi Silver told an audience of more than 500, meeting under auspices of the National Association for the Advancement of Colored People, that "it is given every often to a minority to point the way for the majority."

These are the views of leaders on thought in all fields. They are the views, roughly expressed, of President Roosevelt.

We are happy that Rabbi Silver found a new opportunity to express these views. And that the Rev. Fr. Michael L. Moriarty, director of Catholic chari-

ties, found the same opportunity to urge that education, as well as the proposed Federal legislation, be used to combat this national stain.

In the Costigan antilynching bill, the Congress has a great opportunity to make another historic step as it follows the President's leadership in making good this ultimatum:

"Mob rule cannot be condoned in high places or in low."

[From the Portland (Oreg.) Oregonian, Dec. 24, 1933]

SOUTH FOR ANTI-LYNCHING LAW

That lynching is condemned in the South as in the North may be seen from an article in the Atlanta Constitution. It commends a bill to be introduced in Congress making lynching a Federal offense and says:

"Now that mob law is no longer a sectional evil, the most conspicuous examples of it recently being in States other than the South, it is not surprising that Congress should deal with the evil in the same manner in which it proceeded against the kidnaping menace.

"There is no room in the United States for mob law under any conditions. If our civilization is to be protected, the punishment for crime must be left to the courts. There is no midway ground."

Although further extension of Federal power is involved, the traditional southern jealousy for State rights does not restrain this southern newspaper from waiving State rights in favor of efficient law enforcement.

Federal prosecution of lynchers should have a strong restraining influence. It would rise above local passion and would go over the heads of such Governors as Rolph, of California. By pursuing lynchers to any State to which they might migrate, it would keep them constantly in fear of the law. The first conviction and punishment of lynchers would have a salutary effect in all States.

[From the Portland (Maine) Evening News, Dec. 29, 1933]

LET THE MOB PAY

Lynchings will prove to be highly expensive affairs in future, if the next Congress passes a bill Senator Edward P. Costigan, of Colorado, is expected to introduce.

The Costigan bill would provide that—

Counties in which lynchings occurred would be fined \$10,000; payable to the Treasury or to the victim's family.

A maximum of 5 years' imprisonment or a maximum fine of \$5,000 would be imposed upon any officer failing to make every appropriate effort for protection or for the apprehension and prosecution of members of lynching mobs.

A prison sentence of from 5 years to life would be meted out to any official cooperating in the delivery of a prisoner to a mob.

Stiff medicine this, but possibly the best remedy that has been offered thus far for dealing with a deadly, menacing social disease.

Nor is it difficult to foresee a bitter and protracted fight over such a measure on the floor of the Senate. Champions of the bill will include all who hold that kidnapers, murderers, and criminals of similar stamp should be and must be punished "by due process of law." Against them will be pitted the strength of those who hold that when the law fails, the mob supplies the only answer. Incredible though it may seem to Easterners, the number of these latter appears to be legion. One recalls the hundreds of congratulatory letters and telegrams to Governor Rolph, of California, after that gentleman's hands-off stand on the San Jose lynchings.

[From the Cincinnati (Ohio) Post, Dec. 20, 1933].

MAKING A CASE

The States this year are building up a fine case for the enactment by Congress next year of a Federal antilynching law.

To the gruesome record of recent lynch horrors, Tennessee has added another. A Negro, accused of attacking a white girl, was found hanging from a cedar tree near Columbia, his dead body riddled with bullets. The appalling brutality of the latest lynching lay in the fact that this mob victim had been arrested and then freed by action of the grand jury who found no evidence against him:

How many innocent men and women are lynched may be judged from a report of the Southern Commission on the Study of Lynching. The report found that out of 21 persons lynched in 1930 two "certainly" were innocent, 11 others "possibly" were. Mobs are not deterred by questions of sex, color, or locality. They are not deterred by the innocence of their victims.

Tennessee's latest lynching, her third this year, runs the national total for 1933 to 27. Of these, 4 were whites. California, Maryland, and Missouri this year have joined the lynch States.

Some believe that the Federal Government, under present laws, can intervene to punish lynchers in States where the law breaks down. In a brief just filed with the Attorney General, the National Association for the Advancement of Colored People cites a congressional act of 1870 making it a misdemeanor for an officer of the law to permit an inhabitant of any State to be deprived of the right to person or property. The citation was in justification for a plea for the Federal Government to punish the sheriff of Tuscaloosa County, Ala., for failure to prevent double lynching last August. The brief says:

"A Government which can invade a sovereign foreign state to protect the lives of its citizens and exact reparation for a deprivation of their rights abroad, yet cannot, or will not, through lack of official courage to enforce the written law, protect its own citizens within its borders, abdicates to the mob."

Regardless of conflicting interpretations of existing law, the fact that the Federal Government has not felt free to act hitherto is sufficient evidence of the need for a Federal antilynching law.

[From the Indianapolis (Ind.) Times, Jan. 15, 1934]

SOUTHERN WOMEN SPEAK

The Dixie gentlemen who have been lynching black men stand condemned by the very flower of womanhood they have pretended to protect.

In Atlanta this week the Conference of Southern White Women for the Prevention of Lynching passed resolutions calling on President Roosevelt to work with Governors and Congressmen to eradicate this evil. It was this conference that 4 years ago served notice on men that they held no commission to protect the honor and virtue of southern women by means of mob murders.

With a membership of 1,000,000 white women in 11 Southern States, the conference can be said to speak for southern women rather generally.

The conference did not specifically endorse the pending Wagner-Costigan bill, providing for Federal intervention to halt lynchings. But there is argument for such a measure in the conference's statement that:

"Past experience has demonstrated that State and local authorities and the public opinion behind them have failed to bring to justice members of lynching mobs although their identities have been known."

The Federal antilynching bill does not deprive localities of an opportunity to preserve constitutional rights to their citizens. It merely arms the Federal Government with the right to step in and punish lynchers and cowardly officials when localities have failed.

The attitude of President Roosevelt toward this problem was indicated in his message to Congress on January 3. In his list of crimes that "call on the strong arm of the Government for their immediate suppression" and on the country "for an aroused public opinion", the President cataloged lynching along with organized banditry, cold-blooded shooting, and kidnaping. False local pride should not be allowed to kill the Wagner-Costigan bill.

[From the Cleveland (Ohio) Plain Dealer, Jan. 17, 1934]

A WAR UPON LYNCHING

Among the dubious distinctions of 1933 is that of having more lynchings than any recent year. But on the heels of this outbreak of lawlessness comes a new and stronger demand for action to curb it.

Last evening Cleveland added its voice. Rabbi Silver's eloquent arraignment of lynching expresses the community's convictions. Similar meetings, also sponsored by the National Association for the Advancement of Colored People and other liberal organizations, are being held this month in every State, North and South.

In fact, the South shows an encouraging zeal to stamp out the medievalism which finds expression in lynch "law." In Atlanta last week women leaders from 12 Southern States met to protest lynching. They ridiculed the discredited excuse that lynching helps to protect southern womanhood and expressed themselves in "favor of any legal measure which promises sure and permanent eradication of lynching."

The Cleveland meeting, and the others like it, brings support to the Costigan-Wagner antilynching bill, soon to be before Congress. The southern women in Atlanta expressed themselves in favor of a coordinated national and State attack upon lynching and stressed the fear of leaning too heavily on the Federal Government, but they are very far from opposing Federal legislation. Previously attempts to get such measures through Congress have always been blocked by southern votes. Evidently the sentiment in the South is changing as the more intelligent leaders recognize the blot which lynching puts on the shield of any State which tolerates it.

[From the Waterbury (Conn.) Republican, Dec. 8, 1933]

THE PRESIDENT ON LYNCHING

It was not necessary for President Roosevelt to deal specifically with recent lynchings in his timely condemnation of the lynching evil Wednesday. They are fresh in the public mind. Nor was it necessary or proper that he should have rebuked Governor Rolph, of California, by name for his laudation of the San Jose lynching. When the President said "We do not excuse those in high places or in low who condone lynch law", the inference was inescapable that he had Governor Rolph in mind. No one else in a high place stands out by reason of his approval of lynching. The Governor stands rebuked by the President, to the satisfaction of the vast majority of American citizens.

It could be wished, however, that the President's meaning in what he had further to say about lynching had been more clear. He said that a "thinking America * * * seeks a government of its own that will be sufficiently strong to protect the prisoner and at the same time to crystallize a public opinion so clear that government of all kinds will be compelled to practice a more certain justice. The judicial function of government is the protection of the individual and of the community through quick and certain justice. That function in many places has fallen into a state of disrepair. It must be part of our program to reestablish it."

In its general application this is a plea for a more vigorous, efficient, and just administration of law. But as it applies to lynching is it a hint at more power for the Federal Government? Did the President have in mind that Senator Costigan, of Colorado, and Representative Celler, of New York, are going to introduce Federal antilynching bills when Congress convenes next month? Perhaps not, and yet shall we soon see the adequate protection of prisoners against lynching unless this is done? Walter White, secretary of the National Association for the Advancement of Colored People, does not think so. He said recently:

"It is plain to everyone that the States are unwilling or unable to stop lynching. The officers of the law either aid the lynchers actively or stand idly by and let the mob do its work. Governors order investigations which never discover anything. Grand juries find no evidence for indictments." He points to the marked drop in lynchings from 61 in 1922 to 28 in 1923, a drop which he attributes to the fact that the House at Washington passed the

Dyer antilynching bill in 1922. It was killed in the Senate only by a filibuster. "Federal intervention", says Mr. White, "is the only power local communities fear."

In the light of the recent increase in lynching, Federal antilynching legislation would seem to stand a good chance of enactment in the next session of Congress. Certainly if a Federal antilynching act is passed, the States which have permitted lawless mobs to murder accused persons will have no grounds for complaint or protest. If they had stopped lynching, there would have arisen no demand for Federal legislation.

[From the Atlanta (Ga.) Constitution, Dec. 9, 1933]

AS A FEDERAL OFFENSE

As a result of the recent mob-law outrages in widely separated sections of the country, it is probable that a law making lynching a Federal offense will be urged at the approaching session of Congress.

The enactment of such a law would be in line with the action of Congress in enacting a measure making kidnaping a Federal offense when that crime became so general in its scope that it assumed the proportion of a national menace. The Federal activities made possible by this law have resulted in greatly reducing the kidnaping evil, the apprehension and conviction of most of the criminals responsible for the kidnapings of the past 6 or 8 months, and the prospect that the evil will soon be exterminated.

Now that mob law is no longer a sectional evil, the most conspicuous examples of it recently being in States other than the South, it is not surprising that Congress should deal with the evil in the same manner in which it proceeded against the kidnaping menace.

There is no room in the United States for mob law under any conditions. If our civilization is to be protected, the punishment for crime must be left to the courts. There is no midway ground.

A law making lynching a national offense would undoubtedly have a strongly deterrent effect upon those inclined to place the authority of the mob above that of the courts.

[From the Baltimore (Md.) Evening Sun, Jan. 15, 1934]

THE COSTIGAN-WAGNER BILL

(By H. I. Mencken)

I

The essence of the antilynching bill introduced in the Senate on January 4 by Senator Costigan, of Colorado, and Senator Wagner, of New York, lies in its transfer of jurisdiction from the State courts to the Federal courts. That transfer does not follow a lynching automatically; it follows only in case the State authorities show an incapacity or unwillingness to track down and punish the lynchers. If they are not apprehended or indicted within 30 days, or there is indication otherwise of "a failure diligently to prosecute them", the nearest Federal district court may assume that there is "prima facie evidence of failure, neglect, or refusal", and proceed to issue warrants for the lynchers and try them "in accordance with the laws of the State."

It will be noted that lynching itself is not made a Federal offense. It is defined as the act of any "mob or riotous assemblage composed of three or more persons acting in concert, without authority of law, for the purpose of depriving any person of his life, or doing him physical injury"; but the butchery of the victim, if he is butchered, remains ordinary murder under the State law, and his manhandling, if he is not killed, remains ordinary assault and battery.

Thus lynching is left in the category of common crime, where it manifestly belongs. Every person concerned may be prosecuted separately, and as if he had done the crime along. He gains nothing by being in a mob.

But the "failure, neglect, or refusal" of the law officers concerned is made a Federal offense, and defined as a denial of that equal protection of the laws

which is guaranteed by the fourteenth amendment. Any State officer who fails to "make all diligent efforts" to protect an individual against lynchers, or who "fails, neglects, or refuses" to "perform his duty in apprehending, keeping in custody, or prosecuting to final judgment" all persons participating in a lynching is guilty of a felony, and may be fined not more than \$5,000, or sent to prison for not more than 5 years, or both. If it appears that he actually "conspired, combined, and confederated" with the lynchers, he may be imprisoned for life.

II

Obviously, this bill has teeth in it. It lays no blame and no penalty on the honest officer who tries to do his duty but is overcome by the mob, but it fetches the fraud who offers only a formal defense, or who turns over his prisoner without any defense at all. Moreover, it is wide enough to take in district attorneys as well as sheriffs and jailers, and is even, I suspect, wide enough to take in judges. Any functionary, high or low, who is "charged with the duty of apprehending, keeping in custody, or prosecuting any person" concerned in a lynching may be brought to book, and if it appears that he failed in, neglected, or refused that duty he may be sent to prison.

There is further provision for damages for the heirs of the victim, collectible by a proceeding in the nearest Federal court against the offending county, or, if two counties be concerned, against them "jointly and severally." The amount fixed is \$10,000, and it is payable to the victim's wife and children, if he has any, or to his dependent parents. If he has no relatives the money is to be paid into the United States Treasury. In any event, the suit for it "shall be brought and prosecuted by the district attorney of the United States", and in case there is a judgment and it is not met, the Federal marshal may "levy upon any property of the county", or the appropriate county officers may be haled before the Federal judge and jailed for contempt.

There is nothing in the bill about damages for persons who are manhandled by a mob but not killed. This seems to have been an oversight, and I assume that Senators Costigan and Wagner will remedy it when their attention is called to it. Certainly a man who survives an attempt to lynch him, as sometimes happens, should have damages, and equally certainly there should be damages for the man who is merely roughed. Such assaults, like actual lynchings, are seldom possible without the connivance of the county officers. Finally, the bill makes a Federal offense of "any act in violation of the rights of a citizen or subject of a foreign country secured to such citizen or subject by treaty between the United States and such foreign country", but only to the extent that the act is punishable under the laws of the State in which it is committed.

III

The merits of this proposed law are plain enough. It avoids the error, so often made in State antilynching statutes, of erecting lynching into a special crime, distinct from ordinary homicide. That device, obviously, can only work in favor of the lynchers. Under the Costigan-Wagner bill they are put on all fours with common murderers, and are liable to capital punishment in States where it is inflicted, and to life imprisonment in the rest. These heavy penalties will not only tend to dissuade the village bullies and morons who perpetrate nearly all lynchings, they will also make it crystal clear that lynching is not to be defended any more as a mere aberration of public spirit, but is murder plain and unadulterated.

Another excellent provision is that which throws responsibility directly on the local enforcement officers, including especially the district attorney, and punishes them severely for neglect of duty. If, as I have suggested, the net is wide enough to take in judges also, so much the better. In at least four cases out of five the criminals who carry off a lynching are known to every man, woman, and child within 20 miles of the scene. The local sheriff, if he wanted to, could easily jail them, and the local district attorney could bring them to trial. Unfortunately, both officers, with their eyes on the next election, usually evade their duty, and it is seldom that the local judge urges them to it, for he is commonly a timorous professional job holder just as they are.

When he is anything better the lynchers are quickly brought to justice. I point, for example, to the case of Judge Neill A. Sinclair, of North Carolina. In Judge Sinclair's circuit, during the Ku-Klux pestilence of 6 or 8 years ago, there were many atrocities upon helpless persons, and the local officers com-

monly failed to proceed against the criminals, making the usual excuse that convictions would be impossible. But Judge Sinclair refused to tolerate any such mockery of justice. Instead, he ordered the local sheriffs, on pain of summary jailing for contempt, to bring in the culprits, the local grand juries to indict them, and the local State's attorneys to prosecute them vigorously. With his honor's steely eye upon the jury box and witness stand, the accused were convicted by the carload and sent to prison for long terms, and Ku-Kluxry promptly adjourned.

IV

What an honest and competent State judge thus achieved might be done just as well, and no doubt much easier, by Federal judges. They sit ordinarily in large cities, and have at their disposal grand and petit juries made up not of village loafers but of city men of the better class, not many of whom have any sympathy with assassins. The prosecuting attorney who works with them is not a neighborhood Buzfuz itching for higher office, as in so many of the county courts, but a lawyer of some ability and dignity. And this prosecuting attorney has at his disposal, for searching out evidence, the whole detective force of the Department of Justice, composed of men who are not afraid of criminals, and do not hesitate to shoot when they are molested.

To be sure, it is the custom for a Federal court, in trying local cases, to move into some convenient county-town, mainly for the purpose of saving the traveling expenses of witnesses. But it commonly keeps to its home grounds for the trial of cases of any magnitude, and so far as I know it is not required to go on circuit at any time if it prefers not. In any event, its prosecuting officer remains the same, and it uses the same city grand jury and has the aid of the same Federal police. Even the rustic petit juries, facing it, know that the judge on the bench is something far different from the local Dogberry, who is probably known to most of the jurymen by his first name, and has in his time solicited the votes of all the rest. Federal judges sometimes know less law than they ought to know, and show other lamentable defects, but they are at least out of politics, and it is rare for one of them to be lacking in either personal assurance or professional zeal.

Thus the Costigan-Wagner bill had better be taken seriously in the Bible Belt. It was drawn by two of the best lawyers in the Senate, and has long teeth, some of them ground to a razor edge. That President Roosevelt is behind it is very likely, for he has twice denounced lynching in plain terms. Unless the friends of the great evangelical sacrament get busy promptly it may very well slip through the Senate and House. I advise the boosters of Moronia Felix, both clerical and lay, to call meetings of moral protest a' once. If they dally they may be damned.

STATEMENT FROM WILLIAM ALLEN WHITE

Senator VAN NUYS. We invited William Allen White, of Kansas, to be present today. It was impossible for him to attend, but he sent a very interesting statement, which I will ask Senator McCarran to read into the record at this time.

Senator McCARRAN. This is on the letterhead of the Emporia Gazette, Emporia, Kans., dated February 19, 1934, and reading as follows:

DEAR SENATOR VAN NUYS: I wish the following statement included in the record of hearings urging passage by Congress of the Costigan-Wagner anti-lynching bill: Lynching is one of the few crimes which can be prevented by precautionary measures. The fear of punishment will stop lynching if the punishment is reasonably certain. Sometimes brave men commit crimes of violence or cunning. But lynchers are always cowards. Lynching is the only crime invariably executed by cowards who require the presence of other cowards to nerve them in crime.

The passage of a Federal lynching bill hauling the lynchers into court outside of the county in which the lynching occurs, will naturally almost automatically remove the cowardly defendant from the circle of commending public opinion and hence bare his crime to the contumely which it deserves. He knows the mob protects him from the law in the courts.

Instinctively he feels safe when he lynches. He senses the truth that it is impossible to convict a member of a lynching mob in the community which encouraged or permitted a lynching. For the community responsible for the crime inevitably biases any possible jury assembled under our modern method of choosing juries. Conviction for lynching is only possible outside of the area which condones a given lynching. For unfortunately under our jury system which rejects a man intelligently informed automatically the system has to accept a man of the type who would join a mob or justify it in the court and community. The same man outside of the community where the lynching occurred would be properly horrified by it and so would vote to convict where he would be stubborn for acquittal near the scene of the lynching.

The Costigan-Wagner bill, taking the trial for the lynching away from the scene of the crime, will make conviction so easy that the mob spirit will hesitate and dissolve into inaction. One or two Federal convictions will do more to stop lynching than all the resolutions passed by all the good-will societies, all the tall talk indulged in by all the humiliated governors, and all the moral indignation released by all the uplifters in the United States.

For the crime of lynching is a preventable crime. It will be prevented if the cowards who invariably form the mob can only know that there is a God in his Israel and a jail yawning at the end of the debauch.

I most earnestly urge the passage of this bill.

WM. A. WHITE.

STATEMENT OF ARTHUR GARFIELD HAYS, NEW YORK CITY, REPRESENTING THE AMERICAN CIVIL LIBERTIES UNION

Senator VAN NUYS. The next proponent will be Arthur Garfield Hays. Mr. Hays has attained an international reputation in suits involving civil liberties. It is a pleasure to have him with us today.

Mr. HAYS. Mr. Chairman and gentlemen of the committee, this is at least one bill which I can talk about without anybody questioning the fact that I am wholly disinterested. The reason for that is, obviously, that lynching is a crime perpetrated against poor, friendless, helpless people. If the 4,000 or 5,000 lynchings in the last 30 years had been of people of a different class, it is needless to say something would have been done about it before now.

Last fall I was in Germany for about 2 months. Naturally, a good many discussions turned on the Jewish question over there. Invariably the Nazis would say to me, "How about Negroes in the United States?" I would point out, of course, that in the United States all men were equal before the law, and that there was no discrimination by law, whereas in Germany there was discrimination by law. I need hardly tell you that I was not at all satisfied with my answer. If the Germans had had a greater appreciation of the situation in the United States, they might have riddled the distinction between equal protection by law, and the deprivation of that equal protection, because we know perfectly well that the colored people in the United States do not have the equal protection of the law.

When you come to this antilynching bill, I think that you should bear in mind that, while the figures show that perhaps one sixth of the persons who have been lynched have been white people, there are 10 times as many whites as Negroes in this country, and to get the idea of per capita effect you must multiply the number of lynchings by 10, in which case you will get 35,000 as compared with 700 or 800. So we may assume that 96 percent of those lynched were Negroes, from which point we come to the proposition of whether

or not in a legal sense the Negro has the equal protection of the law.

Reference has been made to the constitutionality of this proposed law. I presume the question of constitutionality of this bill, as of the Dyer bill, is largely a question of geography, meaning, of course, that men come to conclusions about these matters largely because of their own predisposition. The logical situation is perfectly clear to my mind that the Federal Government, being a Government of delegated powers, has no right to act on crime in a State unless it happens to occur on Federal territory, so we must look for justification for a Federal bill somewhere else in the Constitution, and we have it under the fourteenth amendment.

I would like to read the wording of the appropriate section, because that section does not seem to have been covered.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States—

If the amendment ended there, in my judgment, this act would be constitutional. That refers to a State making a law which abridges the privileges or immunities of citizens. But it goes further and says:

nor deny to any person within its jurisdiction the equal protection of the laws.

In other words, there must be something in the fourteenth amendment that refers to the action of the State which did not concern the making or enforcement of laws.

Senator McCARRAN. May I interrupt you for a question or will it annoy you?

Mr. HAYS. Not at all, sir.

Senator McCARRAN. That latter provision of the organic law, in my judgment—and I propound this question to you for the purpose of discussion—relates particularly to the individual. In other words, the individual has the right under the organic law to have extended to him the equal protection of the law. But when an offense, such as the act of lynching, has been consummated, who then has the right to make the demand? Does that provision of the Constitution contemplate a continuation, after there has been a consummation of the act, in which the right to the organic law has been taken from an individual?

Mr. HAYS. It would not, except that section 5 of the fourteenth amendment states that the Congress has the right to enact appropriate legislation to enforce the previous sections. I am coming to that. What is appropriate legislation? The courts have differed as to whether legislation is appropriate and necessary, but if some legislation is appropriate and necessary it seems to be the general opinion that the Federal Government has a right to intervene.

Senator McCARRAN. Will you pardon me again?

Mr. HAYS. Yes.

Senator McCARRAN. The matter comes rather vividly to me, in view of our discussion of the law in a different way and under different circumstances in the Senate of the United States last week, on the question of whether when a contempt has been consummated and there was no further continuance of the contemptuous act the Senate has a right to prosecute for a past contemptuous act. If you apply that same analogy to the latter part of that amendment, does

that mean that where you have a consummated act, a complete act, the law would be construed to extend the penalty for the lack of having given the individuals equal protection under the law?

Mr. HAYS. Senator, I think you would be perfectly right if the act were directed against lynchers. If the bill applied to the lynchers themselves, I think your point would be a good one; but the violation of law covered by this proposed act relates to sheriffs, State or county authorities, who are to be subject to penalty. In other words, the act does not directly protect individuals as citizens of the United States. It penalizes officers of States or sheriffs who fail to give people the legal protection of the law. That is the distinction, to my mind, between other laws which might be directed toward lynchers, and a Federal law directed against a State or the agents of a State.

You are no doubt familiar with the case of *Ex Parte Virginia*, (100 U.S.), which is a leading authority. It was a habeas corpus proceeding brought by Judge Cole. He was charged with discrimination in the drawing of jurors. The United States law provided that such discrimination was a crime, and that any officer who did so discriminate would be penalized. Habeas corpus was brought to the Supreme Court of the United States, which court said that law was constitutional. If you want to distinguish that situation from one where a sheriff fails to give equal protection under the law, it is exactly in the same position as the judge in the *Ex Parte Virginia* case. It seems to me a very potent authority.

Senator McCARRAN. Pardon the interruption. You may proceed.

Mr. HAYS. I think it is much more useful to discuss things as we go along rather than simply make a speech. If there is anything I say that raises a question in your minds, I hope that you will check me up.

Senator Dieterich raised the point about whether the penalty proposed to be imposed upon a county should be imposed only when there was negligence on the part of the sheriff. In connection with that I think it is interesting to note that the southern commission on the study of lynching has prepared a formal State's bill, and in that bill it is provided that the county shall be liable to each lynched person, or the family of each lynched person, in the sum of not less than \$2,000 nor more than \$10,000, to be recovered in a civil action. That is irrespective of negligence on the part of county officials. I think you will be interested in the law of Illinois providing that the children or the family of any person or persons, or anyone dependent upon them for support, who may be lynched in any county or city in that State, may recover from such county or State or city damages in the sum of not to exceed \$5,000. In other words, under your State law there is no question of culpability, nor is there in the draft of the proposed bill of the southern commission.

Senator COSTIGAN. Mr. Chairman, may I ask a question at this point?

Senator VAN NUYS. Certainly.

Senator COSTIGAN. Before you proceed further, Mr. Hays, let me ask you if there have been any cases under the State laws you have referred to for damages where those damages have been recovered for the benefit of the families of the deceased in cases of lynchings?

Mr. Hays. There has been in South Carolina. Incidentally, there is a table in this book of Mr. Chadbourn's on that subject. As to that table and the effect of the law he says:

The table shows that each county which has been fined has had no more lynchings, and the average number of lynchings per year has decreased sharply after the infliction of each penalty.

I cannot imagine anything more effective than that, coming from the southern commission, to show how effective that law would be.

To come back to my general argument, I have referred to the fourteenth amendment, and the distinction between the provision that no State shall pass any law which will deprive a citizen of privileges or immunities, and no State shall deny equal protection of the law to a citizen. But what does equal protection of the law mean, and how can the Government enforce it? The Government by Federal law could not act against lynchers. That is within the province of the State, but, as indicated by the *Ex Parte Virginia* case, action may be had against a State, a subdivision, or officer of a State acting as its agent. The books are full of cases where by Federal law agents of the State have been held under penalties by the Federal law.

And in further reference to the question of constitutionality, I think it is interesting to note that Chief Justice Hughes was a member of a national commission which in 1919 unanimously passed a resolution to the effect that lynching be made a Federal crime punishable by United States courts. This is a fair indication of rather dignified support.

Also, in connection with the Dyer bill, the report on the bill said:

We conclude that the enactment of this bill will insure to persons within the jurisdiction of the various States equal protection of the law and prevention of the crime of lynching reasonably certain.

That was written after these briefs had been submitted, and that was the conclusion of Mr. Dyer and his committee.

There is one other matter that I would like to draw to your attention, and that is the attempt of the American Civil Liberties Union to do something in connection with lynching. It has in various cases endeavored to bring lynchers to justice. While the union does not devote itself usually to combating the lynching of Negroes, this function has been exercised in cases where the victims were white men, and has been on request in some cases where the victims were Negroes. The following account of efforts in Kentucky and California demonstrate clearly the ineffectiveness of State laws:

Walter Merrick, a white man, charged with dynamiting, was taken by a mob from the jail at Princeton, Ky., on May 31, 1932, and hanged. The Kentucky statutes provide for the punishment of lynchers and for the automatic removal by the Governor of the jailer from whom the lynch victim was taken. The Civil Liberties Union, through a local representative, John W. Taylor, started an investigation to identify the lynchers and bring them to justice. A reward of \$500 was publicly posted for information leading to the final conviction of any member of the lynching mob. Governor Laffoon was called upon by the union and by its Kentucky members to offer a public reward for the same purpose. After weeks of delay, the Governor finally made an offer of \$200 by the State. The Civil

Liberties Union at once called the Governor's attention by letter to the Kentucky statute (Ky. Comp. Stat., sec. 1151; subsections (a) 3 and (a) 5 and laws of 1920, c. 41, p. 187, secs. 3 and 5) under which he was compelled to remove the jailer. The Governor ignored the communication.

Finally a formal petition was filed by Attorney Grover Sales, of Louisville. The Governor then acted. He removed the jailer only to appoint the jailer's wife to the job. A perfunctory hearing for the jailer was arranged before the Governor at which witnesses were not called to prove the jailer's responsibility for the seizure of the prisoner. When the Governor's attitude was known the Civil Liberties Union refused to be party to "whitewashing" by conducting the prosecution itself, believing that the responsibility rested solely with the State. The jailer was, of course, exonerated and reinstated in his job.

No effort was made by the local prosecuting attorney or by the attorney general's office to investigate the lynching nor to identify the lynchers. The matter was left in the hands of the union's local representative, John W. Taylor, who happened to be a professional investigator, and who in spite of threats to his life endeavored to get evidence. Such evidence as he got was ignored by the prosecuting officials. Mr. Taylor then ran as a candidate for the legislature, the main issue being the lynchings, and was overwhelmingly elected. This indicates, contrary to the facts in most lynching cases, that community sentiment backed prosecution of the lynchers; that the lynching evidently was the work of a small but influential group of Merrick's enemies; and that if the State officials had been vigorous in enforcing the law, the lynchers could have been identified and brought to justice.

The next case to which I would like to call your attention is the San Jose incident in California.

On Sunday, November 26, 1933, two men charged with kidnaping and killing a young business man of San Jose, Brooke Hart, were taken from the jail in the heart of San Jose by a mob and hanged to a tree in the public park opposite. These men were John Holmes and Thomas Thurmond, both residents of San Jose and connected with families of some standing in the community. Public opinion had been stirred by the kidnaping, and excitement aroused on that Sunday by the finding of the body of the victim in San Francisco Bay. Several weeks had elapsed between the arrest of the prisoners and their lynching. During that time the Federal authorities had been active in getting evidence against them under the Federal kidnaping statute. For this purpose they had been taken to the jail in San Francisco, but were returned to San Jose despite rumors of possible violence.

Although the coroner's jury exonerated Sheriff Emig, of San Jose, of responsibility for the seizure of the men, all of the facts reported unanimously by the press indicate that no resistance was offered to those who battered down the jail door, "overpowered" the officers, got the keys, and took out the men.

Further, the Governor of California was openly party to the lynching, which he approved. He had refused when the lynching was threatened to send in State troops; and he publicly stated that

he had postponed a trip out of the State so that no other official could call out troops in his absence to protect kidnapers. He praised the work of the mob at San Jose "as California's lesson to the country."

The Civil Liberties Union immediately posted a public reward of \$1,000 for information leading to the conviction of any leader of the mob. It sent to San Jose its California attorney, A. L. Wirin, of Los Angeles, and Ellis Jones, of its southern committee. They both spent several weeks in San Jose gathering evidence which was presented to the district attorney. Although the evidence appeared conclusive to the attorney, the grand jury to which it was presented refused to indict.

One boy, A. Cataldi, was held by the district attorney, since he was unavoidably identified with the lynching through his own boastful statements made on the occasion to the newspapers under his own signature. Community sentiment was opposed to prosecution. Nothing but perfunctory moves were made, and then only under pressure of unavoidable facts.

Efforts were also made by the Civil Liberties Union to find a legal basis on which to proceed against the Governor as an accessory, but nothing was found under which this action could be taken; and the proceedings of impeachment and recall are too cumbersome or remote to be useful.

We have requested our attorney, A. L. Wirin, to send to the Senate his own factual statement of his experiences in San Jose. We feel that this account indicates the impossibility of prosecution in the face of hostile community sentiment dominating local officials.

Two days after the lynching in San Jose, Calif., a similar lynching took place in a city with the same name in English in Missouri, and by leaders obviously inspired by the example of San Jose. Lloyd Warner, a Negro youth, charged with first-degree murder, was taken by a mob from jail and hanged. The mob was evidently excited by the California lynching. Local and State officials at once took a vigorous stand; so did the newspapers. The attorney general was directed by the Governor to take charge of the proceedings. As a result, nine men were indicted by the grand jury. So vigorous was this action that no stimulation on the part of any outside organization such as the American Civil Liberties Union was necessary.

The cases were evidently well prepared by the district attorney's office. One man, John F. Zook, was brought to trial on December 7, 1933, and although there was conclusive evidence of his being part of the mob, the jury acquitted him. The district attorney was then forced to nolle prosequere the remaining cases, since he had brought his strongest case to trial.

This State official did everything possible for any attorney to do, and still he could not get anywhere because the jury acquitted the defendant.

This is another illustration of the futility of action by State law against local community sentiment, even where, as in this case, the officials were not controlled by that sentiment.

Our last case had to do with the lynching in Maryland. Although the American Civil Liberties Union participated in the attempt to bring to justice the lynchers of George Armwood, Negro, we under-

stand that the committee will get the story much more fully from witnesses more competent to speak than we are. It is sufficient to say that our posting of a \$1,000 reward for information leading to the conviction of any member of the mob brought not a single bit of information from any source, despite the fact that the identity of the lynchers was known to a very large number of people. We submit to the committee as a result of our experience the following conclusions:

1. That State laws against lynching or the State prosecution of lynching are ineffective against community sentiment supporting the lynching, even when the prosecution of the officials was vigorous.

2. That even where community sentiment was opposed to lynching, as in the Kentucky case, members of the lynching mob may be influential enough politically to thwart action by local prosecutors and even by State officials.

3. That no amount of pressure by newspapers, officials, or the offering of a reward are sufficient to counteract local sentiment and thus to reveal the identity of lynchers or to convict them when identified.

That has been our experience in the last 2 or 3 years in having to do with the lynchings of white men and Negroes.

Finally, I would like to say that it has been my experience in courts that judges, as a rule, are not wholly influenced by questions of law and fact, but, like everybody else, by emotions. If the Supreme Court wants to sustain the constitutionality of this law, it will do it. Imagine the attitude of anybody who has in mind the execution of the atrocious crime of lynching, of participating in an act in which a man is legally put to death. The matter of trying to determine whether or not a particular act is constitutional depends upon geography, as I have heretofore stated. So, when you want to sustain the constitutionality of a law, you can find many reasons why you should do it. I can assure you there are plenty of authorities in the books which indicate that if the Supreme Court of the United States thinks an act is a wise act, it can find plenty of reasons to sustain the constitutionality of it.

Senator VAN NUYS. In relation to the question asked you by Senator Costigan, Professor Chadbourn, in his book in 1933 sets out the fact that 11 States provide for recovery against the city or the county in which a lynching and resulting death occur. Does that correspond with your opinion, that practically 11 States have such statutes?

Mr. HAYS. Yes; the result has been in South Carolina, for example, the statute has been enforced, and lynching has greatly decreased.

Take the Scottsboro case. The general attitude of the community in that case has been very expensive to the State. There have already been four trials, and now two men are under conviction. It is very doubtful whether the present verdict will stand. There again is a case of the Federal Government interfering. Otherwise, those nine defendants would have been put to death long before this, on the theory that there was due process of law in the State courts. The public sentiment down there is that it is terribly expensive to have to continue these trials, and that these men should have been lynched immediately. If under the law it proved to be more expensive to

lynch a man than to give him a trial, you would not have such a situation as that in that or any other community.

It is said that one reason for lynching is because of the law's delay. That is all nonsense. Men have been taken out of court after conviction and lynched. They have been taken out of jail while awaiting hanging and lynched. It is not because of the law's delay.

Another suggestion is that if it were not for lynching these crimes would be more general. Of course, that is the argument always made by people who want to take the law into their own hands. That is not the reason for it. The reason is that it is believed it would save the country a lot of money. I am sure nobody will contend the Negro gets the equal protection of the law. The only way by which he can ever get it is through the passage of this or a similar bill.

Senator DIETERICH. Of course, this bill does not deal with the lynchers. It deals with officers who permit lynching or human life to be taken without due process of law.

Mr. HAYS. Yes.

Senator DIETERICH. In reference to the cases you cited of juries refusing to convict or indict, that happens in relation to many other criminal cases.

Mr. HAYS. Yes; many.

Senator DIETERICH. That is not an unusual case.

Mr. HAYS. No.

Senator DIETERICH. That is not the only class of cases where that happens. It happens in murder cases and other cases where local sentiment is aroused.

Mr. HAYS. I regard that as a distinct classification. I have been asked whether my argument would not indicate that the Federal Government must not pass a law against murder in general. I say that if the same distinction exists, if murder is not prevented by the State, the Federal Government would have an undoubted right to pass such a law.

Senator DIETERICH. The fact that such cases might be tried in the Federal courts would not deprive the defendants of the right of trial by jury.

Mr. HAYS. Not at all.

Senator DIETERICH. They would still be tried by local juries in that district?

Mr. HAYS. Yes, sir.

Senator DIETERICH. And possibly swayed by the same sentiment as a local jury in the State court?

Mr. HAYS. Possibly, but I am not quite so sure of that. This bill provides that in the event the State takes no action, then the case may be removed to the jurisdiction of the Federal Government.

Senator DIETERICH. I say that because I do not believe any lawyer will disagree with you on the proposition that lynching is unlawful and should not be tolerated by any community or subdivision of the Government. The only question I have in mind is the question of penalizing the State or municipality when they are really not at fault, when they have done everything they could to try to prevent it. Lynching is always done by irresponsible parties. It is not done by the highest type of citizenship but usually the lower type of citizenship. There is no question about that.

Mr. HAYS. I regret that I cannot agree with you. I think that there is considerable question about it. There are sections of the country where lynching is acquiesced in by the highest type of citizens, who are fully aware of what the lowest type is doing.

Senator DIETERICH. That is mob action.

Mr. HAYS. Yes, sir.

Senator DIETERICH. The high type of gentlemen who try to incite the mob pull themselves down to the level of the mob.

Mr. HAYS. How about the Governor of California?

Senator DIETERICH. I do not know anything about the Governor of California. If you want to put me on the spot as to that, I say that I think he was just as wrong as he could be. Regardless of any local sentiment, it should not be encouraged by a public official. Every citizen has the right to be tried under the laws of his State or the land.

Mr. HAYS. Perhaps the trouble with the Governor was that he was too outspoken. A good many other high officials may entertain the same view, but are not frank enough to express themselves openly. A good many public officials feel the same as he did. I have no doubt that a large number of public officials in Alabama think the Scottsboro case has been and is a very great expense, and if one or two had been lynched it would have saved a great deal of expense and trouble in Alabama.

Senator DIETERICH. The sentiment against kidnaping in this country is very strong, and I assume the sentiment among the high-minded people has probably reached the point where they would be willing to tolerate any expense that could be inflicted to get rid of that crime.

Mr. HAYS. There is a distinction between those who are guilty and those who we think are guilty. In the California case we have evidence that one man was weak-minded and would have had a good defense in a law court.

Senator DIETERICH. I agree that it would be dangerous to put the enforcement of the law into the hands of the mob. Many times innocent men, against whom an accusing finger has been pointed, have been destroyed by reason of the fact either that publicity had been given to the case, or through some erroneous investigation a presumption arose pointing toward guilt, when in fact the party was really innocent. I agree that a crime of that kind should not be tolerated.

Mr. HAYS. Senator, I should like to call your attention to an experience we had recently. During the mine trouble in Kentucky last year, there was a suggestion that the Civil Liberties Union should send a commission down there to see if we had the right as free citizens to investigate the situation in Bell County. I received a letter from the prosecuting attorney that if we came down there we would not be permitted to make an investigation. We were turned back at the border of the county, after making an effort to proceed with the investigation. We never got anywhere, because of Paul Smith, the prosecuting attorney down there, preventing our entering the county. He gave it as his opinion that they regarded our investigation as provocative.

You have in many parts of this Union a local Fascist government. They do not have an executive, legislative, and judicial department,

but a little group in control, and they will sometimes actually jail men or let them out of jail without any warrant of law. In that Kentucky section they said the mobs were made up of mountaineers. I asked the sheriff how many automobiles were in the last party. He said about 100. I said, "Have the mountaineers got automobiles?" He said, "Oh, no." I don't believe you will find a single case of lynching in the South that could not have been prevented, if the authorities vested with the power had really wanted to prevent them.

Senator DIETERICH. I have no quarrel with the provision of the bill that enforces a penalty against those who were negligent or who refused to enforce the law. I think the penalty in such cases should be severe. The only part to which I cannot reconcile myself is that requiring a penalty to be imposed upon a subdivision of the State government, taking the money of the taxpayers to pay for something for which they are not to blame, when there was no neglect on the part of the officers in trying to enforce the law.

Mr. HAYS. I think that with that provision out the law means nothing.

Senator DIETERICH. I understand your argument, and I understand the law of my State. I believe it provides not only where a man is put to death by violence shall there be a penalty, but I think there is a law providing that where property is destroyed by a mob the loss must be made good by the political subdivision.

Mr. HAYS. Why not? Why should not all the people pay for it? It seems to me that is the best way to insure a law-abiding community.

Senator DIETERICH. It does not seem to me just where a peaceable, law-abiding community is in no way responsible for the commission of acts of violence, that the peaceable, responsible members of the community who cannot protect themselves against that situation should have to pay the money of the taxpayers to make good the injury done by the lawless element.

Mr. HAYS. As a matter of justice, it is a question of whether the family of the victim should bear the burden or whether the county or the community should bear it. After all, doesn't it come down substantially to that proposition? Practically nobody will openly support lynching. I am quite sure every Member of the Senate would say that lynching should be stopped, should not be tolerated. I feel quite sure that the imposition of such a penalty would perhaps do more to deter lynching than anything else. I am sure lynching would not occur if it were generally understood that the taxpayers would have to pay out their money to make good. I am sure that without such a provision we would never get anywhere.

Senator DIETERICH. I would like to see some measure passed that would help eradicate that evil.

Mr. HAYS. Can you pass anything more effective than a provision that will require the taxpayers of a community to respond in damages for such an offense? I cannot conceive of a lynching ever occurring under those circumstances.

Senator DIETERICH. You may be right, but it seems to me it is an injustice to impose that burden upon the innocent taxpayers of the community, who may be in no way to blame for what has occurred.

Mr. HAYS. Senator, such a provision is contained in the law in several Southern States, recommended by the commission on the study of lynching in the South, and they found no difficulty with it.

Senator DIETERICH. I am not thinking of the Southern States. I am thinking of my own State. I assume they were justified in passing those laws in the South, because of the extreme conditions that existed there. I am talking about my own State and the Northern States in general. I am thinking of a peaceable, law-abiding community where the officers do not know a mob is forming, where probably only a dozen may take a man out of jail and hang him.

Mr. HAYS. I think the race riots that occurred some years ago in Chicago and East St. Louis are quite analogous. I can conceive of a case of that kind, where the officers of a municipality or county did everything within their power, and yet were unable to restrain the mob. At the same time, I think it comes down to a matter of choice between imposing the burden upon the community, or saying that the burden shall be borne by the family of the victim.

Senator DIETERICH. No one is more ashamed of those race riots in my State than I, and I am sure the local officials could not have done more than they did to prevent them. That was a very unfortunate matter. Riots occur that are not really race riots. We have industrial riots that occur. Those are often cases of a community becoming engendered with hatred on account of conditions that were unforeseen.

Mr. HAYS. The United States Government has on many occasions paid money to foreign countries, where citizens of foreign countries have been maltreated over here. I can conceive in a time of war when the nationals of another nation may be maltreated by mobs in the United States, and the United States Government be utterly helpless to do anything about it. Yet the United States Government has on many such occasions paid money to foreign countries.

Senator KEAN. I have introduced a bill similar to this, which I suppose is before the committee. In that bill I have provided that the Attorney General, through the Secret Service, shall be charged with ferreting out who the lynchers were. Do you not think that part of the bill would be unconstitutional?

Mr. HAYS. Not at all. Certainly not.

Senator KEAN. And in that way bring to the attention of the public who the lynchers were.

Mr. HAYS. That would help. But, of course, it would hardly reach this situation unless it received general publicity.

Senator KEAN. It would be published in the newspapers.

Mr. HAYS. I am not sure that it would in all cases. In some instances the newspapers evidently find it to their advantage not to publish it. I do think this bill might be improved if the title were changed. As it now reads the title is, "To assure to persons within the jurisdiction of every State the equal protection of the laws, and to punish the crime of lynching." I think it would improve it if the title were, "A bill to prevent and punish lynching by assuring to persons within the jurisdiction of every State the equal protection of the laws."

Senator DIETERICH. Lynching refers to a certain method of taking human life.

Mr. HAYS. Yes.

Senator DIETERICH. Why should the bill be confined to lynching? Suppose a man were beaten to death or bludgeoned, it would be the same thing, but that would not be lynching.

Mr. HAYS. I think it would be under this bill. I think under this bill any maltreatment of a man by a mob is lynching.

May I call your attention to section 5, providing for a penalty of \$10,000 to be recovered in a suit prosecuted by the district attorney of the United States? I think private attorneys ought likewise to be permitted to bring such suits. Mr. Chadbourn, on page 134 of the volume you have before you, appendix A, says:

The amount may be recovered in a civil action in any State court.

Under this bill it would be restricted to an action brought in the Federal court by the United States district attorney. I think that people would be much more likely to enforce the bill if the action might be brought by the individuals affected.

Senator DIERERICH. I think that is a very good suggestion. It would seem that the people who are most interested would have the right to select their attorneys, and not depend upon public officials to do that.

Mr. HAYS. I think so.

Senator VAN NUYS. Thank you, Mr. Hays.

We will recess now until 2 o'clock.

(Whereupon, at 12:20 p.m., a recess was taken until 2 p.m.)

AFTER RECESS

At the expiration of the recess, the hearing was resumed, at 2 p.m.

STATEMENT OF ALBERT E. BARNETT, PROFESSOR OF LITERATURE AND HISTORY OF THE BIBLE AT SCARRITT COLLEGE, NASHVILLE, TENN.

Senator VAN NUYS. The next proponent to be heard will be Prof. Albert E. Barnett, professor of literature, and history of the Bible at Scarritt College, Nashville, Tenn.; a native Tennessean, who made an investigation of the lynching of Cordie Cheek, in Maury County, Tenn., on December 15, 1933.

You may proceed.

Senator McCARRAN. Before you begin, I would like to say that I am obliged to leave in a few minutes, and I mean no discourtesy to you by so doing.

Mr. BARNETT. Certainly not.

I was born in Alabama, within 30 miles of the home of former Senator Thomas J. Heflin. I was educated in the schools of Georgia. I am at the present time a minister of a Southern Methodist church, formerly a member of the Alabama conference, and now a member of the Tennessee conference. For the past 10 years I have resided at Nashville, serving in the capacity I have indicated.

Twice since I have lived in Nashville there have been barbarous lynchings of teen-age Negro boys. One of them was 15 years old, who was taken from a hospital bed by a group of men and lynched. The other was a lad of 17, whose name you mentioned, and who was done to death by a mob on the 15th of last December. In each case local action has been ineffective. If either of these outrages had been committed against an American citizen in Haiti, Cuba, the

Philippines, or Mexico, our Federal Government would have been able to proceed. Since they took place within the territory of the United States, nothing has been done that is effective.

Speaking some years ago in justification of the right of the Federal Government to enact child-labor legislation, Mr. Elihu Root said:

It is useless for the advocates of States rights to inveigh against the supremacy of the constitutional law of the United States, or against the extension of national authority in the fields of necessary control, where the States themselves fail in the necessary performance of their duty.

It is this failure of the States themselves "in the necessary performance of their duty" that brings me here as a southern man to advocate the passage of the pending antilynching legislation.

In 1919, when I was a student in Emory University, in Atlanta, Ga., Dr. Plato Durham, a North Carolinian, at that time a professor of church history in the Emory University faculty, stated that over a period of 30 years there had been an average of a lynching a month in the single State of Georgia without a single effective prosecution of lynchers in the State courts. His statement was not an extreme one as the records carefully kept since 1889 show. For the period 1889-1932 there were, according to the most conservative records, 3,753 lynchings. Out of this number there have been only 12 instances of conviction of lynchers, or an equivalent of eight tenths of 1 percent. The sentences of those convicted in these 12 instances were nominal and were not infrequently suspended.

The weakness of the State court in handling this form of crime is a weakness that inheres in its purely local character, so that in my estimation, a Federal court, by its independence of local political pressure, is a better court in which to try lynchers than any State court is apt to be.

Senator McCARRAN. Do you object to being interrupted?

Mr. BARNETT. I shall be very glad to have you do so.

Senator McCARRAN. In the Northern States, the Federal court naturally draws its jurisdiction from perhaps not one county, but several counties comprising the district in which the Federal court is located. Do not the Federal courts have the same character of jurors, drawn by exactly the same methods, as the State courts have?

Mr. BARNETT. I think the Federal juries are usually of a higher type. They are not so frequently composed of professional jurymen as is the case in many local courts.

Senator McCARRAN. That is true.

Mr. BARNETT. Furthermore, the judges and prosecuting attorneys are not locally elected, as in the case of the local State courts.

My position in this respect has been challenged by those who point to the widely advertised breakdown of Federal prohibition enforcement. They say that, on the basis of Federal failure at this point, we have no warrant for hoping for Federal effectiveness in the case of lynching. My own feeling is that the failure of Federal prohibition enforcement has been greatly exaggerated and, yet for the sake of argument, I am willing to grant the ineffectiveness of the Federal Government in that direction, while remaining confident of its effectiveness in this other direction. In the case of prohibition there was an attempt to regulate a financially lucrative industry and one which pandered to the appetites of multitudes of people, but con-

trusted with this, lynching is occasional, it is revoltingly brutal, it does not have profit as its motive, and it is universally condemned by the decent citizenship of any community. There is room for debate regarding a man's right to drink, but there is no room for debate regarding the morality of lynching.

The State courts have simply not furnished existing moral sentiment with an effective channel for its expression, and it is my conviction that a Federal court would supply this need. Evidence of this existing sentiment is easily to be had.

If I may be permitted at this point, as some evidence of a very tangible sentiment in the section that I represent against lynching, and the existence of sentiment favorable to Federal legislation to prevent lynching, I should like to submit editorials, not from the secular press, although I have here on file a large number from Tennessee papers, some very splendid editorials. I have here an editorial from the Christian Advocate of January 12, and another from the same paper of February 9, 1934, written by Dr. W. P. King, editor of the Christian Advocate, Nashville, Tenn., and general organizer of the Southern Methodist Church, in which I think he expresses the sentiment of the denomination which he represents. Dr. King is a native of Georgia. He would have been here for this hearing but for a providential hindrance on Sunday over which he had no control. These two editorials were written by him.

Then I have an editorial from the World Outlook, which represents the missionary group in our church. I think no group of people are able no more accurately to tell us what foreign countries think of us than the group back of this editorial, which was written in February 1934.

Then I have a resolution of the Ministerial Alliance of Nashville, composed of the Protestant ministers of the city, passed on January 29, with only 3 dissenting votes, and these 3 made it quite clear that they condemned lynching, but questioned the effectiveness of Federal legislation. The resolution calls upon Congress to enact the Costigan-Wagner antilynching bill, and is signed by the secretary of the association.

Then I have a bulletin of the community relations committee of College Side Congregational Church, Nashville, Tenn., in which their position is stated with reference to the pending bill.

Then I have a statement by Rabbi Julius Mark, of the Vine Street Temple, Nashville, Tenn. He would have been here but for conflicting engagements.

I think that those statements very well illustrate the sentiment of the people in the section of the country I represent, which sentiment has been unable to find expression in our local courts.

Senator VAN NUYS. They may be made a part of the record.

(The documents referred to, to wit, an editorial from the Christian Advocate, Jan. 12, 1934, entitled "What Will Be Our Lynching Record for 1934?"; an editorial from the same paper, Feb. 9, 1934, entitled, "Race Relations and a Reply to Criticisms"; an editorial from the World Outlook of February 1934 entitled, "The Rallying of the Hosts"; a resolution adopted by the Pastors' Association of Nashville, Tenn., Feb. 16, 1934; a bulletin of the community relations committee of the College Side Congregational Church, Nashville,

Tenn., Feb. 18, 1934; and a statement by Rabbi Julius Mark, Vine Street Temple, Nashville, Tenn., submitted by the witness, are printed in full at the close of the testimony of this witness.)

Mr. BARNETT. Lynching is usually justified by those who engage in it on the twofold ground that the courts cannot be trusted, and that attacks upon white women by Negro men deserve the extreme penalty, which the mob inflicts. These are rationalizations rather than explanations. Although State courts have shown themselves ineffective in dealing with lynchers, they have not failed to be quick and severe in the punishment of Negroes for those types of crime, which, according to the record, are charged against the victims of the mob. Take the case of a Negro man in Waco, Tex., in 1916. He had killed a white woman and was taken to Dallas for safe-keeping. He was brought back to Waco for trial. The jury that considered his case deliberated only 3 minutes and brought in a verdict of guilty, with a sentence of death. As the judge announced the sentence, the sheriff slipped out of the court room and left the Negro unguarded. A man in the audience shouted "get the nigger!", and the crowd took their victim and burned him at the stake, although he had been sentenced to death already by the court.

The records indicate that for practically all types of crime Negroes are convicted more frequently than whites charged with the same crime, and they are given sentences that are regularly more severe. It cannot be maintained, therefore, that a distrust of the courts is a material cause of mob violence.

The idea that lynching is regularly, or to any great degree, the result of indignities by Negro men against white women is equally untenable. Not more than one sixth of the more than 3,700 victims of mob violence between 1889 and 1932 were charged with rape, and it is more than likely that many of those so charged would never have been judged guilty even in a southern local court. Southern women have repeatedly opposed the use of this pretext as a justification for the barbarous practice of lynching. A politician in a certain southern State was running for a high office and was speaking in a county where a lynching had recently occurred. He was reported to have said:

Whenever the Constitution comes between me and the virtue of white women—I say, to hell with the Constitution!

A splendid woman, a citizen of this politician's own State, answered his appeal to prejudice in this fashion:

Hundreds of thousands of white women in the South feel that the law, as represented by sheriffs, juries, and judges, is their honorable and reliable protection. * * * Women have in every Southern State passed resolutions repudiating the use of the name of the white women of the South as a cloak for mob violence. They state that they stand for legal protection of all women and lawful execution of those convicted of crime, be it what it will. The women of the South are not afraid to stand by the Constitution.

That answer of a southern woman is a sufficient repudiation of the pretext for lynching.

I want to say a word about the merits of the Costigan-Wagner bill from my own viewpoint.

The preamble of the Constitution of the United States declares that it is the function of the Federal Government—

to form a more perfect union, establish justice, insure domestic tranquillity * * * and promote the general welfare.

More specifically it is provided in the Federal Constitution that—
no State shall * * * deny to any person within its jurisdiction the equal protection of the law.

The Costigan-Wagner bill is drawn under the authority of and for the purpose of giving effect to what has always been involved in the basic law of our land. The bill merits support on the following specific grounds:

1. It exerts pressure on the local political unit to perform its duty by its citizens. It does this by waiting 30 days for local officials to act, and it provides that the Federal district court assumes jurisdiction only when it has become evident that local authorities do not intend to proceed.

2. It penalizes the negligent or the conspiring local official. This is most desirable. It is my conviction that in the vast majority of cases the sheriff who is conscientious can protect his prisoner from harm, and that, usually, the lynching of a prisoner constitutes prima facie evidence, either of negligence or conspiracy.

3. The bill lays upon the total population of the country the responsibility for seeing that injustice is stamped out. People who have to help pay a \$10,000 fine will be less apt to lose their memories and their powers of speech when lynchings are brought into court, than they do so regularly at the present time. The infliction of this fine of \$10,000 on a county in which a lynching takes place is built upon the principle that those who allow lynching share in its guilt, that passivity on the part of the citizens in a democracy deserves the punishment represented in the infliction of this fine. As a taxpayer, I want to help indemnify the families of the victims of mob action, and I want all other citizens to feel and actually to be thus obligated. I am thoroughly convinced that until people bestir themselves sufficiently to stop lynching, that it is entirely right to make them pay, at least in a financial way, for their tolerance of lawlessness. It is no more of an injustice to tax people in order to indemnify a victim of mob violence in a county than it is to tax all citizens for the purpose of building and maintaining a jail. It is no more of an injustice to impose this financial responsibility on a county than it is to impose upon the employer of labor the obligation to carry liability insurance for those in his employment, even though they may be injured through their own carelessness.

4. This bill is constituted out of the elements that have been tested in the several States that have undertaken to deal specifically with the crime of lynching.

In the first place, lynching is a statutory offense in Alabama, Indiana, Kansas, Kentucky, Virginia, and North Carolina. In Kentucky attempted lynching is a statutory offense. In Illinois, Pennsylvania, New Jersey, and West Virginia mob violence is a statutory offense.

In the second place, in 11 States (Connecticut, Kansas, Illinois, Minnesota, Nebraska, Ohio, Pennsylvania, South Carolina, New Jersey, North Carolina, and West Virginia) counties in which lynchings occur are financially liable for from \$1,000 to \$10,000. Regarding the effectiveness of this penalizing of the county as a

deterrent to lynching, Professor Chadbourn of the law faculty of the University of North Carolina, speaking of the experience with the South Carolina law says (p. 51, *Lynching and the Law*):

Each county which has been fined has had no more lynchings, and that the average number of lynchings per year in the State has declined sharply after the infliction of each penalty.

This indicates that if we are interested primarily in preventing lynchings that one of the most effective ways of doing so is to assess a fine against any county in which a lynching takes place. This provision of the Costigan-Wagner bill is one of its outstanding merits and one of the main reasons why I advocate its passage.

In the third place, nine States (Alabama, Illinois, Indiana, Kansas, Kentucky, Minnesota, South Carolina, Tennessee, and New Jersey) provide for the removal of peace officers who fail to prevent the lynching of a person who has been in their custody. In some of these States, the ousted officer is subject to the additional penalty of a fine, and in others he becomes ineligible for holding office in the future. Regarding the effectiveness of thus penalizing negligent or conspiring peace officers, Professor Chadbourn says, page 60, *Lynching and the Law*, with reference to Alabama and Kentucky:

Although these ousters were effected in only 5 percent of Kentucky's lynchings and 2 of Alabama's, the table shows that there followed in each case a sharp decline in state- and country-wide lynchings.

Thus it appears that the Costigan-Wagner bill gives unity and general application to the rather thoroughly tested principles of those localities that have undertaken by specific legislation to reduce and punish the crime of lynching. I should like to see this bill pass as it stands, without the slightest modification, and I respectfully petition this committee so to recommend to the Congress of the United States.

Senator VAN NUYS. Thank you very much, Professor. Leave the exhibits with the reporter, and they will be incorporated in the record.

(The documents referred to on page 64 hereof are here set forth in full, as follows:)

[World Outlook, Nashville, Tenn., February 1934]

KIDNAPING IN NASHVILLE

"Lynching stages a comeback; one which for the South carries more than a touch of grim irony. The revival has occurred well north of Mason and Dixon's line."

Thus our confrere of the Central Advocate concerning the recent lynchings in San Jose, Calif., St. Joseph, Mo., and Princess Anne, Md. If with a fitting moment of complacency we had set our southern hand to the denunciation of Governor Rolph of California, as we might be tempted to do, and others north of Mason and Dixon's line, our pen would have fallen palsied at the horror exploding right by our doorstep. All the country has heard and probably ere this, all the world.

Late in November, in the little town of Glendale, Maury County, Tenn., a 17-year-old Negro boy, Cordie Cheek, was accused by an 11-year-old white girl of attacking her, and arrested, was sent to the Nashville jail for safe-keeping. The grand jury of Maury County investigated the case, and no evidence appearing, failed to indict Cheek, and so the authorities of Maury County directed that the sheriff of Davidson County release him. Immediately after his release Cheek went to the home of his uncle in the city of Nashville, declaring that he intended going at once north into another State, but shortly after his arrival

at his uncle's home, Cheek was taken from the home in the presence of witnesses by armed men, removed to a point in Maury County, killed, his body left hanging to a tree, with a bullet hole in his head.

This barbarous kidnaping-murder occurred not in "bloody" Russia, or darkest Africa, or gang-ridden Chicago, or in some remote mountain section or backwoods frontier of this American land, but in the Southland, in Nashville, sometimes suffering the proud title, "Athens of the South", the kidnaping occurring just outside the campus of Fisk University. Scarcely more than a stone's throw away is Vanderbilt University, that sets the pattern of culture for a section, and George Peabody College, whose students go forth to disseminate these same patterns and ideals into every section of the Southland, and equally near, Scarritt College for the training of Christian workers; the headquarters of the foreign missions committee of the Southern Presbyterian Church; the Doctors' Building, headquarters of the board of missions of the Methodist Episcopal Church South, and other church headquarters. If there had been "a touch of irony", dear Dr. Brummitt, it has utterly gone from us.

But the reproach lies upon the whole Nation. A newspaper in Mexico City, referring to the St. Joseph horror, suggests that a film be put on portraying this dreadful thing in all its horrible detail as typical of American civilization, and with grimmest irony exclaims: "But, alas, although treaties permit the filming of such a picture, it would cost much money. Because we are poor we do not have international reciprocity in the cinema, but neither (and this is a compensation) do we have lynchings." London papers made a splash of noise for these happenings. Not as much will be said in Moscow as would have been a month ago, but Ambassador Bullitt would not be surprised if the enthusiastic leaders met him with occasional tongues in cheek, and over their teneups he should catch them slyly snickering.

THE PASTORS ASSOCIATION,
Nashville, Tenn., February 16, 1934.

The Nashville Pastors Association, an interdenominational organization of ministers of religion in the City of Nashville, at a special meeting held January 20, 1934, to discuss the Costigan-Wagner antilynching bill, went on record as approving and endorsing this bill.

A. D. BEITTEL *Secretary.*

[Bulletin, The Community Relations Committee, Collegesside Church, Nashville, Tenn., Feb. 18, 1934]

The Committee on Community Relations of Collegesside Church plans to bring before the church this year certain matters of local or national import, which we believe will be of vital interest. For the present this will be done through the medium of occasional Sunday morning bulletins.

A few weeks ago a Federal antilynching bill was introduced into the Seventy-third Congress by Senators Edward P. Costigan of Colorado, and Robert F. Wagner of New York. The bill is designated "a bill to assure to persons within the jurisdiction of every State the equal protection of the laws, and to punish the crime of lynching." The bill will come up for hearing by a Senate committee Tuesday to Thursday, February 20 to 22.

This bill provides a fine or imprisonment for a public official who fails to perform his duty in protecting a prisoner against lynching or in prosecuting the lynchers. The bill provides further that in case of a lynching, and after a reasonable time has elapsed during which it appears that no prosecution of the case is likely to occur in the local courts, the Federal district court shall have jurisdiction in the case. A fine is also assessed against a county which permits a lynching to take place within its borders.

The bill represents an attempt to enforce a provision which has long since been part of our Constitution, but which has failed of enforcement because of lack of enforcement legislation. It provides for the entrance of the Federal Government without usurping the functions of the State. The levying of a fine on the county in which injustice is done brings the whole population face to face with its duty. It penalizes the negligence of the corrupt official. It insists on promptness of action by providing that where the local government fails to function for 30 days, the Federal court assumes jurisdiction. It places

responsibility on the local government, but provides effective recourse if there is a break-down of local government.

If you are in favor of such legislation you may wish to write your approval of the bill to Hon. Edward P. Costigan and Hon. Robert F. Wagner, Senate Office Building, Washington, D.C., and you may want to send a letter to President Franklin D. Roosevelt, White House, Washington, D.C., urging some statement of Executive approval of the bill.

STATEMENT OF RABBI JULIUS MARK, VINE STREET TEMPLE, NASHVILLE, TENN.

Governor McAlister says: "The mob shall not rule in Tennessee."

A very curious story is related in the twenty-first chapter of the book of Deuteronomy. The body of a murdered man has been found and no one knows who has committed the crime. Thereupon, the elders of the city nearest the spot where the body has been found come together and slaughter a heifer. Then they wash their hands and say: "Our hands have not shed this blood, neither have our eyes seen it. Forgive, O Lord, * * * thy people * * * and suffer not innocent blood to remain in their midst."

What is the meaning of this ceremony? An interesting explanation is found in that great commentary on the Bible, called the Talmud. The question there raised is: "Why should the elders, the good people, the respected and prominent people of the community say that they have not killed that man? Why shouldn't the robbers and gangsters and cut-throats of the city be assembled and swear that they had not done it?" The answer is: For everything that happens in a community the best people, and not the worst, are responsible.

In this explanation of what appears to be a rather strange proceeding found in the Bible, there is much food for earnest thought and sober reflection. The commission of crimes is nothing new in human history. The tendency of the general populace has always been to blame the perpetrators of the antisocial act. Few men have realized as clearly as does the Talmudic sage that perhaps a good deal if not most of the blame should be experienced by the very ones who do the condemning. The battle against crime will have been won not when every criminal reforms—it is ridiculous to expect that—but when the better elements, so-called, of society will realize that it is due to their own selfishness, neglect, and indifference to social problems that the criminals stalk the highways and byways of every community. In the story the elders ask forgiveness for whom? The murdered? Not at all. They ask forgiveness for the entire people.

The shocking kidnaping that occurred in our own city last Friday and the still more atrocious murder in a neighboring county should cause all Tennesseans who prize their citizenship in this State not only to rise in protest, but to do all in their power to prevent the recurrence of such a dastardly crime within our borders. Those responsible should be punished and meetings of citizens throughout the State should be held, condemning lynching as a challenge not only to the majesty of the law, but to every humanitarian feeling.

The purpose of my remarks tonight, however, is not so much to condemn as to commend. Governor Hill McAlister's prompt action in challenging the right of a mob to rule in Tennessee deserves the praises of every citizen of our State. Coming as it did so soon after the atrocious and inflammatory statement of the Governor of California, it endows the law-abiding citizens of America with new courage in their struggle against mob rule. We should let Governor McAlister know that we are proud of his strong declaration for law and order and that we shall back him to the limit in his courageous stand. It should also be a source of profound gratification to us that it is a southern Governor who is taking the lead in the crusade against lynching.

Lynching, that revival of sadism and blood lust, is no new problem in the United States. It is confined to no limited portion of our country, although it breaks out most frequently in the Southern States. Usually, the victims are Negroes, although occasionally white men, too, fall in the clutches of a mob. Only about one sixth of the lynchings have been for alleged crimes against women. During the recent decades the number of lynchings has decreased markedly in the United States. The average number of persons lynched each year between 1890 and 1900 was 187; between 1900 and 1910, 92; between 1910 and 1920, 62; from 1920 to 1925, 46; and from 1925 to 1930, 17. In 1931, 14 were lynched, in 1932, 10, while this year the number has suddenly shot upward to 27.

Every lynching, whether the victim was innocent or guilty, is a disgrace not only to the community where it has occurred, but to the entire country. It is an evidence of the lack of confidence in the honesty and efficiency of our judicial processes. It is an insane mob, swept by the most primitive passions, taking the law into its own hands. It is a mockery of the duly constituted officers of the law. It is a lynching not so much of the individual, but of the courts, citizenship, of the Government itself. I care not how revolting was the crime committed, even more revolting is the spectacle of a band of armed men destroying a life, without due process of law.

The law is spat upon whether the man is innocent or guilty. But the crime becomes even more ghastly when, as is sometimes the case, the victim is innocent. In the lynching which occurred here there is much evidence to prove that no crime had been committed. The Negro youth, Cordie Cheek, had had a fight with a white boy at the very hour when the alleged assault for which he paid with his life was said to have occurred, namely, a little before 4 o'clock, on November 16. It was not until 2 hours later that the assault, or attempted assault, was reported. The Maury County grand jury refused to indict him. He was ordered set free, after he had been lodged in the Davidson County jail. He knew that he would not be safe in Maury County, so he did not think of returning there. No one dreamed that an effort would be made to kidnap him here. I am not attempting to take the part of judge and jury. I merely say that there is much evidence to show that he was innocent of the crime for which he was lynched. If lynching is vicious, when the victim is guilty, how much the more is it to be condemned, how much more earnestly should we labor to eradicate it, if the victim is innocent, as is sometimes the case? For who can now repay him what he has lost?

I know that there is not a single person within the hearing of my voice who does not agree with me that lynching is a vicious, brutal, bestial, barbarous, inhuman crime against society. The question is, what are we going to do about it? The victim, innocent or guilty, is dead. The brutal crime has been committed. Shall we now wait until the feelings of our citizens are once more outraged, and then condemn lynching again? Or shall we determine that justice shall not again be miscarried, the integrity of our courts not be again assailed and made a laughing stock, the fair name of our State and country not again be besmirched?

I beg leave to offer a few suggestions.

In the first place, lynching should be made a Federal offense. Many attempts have been made, notably by the National Association for the Advancement of Colored People, to have such a law placed upon the statute books of our land; but, thus far, without success. It is well known that criminals have little fear of local and State laws, but they stand in dread of Government officials. Al Capone broke practically every law upon the statute books of the State of Illinois with impunity. Everyone knew he was a bootlegger, everyone knew he was a murderer and a gangster, yet he ruled the underworld and a good part of the upper world of Chicago without being disturbed. The Federal Government placed him where he belongs, where, in fact, he should have been placed years ago.

If it were a Federal offense, punishable with a long prison term, for anyone to take part in lynching, many would think twice before joining a mob. It is also beyond question that the Federal authorities are less swayed by local passions than State and community officials.

Secondly, speeding up the processes of justice so that criminals may be more certainly apprehended and made to feel the penalty of the law. This can be accomplished, without waiting for Federal legislation. Governor McAlister has indicated in no uncertain terms that he means business, that the perpetrators of the most recent crime will be identified and punished. If the guilty men get off scotfree, encouragement will be given to more lynchings.

Thirdly, and this is the most important of all, public opinion must be aroused against this "vile form of collective murder", as President Roosevelt called it. It goes without saying that no law is effective, no punishment, drastic though it may be, is a deterrent. If the public sentiment and public feeling are not behind it. The "good people", so called, the representative people, the law-abiding people of every community must be made to realize that indifference to the horrible problem of lynching is treason to good government and subversive of simple justice. If the mob can rule in one situation, it may rule in another. Who will then be safe?

The American people have the unhappy reputation of being governed by more laws than any nation on earth and being more disrespectful of them. The mere passing of a law solves no problems. Even the severest punishment for their infraction is no deterrent to crime. What we need is fewer laws and more respect for them. It is up to the people themselves to demand an end to the misrule of thieves, gangsters, and lynchers, whether they occupy high places or low. Ministers of religion can carry on this battle for social righteousness and social justice by dwelling less upon the sins of the Amalekites and more upon the transgressions of our own time. Educators can do their part by instilling respect for law in the minds of the youth and of encouraging them to battle against every form of social iniquity. The citizens of each community of our State can inform our governor that they laud the stand of a southern governor against this base form of collective brutality and that they will stand behind him in his administration of justice. The press has already made a distinguished contribution to this cause and should be encouraged to carry on its antilynching propaganda. All this should be done out of self respect as human beings and out of respect for the laws of the land. Our slogan must be, "The mob shall not rule in Tennessee."

Only when we have done our utmost in waging the battle for righteousness, justice, and humanity, may we be worthy of saying: "Our hands have not shed this blood, neither have our eyes seen it." In the meantime, we can only pray that God may "forgive us and not suffer innocent blood to remain in our midst." A splendid citizens' committee under the leadership of men like Judge John Aust, Prof. Edwin Mims, and Dr. James I. Vance, has already been formed to wage unceasing warfare against the pernicious and unholy spirit of unbridled passion and base lawlessness inherent in mob violence. They recognize that it is not the criminal elements but law and order, the very foundations of democracy and justice upon which our great Republic is founded, that are on trial.

To them and to all other forces for liberty and fair play that are engaged in conserving our historic traditions of justice to the weak as well as to the strong, to the small as to the great, to the humble as to the exalted, let us give our enthusiastic support and encouragement, to the end that the eternal hope which breathes in the poet's prayer may be realized:

America, America, God mend thine every flaw,
Confirm thy soul in self control,
Thy liberty is law.

STATEMENT OF ALAN A. COLCORD, NEW YORK CITY

Senator VAN NUYS. The next speaker is Mr. Alan A. Colcord, 36 West Forty-fourth Street, New York City, who desires to make a statement relative to the constitutionality of this bill.

Mr. COLCORD. On January 4, 1934, Senator Costigan and Senator Wagner introduced an antilynching bill in the Senate; it has been referred to the Committee on the Judiciary.

In its main features, it closely follows the Dyer antilynching bill of 1922, which met defeat on the floor of the Senate as the result of a successful filibuster by a group of southern Senators, led by Oscar Underwood.

Governor Rolph, of California, unwittingly gave a great impetus to Federal legislation on lynching when he publicly announced his refusal to intervene in the San Jose case, and extolled those who participated in the lynching.

The time is ripe, as never before, to curb this peculiarly American crime, and to give real substance to the constitutional guaranty of the equal protection of the laws.

The justification for a Federal antilynching law is to be found in the peculiar nature of the crime itself, and the consequences flowing from it.

When a prisoner is violently taken from the custody of the law by a mob and lynched, the orderly processes of Government are successfully assaulted and set at naught. Let the State agencies complacently submit, or negligently fail or refuse to apprehend or prosecute the known participants in the lynchings, then, in effect, the State abdicates her sovereignty in favor of the mob and acquiesces in her own overthrow. Not only does this follow, but the constitutional guaranty of the equal protection of the laws becomes reduced to mere platitude.

Although other forms of mob assault upon government meet with vigorous effort to search out and punish the offenders, lynchers generally enjoy immunity from prosecution.

There are but few who are so naive as to expect that all criminals will be apprehended or all crimes punished. Crime will exist and go unpunished until we arrive at the Utopian state, pictured by Sir Thomas More, where no crime exists. But it is altogether realistic and reasonable to expect that every effort will be made by those in authority to enforce the laws and to maintain orderly processes of government against mob assault.

If an American citizen in a foreign country is assaulted or done to death by a mob, the foreign government is held answerable. No excuse or plea by a foreign state that it could not control mob violence can avail. Although compensation may be payable under treaty agreement, the sustaining principle of the treaty is that every civilized State is held to the absolute obligation to afford adequate protection to foreign nationals within its jurisdiction.

Similarly the United States Government is held answerable by foreign governments for assault or for the loss of life of our nationals as a result of mob violence. According to the Judiciary Committee report on the Dyer bill of 1922, Congress appropriated and this Government paid to other governments, to compensate for murder by lynchings of their citizens by American mobs, no less than \$792,499 for 100 murdered foreigners.

The act of the mob in putting its victim to death, though savage and degrading, is hardly the most consequential; the more consequential one is the bold assault upon the orderly processes of law involved in the act, and the acquiescence of the State by allowing the participants to walk the streets free and unpunished.

The repercussion is not merely local or even Nation-wide: it becomes international in its scope, bringing our Government into derision and contempt abroad. In its ultimate national consequences it really becomes an assault upon the peace and dignity of the United States. Furthermore, the constitutional guaranty of the equal protection of the laws becomes stripped of all substance and reality when the known lynchings go unpunished.

A Federal antilynching law would be an appropriate measure to more effectually secure this constitutional guaranty. It would not only seek the stamping out of this crime, but the vindication of orderly government and of fundamental rights. It would be a justifiable intervention to suppress mob conspiracy or uprising bent upon nullifying the constitutional guaranty.

From the earliest times, every civilized State has recognized its obligation to maintain the law against mob violence, and yet since

1889 approximately 4,000 lynchings are reported as having occurred throughout the country.

Although a large number of States have enacted antilynching laws, including many Southern States, nevertheless lynchings still continue even in these States and the participants enjoy practical immunity.

The provocation for a lynching is often attributed to a lack of confidence in the prompt and efficient administration of the criminal laws, or a fear that the accused will escape punishment through technicality or appeal. It has, therefore, been urged that the cure for lynching lies in the tightening up of criminal law and the closing of legal loopholes in our criminal procedure. The statistical facts belie any such premise. A mob intent on lynching is usually composed of the lower elements of society; propertyless and irresponsible; the very nature of the act itself is the negation of any concern for law or fundamental right. Records show that many persons have been lynched during the course of a speedy trial or after conviction and sentence of death. The motivating cause is to be found in the emotional outbreak of irresponsible groups, the analysis of which is not at all material. It is material that lynching is tolerated and that there is a failure to prosecute. This failure probably lies in our elective system and in the very nature of our democracy. Lynching usually thrives in rural communities or in sparsely settled counties where the elective officials are so close to their constituents, including the participants and their sympathizers, that they are unable to free themselves from the inflammatory feeling which prompts the crime or from the rule of political expediency.

Under a Federal law, prosecution would be placed in the hands of the Federal authorities, who would be removed from this local pressure and the prospects of a speedy and prompt administration of the law would be greatly enhanced.

In considering sound legislation directed toward curbing the lynching evil, elementary principles should not be overlooked. The administration of the criminal law and the apprehension and punishment of offenders lie peculiarly within the province of the several States. Under its delegated powers, the Federal Government may punish for such crimes as counterfeiting, maritime crimes, and those connected with interstate commerce, but this is founded upon the express delegated powers given the Federal Government in the Constitution. Under the interstate clause lies the recent enactment of the Federal kidnaping law; its scope and constitutionality being entirely premised upon the commerce clause.

Under the Federal Criminal Code, murder is a punishable crime if committed within the exclusive jurisdiction of the Federal Government, such as murder committed in a United States fort or post office or in Indian territory. There is, moreover, a rule of comity which must be recognized in the intimate relationship existing between the Federal Government and those of the several States, whereby the presumption should be indulged in that the governments of the States are properly performing their functions in administering orderly processes of law. Aside from any constitutional right of interference, it is manifestly impractical for the Federal Government to undertake the burden of wholesale enforcement of criminal law in the several States.

With these principles in mind, we come to a consideration of the provisions of section 1 and 5 of the fourteenth amendment to the Constitution providing that "no State shall * * * deny to any person within its jurisdiction the equal protection of the laws" and by section 5 "the Congress shall have power to enforce by appropriate legislation the provisions of this article."

It is clear that Congress has the right to pass legislation to enforce this constitutional guaranty. Since 1870 there has been in existence a statute, being section 5508 of the Revised Statutes of the United States, making it a crime 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 the laws of the United States and imposing a fine of not more than \$5,000 and imprisonment for not more than 10 years upon conviction. The constitutionality of this statute relating to conspiracy and section 5510 relating to civil rights has never been questioned. A Federal antilynching law would constitute legislation along the same general lines as the statutes, but would be specifically directed toward the punishment of lynching as a crime and should provide for Federal prosecution of the participants in case the State officials refused to act or negligently failed to do so.

It is submitted that the proposed legislation should provide for Federal intervention only in the case of a preliminary affirmative showing of State refusal or negligent inaction.

This is manifestly based upon both necessity and the rule of comity.

As was stated in the case of *Covell v. Heyman* (111 U.S. 176, p. 182):

The forbearance which courts of coordinate jurisdiction, administered during a single system, exercise toward each other, whereby conflicts are avoided by avoiding interference with the process of each other, is a principle of comity with perhaps no higher sanction than the utility which comes from concord; but between the State courts and those of the United States, there is something more. It is a principle of right and of law, therefore, of necessity.

The United States Supreme Court has frequently declared unconstitutional State statutes which violate the constitutional guaranty of the fourteenth amendment. (*Ex Parte Virginia*, 100 U.S. 339; *Slaughter Houses cases*, 16 Wall. 27; *Sonn Hing v. Crowley*, 113 U.S. 703; *Yick Wo v. Hopkins*, 118 U.S. 357.)

In the latter case the city of San Francisco passed an ordinance discriminating against Chinese laundrymen, and the court held this unconstitutional, and at page 373 of the opinion the principle was declared:

When the facts shown establish an atmosphere directed so exclusively against a particular class of persons as to warrant and require the conclusion that, whatever may have been the intent of the ordinance as adopted, they are applied by the public authorities charged with their administration, and thus representing the State itself, with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the fourteenth amendment of the Constitution of the United States, though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand so as practically to make unjust and illegal

discrimination between persons of similar circumstances, material to their rights, the denial of equal justice is still within the protection of the Constitution.

In the case of *United States v. Powell* (151 Fed. 648), it was held that Congress may legislate to prohibit a conspiracy against one in the custody of State officers.

The Supreme Court has furthermore held that the denial of the equal protection of the laws need not be by legislation, *Saunders v. Shaw* (244 U.S. 317, p. 320), and in the case of *Ex Parte Virginia* (100 U.S. 339) the court held that in exercising her rights, a State cannot disregard the limitations which the Federal Constitution has applied to her power.

At page 346 of the opinion—

The prohibitions of the fourteenth amendment are directed to the States and they are to a degree restrictions of State power. It is these which Congress is empowered to enforce against State action, however put forth, whether that action be executive, legislative, or judicial.

Accordingly where a State trial is dominated by a mob so that there is an actual interference with the course of justice, the due process clause has been invoked by the Supreme Court to set the trial aside. (*Moore v. Deppen*, 261 U.S. 86; *Frank v. Mangum*, 237 U.S. 309.)

In his dissenting opinion in the latter case Mr. Justice Holmes, at pages 349-350, wrote:

We do not think it impracticable in any part of this country to have trials free from outside control. But to maintain this immunity it may be necessary that the supremacy of the law and of the Federal Constitution should be vindicated in a case like this. It may be that on a hearing of different complexion would be given to the judge's alleged request and expression of fear. But supposing the alleged facts to be true, we are all of the opinion that if they were before the Supreme Court it sanctioned a situation upon which the courts of the United States should act, and if for any reason they were not before the Supreme Court, it is our duty to act upon them now and to declare lynch law as little valid when practiced by a regularly drawn jury as when administered by one elected by a mob intent on death.

The conclusion follows that Congress can pass appropriate anti-lynching legislation and that such legislation would be constitutional if it were framed in such a way as to avoid unnecessary violence to State rights or infringement upon well-recognized principles. If the proposed law is not framed with due regard to the foregoing, then it might become impractical and unwise legislation which the Supreme Court would declare unconstitutional in whole or in part.

STATEMENT OF ARTHUR B. SPINGARN, CHAIRMAN NATIONAL LEGAL COMMITTEE, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Senator VAN NUYS. The next speaker is Mr. Arthur B. Spingarn, representing the National Association for the Advancement of Colored People.

While Mr. Spingarn is coming forward, let me say that we have 25 or 30 witnesses to be heard, and it will be necessary for the speakers to curtail their remarks as much as possible and avoid repetition and duplication of argument. This is said in all kindness, but it will be necessary for me to enforce that rule.

Mr. Spingarn, you may proceed.

Mr. SPINGARN. Mr. Chairman and gentlemen of the committee, generally speaking, no opposition to legislation aimed at the suppression of lynching and mob violence and the punishment of those guilty of these offenses is now being seriously urged by any responsible individual or organization. On the contrary, not only the repeated editorials in representative newspapers throughout the United States, but the growing number of laws now on the statute books of the individual States, north, east, west, and south, persuasively indicate that the prevailing sentiment in all sections of the country is in favor of such legislation.

The chief attack against antilynching legislation has been directed, not against the legislation as such, but solely against Federal legislation, and the basis of this attack has been either (1) that a Federal antilynching bill would be unconstitutional, or (2) that such Federal legislation is unwise and unnecessary, because the individual States should and can deal most effectively with these crimes.

Other witnesses will address themselves to the question of the constitutionality of the proposed antilynching bill; this statement will restrict itself to the objections against any Federal legislation on the subject, based on the theory that the problem is being and can best be solved by State action alone.

I want to digress for a moment long enough to answer a question that was raised by Senator Dieterich this morning. The Senator, as I understood him, questioned the propriety, first, of holding a county responsible for an act with which the authorities had nothing to do and could not prevent and, second, holding the county responsible for the act of the lawless element.

As to the first point, with reference to holding the county responsible for something which it could not prevent, may I say that we have an exact precedent to that effect in the Workmen's Compensation Law, which has been governed not only by Federal legislation, but by legislation in almost all of the States. It does not matter how careful a manufacturer may be, what machinery he has, what precautions he has taken, no matter how careless the employee who was injured, yet when an injury of that sort happens it is borne by the occupation and not by the individual.

As to the second point, holding the county responsible for acts of the lawless element, on the contrary, in most instances, as I will show you from statistics which I will read later, we are holding the county responsible for the acts of negligence of its best element; or at least, we must believe they are the best element, if we believe in a democratic form of government, because they are the elected representatives of the people.

Senator DIETERICH. I probably should have said the most lawless element. Probably that would be a better designation of those who stoop to take the law into their own hands.

I might say, as to the Workmen's Compensation Law, that that is not a good analogy. The Workmen's Compensation Law, when it was enacted, took away from the worker the right to recover large judgments, limiting the amount that could be recovered, designating the injury and prescribing the amount of compensation if the injury occurred in the course of employment. And every employer knew when he employed workmen that such a law was in existence, and if

that workman was injured he would be subject to the compensation provided by that law.

The good citizenship of a county or of a city does not have the right or the opportunity to protect itself against those who commit lawless acts. The trouble is, I think, that you are mixing the two. This is a general law to apply all over the country. You seem to apply it simply to some of the cities in the Southern States.

Mr. SPINGARN. If the Senator will permit, I will show you what happens in Western States and Eastern States and throughout the country.

In examining the records, it is well to keep in mind that the figures that will be cited concerning the number of lynchings and the failure of local authorities to punish those responsible for them are minimum figures and that the figures indicating the number of persons convicted for the crimes are probably maximum figures. Many secret lynchings inevitably go unrecorded, and local communities very often try to suppress the fact that a lynching has taken place, but any punishment of any lynchers is always given the widest publicity.

From 1899 to date there are 3,744 recorded lynchings, of which 1,588 have taken place in the last 30 years. The careful records kept by Tuskegee Institute indicate that between 1900 and 1930 there have been only 12 instances (with a total of 67 defendants) in which convictions have been secured. In other words, considerably less than 1 percent of the lynchings in the United States have been followed by convictions of any kind. This means that today, under State laws, there is virtually an immunity for all lynchers, the chances of being punished being very much less than 1 in 100.

There were convictions in Alabama in 1900, 1919, and 1920; in Georgia in 1922 and 1926; in Missouri in 1903; in Oklahoma in 1922; in Virginia in 1923; in Minnesota in 1920; in Texas in 1920; and in Illinois in 1903.

And yet, beginning with Georgia, in 1893, State after State has passed antilynching legislation on its statute books.

Among the States that have specifically made lynching and mob violence crimes are:

Alabama, Alabama Code, sections 4939 and 4940; Georgia, Georgia Code, sections 363 to 365; Illinois, Illinois State Statutes, paragraphs 537 to 549; Indiana, Indiana Statutes, 2175, and 2531 to 2536; Kansas, Kansas Revised Statutes, sections 21-1003 to 21-1009; Kentucky, Kentucky Statutes, sections 1151 and 1241; New Jersey, New Jersey Compiled Statutes, section 130; North Carolina, North Carolina Code, sections 1266, 3945, 4377, 4600, 4636, and 4570 to 4573; Pennsylvania, Pennsylvania Statutes, sections 486-a and 4682; Virginia, Virginia Code, sections 4427-c to 4427-h; and West Virginia, West Virginia Code, section 17.

Besides this, a considerable number of States, although not specifically defining lynchings and mob violence as crimes per se, have laws on their statute books under which lynchings can be punished, and a number of others, e.g., South Carolina, provided for criminal liability by the county to the legal representatives of the person lynched, and, of course, in all the States, there are laws against common-law crimes, under which successful prosecution could be made if public sentiment desired such prosecution.

And yet, since the enactment of these laws, specifically addressed against lynching and mob violence, in only one of these States, and in only one instance in that State, have the perpetrators of either lynching or mob violence been punished under those statutes or otherwise. In all the other States where the antilynching legislation exists, all the lynchers have gone unpunished, and in the State with the exceptional good record, in 7 out of 8 lynchings the lynchers have likewise gone unpunished.

Senator DIETERICH. May I interrupt you at this point?

Mr. SPINGARN. Yes, sir.

Senator DIETERICH. You do not imply that is the condition in Illinois or the attitude of Illinois courts?

Mr. SPINGARN. No.

Senator DIETERICH. You imply that that is the attitude of the courts in some of the southern States?

Mr. SPINGARN. Yes, sir.

Senator DIETERICH. Did you ever have any complaint in relation to the attitude of Illinois courts?

Mr. SPINGARN. No, sir; none that I know of.

Obviously, these State antilynching laws have not resulted in punishment for the offenders.

How far have these State antilynching laws succeeded in prevention of lynchings?

Since the enactment of legislation directed against lynching and mob violence, Virginia and West Virginia have each had 1 lynching; Kansas has had 4 lynchings; Kentucky has had 6 lynchings; Alabama and Illinois have each had 8 lynchings; North Carolina has had 37 lynchings; and Georgia has had 402 lynchings. It is from some of these States that has come the loudest denunciation of any proposed Federal legislation and the most insistent demand that they be left to feel it was so bad that we had a lynching.

Let us now briefly examine how far these States have given the equal protection of the law to those in their actual custody. Time will not permit me to analyze all the lynchings of which records have been kept since 1889, but it will suffice to take the years 1930 to date, which may fairly be considered typical.

In February 1930, a Negro was taken by a mob from the sheriff at Ocilla, Ga., beaten, burned, and hanged.

In April 1930 a Negro was taken from the jail at Walhalla, S.C., and shot to death by a mob.

In May 1930 a Negro was burned to death by a mob in the courthouse at Sherman, Tex. In the same month a mob took a Negro from a guard of National Guardsmen at Chicasha, Okla., and lynched him.

In August 1930 two Negroes, boys 18 and 19 years old, were taken from the Marion County, Ind., jail and lynched. In the same month a Negro was taken by a mob from the jail at Tarboro, N.C., and lynched.

In September 1930 a Negro accused of murder was taken from the McIntosh County, Ga., jail and lynched. In the same month two Negroes charged with robbery, while being taken by officers from De Kalb, Miss., to Scooba, Miss., were seized and lynched by

a mob. In the same month a Negro was taken from the sheriff in Thomasville, Ga., and lynched.

In October 1930 a mob took a Negro accused of murder from the jail at Bartow County, Ga., and hanged him.

In January 1931, a Negro was taken by a mob from the sheriff's office at Maryville, Mo., and burned to death by them. In the same month a white man accused of murder, was taken by a mob from the jail at Schafer, N.Dak., and hanged.

In April 1931, an 18-year old Negro boy was taken by a mob from the Union City, Tenn., jail and hanged.

In August 1931, a Negro was taken from the jail at Pointe-a-la-Hache, La., and shot to death by a mob.

In November 1931, a Negro accused of wounding a white man, was taken from the county convict camp, at Caledonia, Miss., and hanged by a mob.

In December 1931, a Negro was taken from a hospital cot at Salisbury, Md., where he was in charge of police officers, and lynched by a mob. In the same month, two Negroes were taken by a mob from the jail at Greenbrier County, W.Va., and lynched. In the same month a 19-year-old Negro, under sentence of death for murder, was taken from the Montgomery County, Tex., jail and shot to death by a mob.

In April 1932, a mob took a white man from the Cheyenne County, Kans., jail and hanged him.

In May 1932, another white man, accused of dynamiting a store, was taken from the Princeton, Ky., jail and hanged.

In September 1932, a Negro accused of shooting a sheriff was taken from the Crosett, Ark., jail and hanged.

In November 1932, a Negro was taken from the town marshal at Wisner, La., and lynched.

In February 1933, a Negro accused of the murder of the cashier of a bank was lynched in Ringgold, La., while in the custody of the sheriff.

In June 1933, two white men accused of murder were taken from the jail in Scott County, Tenn., and lynched.

In July 1933, a Negro accused of striking a white truck driver was taken from the Clinton County, S.C., jail and lynched.

In August 1933, two Negro boys, 17 and 18 years old, accused of murder, were taken from the authorities and lynched while being transferred from Tuscaloosa, Ala., to Birmingham for safekeeping.

In September 1933, a Negro was shot to death by a mob, which took him from the custody of a deputy sheriff at Opelousas, La.

In October 1933, a Negro was taken from the jail at Ninety-Six, S.C., and beaten to death. In the same month another Negro was taken from the jail at Princess Anne, Md., and hanged by a mob. In the same month another Negro was taken from the Richland, Ga., jail and hanged.

In January 1934, a 20-year-old Negro, accused of slugging a miner, was forcibly removed from the jail in Perry County, Ky., and lynched; and in the same month a Negro was lynched while being transferred from the county jail at Tampa, Fla., to the State authorities.

Any consideration of these facts points inevitably to the conclusion that a large percentage of the lynchings occurs because local authorities either cannot or will not extend to the victims the protection of the law to which they are under the Constitution entitled. And we cannot escape from the further conclusion that after the lynchers have finished with their work, the State antilynching laws cannot and will not function so as to bring about punishment for the lynchers and their accessories, so that the enactment of State antilynching laws has not in any way appreciably succeeded in obtaining for those lynched their constitutional right of protection under the laws.

Senator VAN NUYS. Are there any questions?

Senator DIETERICH. Is it your understanding that the \$10,000 penalty provided in this bill is placed there as a penalty?

Mr. SPINGARN. Yes, sir.

Senator DIETERICH. In the matter of recovering damages for the wrongful death or injury of a citizen, if there is a sufficient showing of gross negligence, they are allowed to recover punitive damages? Isn't that correct?

Mr. SPINGARN. Yes, sir.

Senator DIETERICH. But if there is no gross negligence shown, then they recover what reasonable damages are. They are estimated under the regular rule of assessing damages. In very few of those cases do the damages amount to \$10,000. Am I correct in that?

Mr. SPINGARN. That is quite correct.

Senator DIETERICH. It requires an assessment of punitive damages before it amounts to \$10,000. They why do you assume that a penalty against a county is just, when the circumstances were that the county authorities had done everything they could, and were guilty of no negligence, were absolutely not responsible in any way? Suppose they did everything in their power to prevent this action in good faith, then why do you feel that a penalty of \$10,000 should be assessed against the county for the benefit of the family of the deceased?

Mr. SPINGARN. It might very well be, Senator, that there might be some discretion given such as not less than a certain amount or more than a certain amount.

Senator DIETERICH. Why shouldn't the bill be amended to provide that when the officers are negligent in the performance of their duty, then that penalty may be assessed? Why should not the county and its officials have the right to defend and show that they had nothing whatever to do with it?

Mr. SPINGARN. I am not opposed to that.

Senator DIETERICH. In some cases that penalty would be most unjust.

Mr. SPINGARN. There might be unjust cases where \$10,000 might be too much. There might be a minimum amount.

Senator DIETERICH. This bill could be drawn to protect against that.

Mr. SPINGARN. It could be so amended.

Senator VAN NUYS. We thank you very much.

**STATEMENT OF MISS ELIZABETH EASTMAN, WASHINGTON, D.C.,
MEMBER NATIONAL BOARD YOUNG WOMEN'S CHRISTIAN
ASSOCIATION**

Senator VAN NUYS. The next speaker is Miss Elizabeth Eastman, representing the public affairs committee of the Young Women's Christian Association.

MISS EASTMAN. Mr. Chairman, this is a statement in behalf of the public affairs committee of the National Young Women's Christian Association.

On February 8, 1934, the public affairs committee of the National Young Women's Christian Association endorsed the Costigan-Wagner antilynching bill, S. 1978, because they considered it a good way to carry out the mandate given them by the last national convention in 1932 "to work for the abolition of lynching."

This mandate came in the form of a resolution from the floor introduced by a member from Florida and was adopted by the representatives assembled from 1,016 local associations.

In addition to this mandate the public affairs committee had at the time of its endorsement of this bill the following:

1. The reports of work of local associations in California, Missouri, Kentucky, Tennessee, and Maryland in connection with the recent lynchings in these States.

2. The endorsement of the National Business Girls Council, which represents 95,000 business girls throughout this country.

3. The endorsement of the National Industrial Girls Council, which represents industrial workers, north and south, white and black.

4. The endorsement of the National Student Council for whom Mrs. Harrington will speak.

5. The report of 47 State public affairs chairmen, 3 of whom were against the bill, 2 of whom questioned the wisdom of such a bill and 42, the large majority, of whom were in favor of such a bill.

6. The report of 49 selected individuals who carry responsibility for leadership in local associations throughout the South and West (selected because they are the sections in which lynchings have been most prevalent). Of these 2 were against the bill, 3 questioned the wisdom of such a bill, and 44 were in favor of the bill.

7. Reports from local associations representing a constituency of over 4,000,000.

In order that this committee might know accurately the thinking of these responsible members of our organization, I am quoting from some of the letters containing these reports.

In favor of the bill, a member from California writes:

If there had been such a bill, I believe that the Governor of California would not have been so ready to allow the San Jose mob to take its own course. When lynching occurred largely in the South people did not see the necessity of a Federal bill, but in view of the events of the past few months I believe most people will agree one is necessary.

A member from Georgia writes:

I have before me an analysis of the Costigan-Wagner bill. * * * After hearing discussion of the bill last Tuesday, * * * I feel that this Federal legislation is a step forward and can see no harm in starting at once to secure support.

A member from Missouri writes :

The proposed bill * * * seems to me to strike at the very root of the matter, namely, that those who assume office assume responsibility to keep order and to protect a prisoner with their lives if need be. Also it seems practical to make the county in which the crime is committed liable to heavy fine.

A member from North Carolina writes :

Personally I believe that it is a national problem and that while the South must bear the heaviest responsibility in relation to it, a good Federal law should help rather than hinder State control. * * * I am prepared to say that it seems to me to satisfactorily provide for State enforcement which should put some stiffness into the backbones of our State officials.

A member from Texas writes :

Lynching has become a national problem. It should be dealt with by the Federal Government rather than by State. Our association and its leaders are deeply interested, as we live in the South and know of the terrible suffering as no other group.

A member from Kentucky writes :

Six States have passed laws making lynching a crime. In 4 States there has been statutes against mob violence. Alabama, Indiana, Kansas, and Kentucky likewise have provisions for accessorial liability. * * * Regardless of these statutes there have been lynchings or mob violence in 7 of the 10 States. * * * In Alabama the instigators of one of the outbreaks were punished. * * * In all the other cases, with the exception of the last Kentucky lynching, which has not yet come to trial, they have gone unpunished. This seems to me to be sufficient evidence that the problem has become one of national importance and therefore should be dealt with by the Federal Government.

The Wagner-Costigan bill seeks to do this very thing. * * * In the extreme Southern States where the matter of decentralization is still of importance in people's minds, there may * * * resentment. * * * I am willing, however, to risk the resentment in the Southern States which might result from the seeming curtailment of State's rights.

A member from Tennessee writes :

An interracial group of both men and women has met a number of times since that tragic event (the lynching of Cordie Cheek, Negro) to consider ways and means of bringing about local governmental actions, and so far we have experienced considerable discouragement. * * * In contrast with this case we may place the speedy justice meted out by the Federal district court in the case of a recent kidnaping and flogging across State lines. The victim was white, whereas Cordie Cheek was a Negro. Nevertheless, the fact remains that in this community in recent weeks we have seen the Federal Court mete out swift justice against mob violence, and we are yet waiting the action of the local court in the case of Cordie Cheek.

A member from Virginia writes :

When States fail in the protection of life and liberty of their citizens, it is the duty of the Federal Government to live up to the provision of its own constitution.

Thus feeling the pulse of its large and diversified membership, those who are rich, those who are poor, those of northern as well as southern tradition, those who work in factory, in the office, in the home, those who inhabit our rural areas, small towns and those who live in our great metropolitan centers, on the basis of the validity of the argument and the bulk of opinion, the public affairs committee of the national board of the Young Women's Christian Association endorsed the Costigan-Wagner antilynching bill and appointed me to speak in their behalf at this hearing to the end that you might

speedily bring this bill to the floor of the Senate and work diligently for its passage.

Senator VAN NUYS. Thank you very much.

STATEMENT OF REV. JOHN T. GILLARD, REPRESENTING THE MARYLAND ANTILYNCHING FEDERATION

Senator VAN NUYS. Our next speaker is Rev. Dr. John T. Gillard, representative and vice chairman of the Maryland Antilynching Federation.

Reverend GILLARD. It is a far cry from the day that Abraham Lincoln's trembling pen signed the Emancipation Proclamation. Today we are gathered here in an effort to write another emancipation proclamation—a proclamation emancipating our country from a spirit which continues to violate human rights—the spirit of the mob which finds expression in lynching.

Groups under emotional tension act in conformity with generally accepted attitudes and practices—they follow the mass mind. Ordinarily the social minded of a community predominate and hold in check the antisocial tendencies. But occasionally, and of late frequently, disreputable thought patterns predominate and result in antisocial activity. Men, women, and children who go out to kill, or to look on sympathetically while others kill, may be members of an actual mob but 1 day in a year or a lifetime, but they are most probably mob minded every day in the year. Mobs are but the logical outcome of dominant assumptions and prevalent thinking.

Since ignorance is the mother of prejudice, far better than the enactment of law would be the eradication of root misunderstanding. It is the duty of intelligent and law-abiding citizens to concern themselves with such a program of education. But by its nature education requires a long time. In the interim some sterner and more immediate effective method must be found to control the vicious forces which are hostile to well-established order.

It is the business of the State to make laws for the safety of the community and to administer them so that the whole community may not suffer for the inordinate actions of a few individuals. The primary obligation of coping with the problems under consideration lies with the various States.

When passion and prejudice supersede the dictates of reason as expressed in law and offer violence to its established order then the sanction of the law must be invoked. But it is a fact full of doleful significance that of the tens of thousands of people who have violated the rights of the Government and of individuals by mob violence, a study of the records over a period of 30 years (1900-30) discloses only 12 instances in which a total of 67 individuals were convicted. This means that eight tenths of 1 percent of the lynchers have been convicted.

I am a firm believer in State rights where they can be and are adequately safeguarded. But that almost no lynchers in the United States have been punished by local courts suggests the futility of local legislation and prompts the hope that a Federal antilynching bill will more effectively cope with the serious situation which confronts the country. People have ceased to fear the State sanctions

and the lower courts because they have been inoperative and inept in nearly every case. Experience has taught that people generally have greater fear and respect for the Federal courts. While State rights are to be respected, individual rights guaranteed by the Constitution of the United States must be safeguarded by the power and the majesty of the United States if need be.

Therefore I urge you gentlemen favorably to consider the bill before you. I urge it as a priest and a member of a society of priests who have dedicated their lives to the welfare of America's 12,000,000 Negroes—the Society of St. Joseph of the Sacred Heart. I speak in behalf of many members of the Catholic Church, white and colored, clerical and lay, high and low, in token of which it is my privilege to present you with a set of resolutions signed by over 5,000 voters of Baltimore.

At this point I shall read the resolution to which I referred:

Whereas the honorable Senators Costigan and Wagner have introduced into the Senate of the United States a bill designed to assure persons within the jurisdiction of the United States the equal protection of the laws, and to punish the crime of lynching, said bill being known in the Senate files as "S. 1978", and popularly as "the Costigan-Wagner antilynching bill"; and Whereas bill 1978 offers some assurance that such neglect, indifference, or open contempt for the law shall be punished, if not prevented; and

Whereas the Negroes of the United States are the chief victims of lynch law, and to them in a special manner is this bill pertinent; Be it therefore

Resolved, That we, the undersigned, go on record as approving the Costigan-Wagner antilynching bill (S. 1978), either in its present or an amended form; and be it further

Resolved, That we, the undersigned, do hereby urge Your Honors to give prompt and favorable action toward reporting the bill out of committee, and energetic support of the bill after it shall have been referred to your respective Houses for vote thereon; and be it finally

Resolved, That no one signing his name hereunto shall cast his vote in favor of any Senator or Representative who shall not wholeheartedly support and unequivocally vote in favor of this bill which gives some promise of suppressing or punishing a crime which cries to heaven for vengeance, to 12,000,000 colored citizens of this country for action, and to every fair-minded man for prompt justice.

Senator DIETERICH. Father Gillard, will you stop there a moment, please?

Reverend GILLARD. Yes, sir.

Senator DIETERICH. Do you think it is properly the part of a resolution to coerce Members of the United States Congress into reporting a measure, if within their consciences they might think some provisions of it should not be enacted into law?

Reverend GILLARD. No.

Senator DIETERICH. You say the signers of that resolution are pledged to withhold all support from any Member of Congress who may be doing what his constitutional duty requires him to do.

Reverend GILLARD. No, indeed, Your Honor. I would be the last one in the world to do that.

Senator DIETERICH. Why did you embody that in the resolution?

Reverend GILLARD. Probably the reason for that was, Senator, that it has been our experience in Baltimore, where I appeared twice in favor of the State antilynching bill, that oftentimes a material motive will induce where an intellectual motive will not. Probably it was with that in mind, not with any idea of coercing the Senate, because that would be the last thing in the world I would do.

Senator DIETERICH. I really think that would be highly improper.

Reverend GILLARD. Yes, sir.

Senator DIETERICH. It is trying to coerce a Senator or a Representative in the discharge of his duty.

Reverend GILLARD. That would be the last thing I would try to do, Your Honor.

Senator DIETERICH. Do you understand that this bill transfers from the State courts to the Federal courts the right to prosecute offenders under this proposed act?

Reverend GILLARD. Where the State has neglected to do it, I understand.

Senator DIETERICH. Do you understand the bill leaves in the hands of the State the duty to prosecute in the State courts those who have committed this offense, or that that is transferred wholly to the Federal court?

Reverend GILLARD. I understand it is only where the State has neglected to do its duty.

Senator DIETERICH. Do you understand that this bill is only intended to reach those officers who are dilatory or negligent in enforcing the law?

Reverend GILLARD. Yes, Your Honor.

Senator DIETERICH. And who fails to give every citizen equal rights under the Constitution?

Reverend GILLARD. Yes, Your Honor.

Senator DIETERICH. And that it has nothing to do with prosecuting the members of the mob under this bill, but it is only directed to the officers?

Reverend GILLARD. That is the way I understand it.

Senator DIETERICH. Do you not think, as a matter of justice, that officers who are not negligent should not suffer a penalty, as they might suffer a penalty under this law?

Reverend GILLARD. I listened to your argument this morning, Senator. I must state that I agree with you in that distinction you are making, that if the county or municipality has done its duty it should no be required to pay that penalty. I quite agree with your distinction about the penalty. That is a very difficult proposition. That is why I put in my statement the words "or amended form."

Senator DIETERICH. Yes. I noticed that. That was very thoughtful, because there might be some provisions in this bill that someone absolutely in harmony with the spirit of it would not feel like supporting.

Reverend GILLARD. Yes. I had some difficulty myself.

Senator DIETERICH. I think I express the general sentiment of the Members of Congress when I say they want to stamp out this practice, but they do not want to enact into law a measure that will inflict a penalty upon those who are wholly innocent.

Reverend GILLARD. Yes, Your Honor. Do you not think "the amended form" covers the last point sufficiently?

Senator DIETERICH. Anyone who is guilty of a negligence act should be punished, of course, but I think it is just as unjust to punish one who is not guilty of negligence as the action of the mob in taking the prisoner away from the court.

Reverend GILLARD. In sociology, Senator, if we take a passive state, which we find to be the case with a great many respectable citizens, we find we do not make sufficient progress. The mere passivity of members of a community means that we must take active means in making that community high-minded, social-minded.

Senator DIETERICH. I am talking of officers charged with the enforcement of the law.

Reverend GILLARD. I referred to the private citizens.

Senator DIETERICH. This does not reach the private citizen. It only reaches the officers charged with enforcement. Of course, that would be all right if the officers are negligent in the discharge of their duty to enforce the law, but as the bill is written I think the infliction of the penalty in any kind of case is unjust to the community. This bill seeks to penalize the officers of the law who are negligent in the discharge of their duty.

Reverend GILLARD. Yes, Your Honor.

Senator DIETERICH. Is that fact clearly understood?

Reverend GILLARD. Yes, Your Honor.

Senator DIETERICH. The portion of the resolution to which I took exception was the fact that you are pledging your people not to support some one who might be in entire sympathy with the intent and spirit of the bill, but who might object to some particular provision of it.

Reverend GILLARD. Do you not think "in its present or amended form" would considerably cover that?

Senator DIETERICH. It depends upon what the amendments may be. There might be some amendments that would make this bill more objectionable than it is at present.

Reverend GILLARD. That is the reason why we incorporated that phrase in the resolution.

Senator VAN NUYS. The resolution has been read into the record. It may be filed with the committee, together with the signed petitions, which are too voluminous to incorporate in the record.

(The resolution referred to, together with a large number of signed petitions, was filed with the committee.)

STATEMENT OF KARL N. LLEWELLYN, PROFESSOR OF LAW AT COLUMBIA UNIVERSITY LAW SCHOOL

Senator VAN NUYS. We shall now hear from Prof. Karl N. Llewellyn, professor of law at Columbia University Law School and formerly instructor at Yale Law School.

Mr. LLEWELLYN. Gentlemen of the committee, my remarks will be very brief. I take a slightly different position in supporting the bill from that which has been advanced from time to time in the arguments thus far. I argue that lynching must stop, upon which we are all agreed; I argue that it can be stopped, upon which we are all agreed; I argue that it is not being stopped, again upon which we are all agreed; but I argue further that it is the business of the State to stop it, and that the State will stop it if we pass this bill. I say that the vital thing that is wrong with the States stopping it now is that each State is divided against itself.

Reference has been repeatedly made to the baser portion of the community that indulges in lynching; reference has been made to the

political influences which from time to time bother the prosecution of members of a mob; reference has been made repeatedly to the support given in newspaper editorials and by the better portion of the community to any type of movement against lynching; but you will observe that the States, as shown by the record laid before you by Mr. Spingarn remain divided against themselves, and nothing happens because of that division in each house.

I urge upon you that this particular bill provides the frame within which those States can be welded together into movements or activities that will stop the lynching before it starts. I am concerned in having restored that glorious record that went on down to within a few years, when lynching had almost ceased.

That is one reason why I would suggest to Senator Dieterich that, should there be injustice done by the imposition of a fine—which I do not concede, you understand, sir—but I say, even should it be done, the imposition of a fine or two will bring it back to that downward trend where in the course of 5 years there will be no more opportunity or need to impose fines. Indeed, the very heart of this bill is the fine.

We have seen that lynching can be stopped. It often costs money to stop it. It costs money at times to call out the troops. That is an expense that deters the calling out of troops. As Mr. Hays brought out, it costs money for a protracted trial. Money can be saved by not having a trial. That comes back to the proposition that if you make the cost more not to have a trial and not to call out the troops when they are needed, in my judgment, you will have solved that part of the problem.

Much has been said in relation to the Workmen's Compensation Act, which has its value. Nothing so far has been said as to the principle of international law that, when a national of one State is mobbed in another State, the State which fails to protect, although it could not help it, although it had no knowledge of what was going to happen, pays damages to the State to which he belonged for the benefit of those whom he had left behind. That has been international law for 70 years.

We refuse that protection on a similar basis to citizens of our own country, where the citizen is entitled to the protection of the officers of the law. And finally I say, sir; and leave that with you, we have the doctrine of respondeat superior in our law, under which we are responsible for the acts of our agents whom we elect to carry on our Government.

Senator DIETERICH. Do you see any distinction between this bill where it deals with officers who have had a prisoner in custody who is charged with a crime of a rather inflammatory nature, who permits that prisoner to be taken from his custody by a mob, and where three citizens conspire to kill a neighbor, which would be lynching under this bill, because he has committed some offense that enraged those three particular citizens, and the officers knew nothing of the intention of those citizens to commit that crime?

Mr. LLEWELLYN. If I get the point of your question, it is that, as I read the bill, the conspiracy you speak of is a mob or riotous assemblage.

Senator DIETERICH. Of three or more persons.

Mr. LLEWELLYN. However, I am not aware of anything in the bill which would impose a penalty for that.

Senator DIETERICH. The bill would impose a penalty if three or more citizens would take another citizen out and kill him. That would fall within the provisions of this bill, where the county would be penalized to the extent of \$10,000.

Mr. LLEWELLYN. The argument being that under section 5 the person put to death is not required to be a person who is in the hands of the officers of justice?

Senator DIETERICH. Yes; I am not talking about argument. I do not want to get away from the question I asked you, whether you saw any distinction between enacting a law to deal with a mob that took a prisoner from out of the custody of the law, and where those in charge of him neglected to protect themselves to the extent of preventing the mob from taking that prisoner from their custody, and where three persons in one of the Northern States concluded that John Jones had done something to injure their families and conspired and went out and shot John Jones?

Mr. LLEWELLYN. Let me see if I get the point of your question, sir. I understand that you are asking whether I see any distinction in principle between the taking of a man from the hands of the officers of justice—

Senator DIETERICH (interposing). By a mob.

Mr. LLEWELLYN (continuing). By a mob; and, on the other hand, the mere formation of a small mob to deal with a particular person individually?

Senator DIETERICH. Yes.

Mr. LLEWELLYN. I do see a distinction in principle for the purposes of this bill. That distinction in principle does not exist in international law. I think, for the purpose of handling a worthwhile bill, it is worth very serious consideration whether section 5, which is the section imposing the penalty, might not properly be amended so as to limit the person killed to either a person charged with crime or a person in the hands of the officers of justice.

Senator DIETERICH. That is just the point I was making. Do you not think it would be an improvement on this bill and would make it a more just measure?

Mr. LLEWELLYN. I am not saying, sir, that it could not be improved. I am saying I should want to consider seriously whether there could not be some improvement.

Senator DIETERICH. If you were a Member of the Congress, you would think that that would be a proper thing to engage your attention, would you not?

Mr. LLEWELLYN. Yes, sir. I thank you, gentlemen.

STATEMENT OF MRS. HANNAH CLOTHIER HULL, NATIONAL PRESIDENT OF WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM

Senator VAN NUYS. May I now call upon Mrs. Hannah Clothier Hull, representing the Women's International League for Peace and Freedom, as national president?

Mrs. HULL. Mr. Chairman and gentlemen of the committee, the Women's International League for Peace and Freedom, with a mem-

bership of 12,000 in United States, representing every State in the Union, is an international organization of which Jane Addams is honorary president, with sections in 26 countries and corresponding centers in 14 others, with international headquarters at Geneva. Our organization, therefore, is automatically international and interracial. We have members in the lands of both white and colored people: China, Japan, India, Haiti, and so forth.

Among the early activities of our international congresses the Women's International League undertook the task of working for the emancipation of minority peoples who were victims of domestic violence, as well as against international war. An international report of our congress at Zurich, in 1919, for example, states that the organization went on record as follows:

We recommend that members of this congress should do everything in their power to abrogate customs and laws which lead to discrimination against human beings on account of race or color.

Last month the national board of the Women's International League endorsed the Costigan-Wagner bill. Hence the United States section of the Women's International League, by action of its national as well as its international organization, is committed to work for antilynching legislation. We worked for the Dyer bill when it was before Congress.

Those who have given any time either to the war question or that of domestic violence surely come to recognize that the solution of these problems of mankind lies primarily in the way that the great power nations of the present time deal with their minority people, whether within their own borders or in colonies. In spite of the injustices against minority peoples in other countries (such as the white terror in Poland against the Ukrainian minority or the treatment of the Druses by the French in Syria or the natives of Irak by Great Britain or the present attacks of the Hitlerites against the Jews in Germany, and so forth), none of these are so difficult of explanation as the lack of adequate protection by the Federal Government of the United States of a minority race which has been for so long a victim of the crime of lynching. To the people of Liberia, of which we are the guardians, the failure of our Government to prevent lynchings is simply incomprehensible; it is a sad example to set a people whom we are attempting to lead toward enlightened civilization.

It is not necessary to speak in this presence of the enormity of the crime of lynching. This may be taken for granted. It is the manner of dealing with it which concerns us today. When such a crime persists in our country, as it has persisted, and the States are not able and fail to cope with it, it becomes not a State affair alone but a Federal affair.

It is not the State alone which is blamed throughout the world but our whole Nation; because the outside world knows only the United States of America. All American citizens therefore stand condemned when the Federal Government stands idly by and permits lynchings to continue.

There are in some States good laws and it is proper that these laws should be allowed time to function when a lynching occurs. This is provided for in the bill before us. But when State officials do not

act, have been too terrified to act, and when the State itself is looked upon as an enemy of the community for taking action against mobs and their leaders, our Federal Government should certainly be given the power to arrest, try, and punish. The possession of this power would in itself serve as a deterrent to the crime and would prevent the holding of mere mock trials in which leaders of mobs are speedily acquitted on entire lack of evidence or on evidence known to be false. Often the victims of lynching have been guiltless of the crime alleged and have been so proved after they had suffered torture and death, especially in the case of Negroes. Lynchings too have occurred for such slight offenses as stealing, planning to sue or even quarreling with a white man. These are the things which other nations learn about us and for which they hold the United States Government responsible.

The crime is alarmingly on the increase; two have occurred already in this year of 1934; it imperils law and order and cannot but have a disastrous effect upon the youth of our country when they realize that the Nation whose Constitution they have been taught to revere as professing to give to all of its citizens, life, liberty, and the pursuit of happiness, refuses to protect some of its citizens against mob murder. Since the Federal Government has taken upon itself by the fourteenth and fifteenth amendments the duty of protecting the civil and political rights of its citizens, it is surely bound to enact legislation to enforce protection of their lives. About one fourth of the States have legislation against lynching, but are not all enforcing it, while the majority of the States do not even pretend to have a safeguard against it. We read in James Herman Chadbourn's book on Lynching and the Law that in his study of the matter he has been forced to the conclusion that a "prolynching sentiment is expressing itself even in the judicial circles." When such a state of affairs exists, civilization itself is at stake.

Members of our organization traveling in such remote places as old Bokhara, and Tashkent, in Indo-China and in all parts of Europe, have found that the good name of the United States has been doubted because of this total lack of Federal responsibility in lynchings. This fact, we believe, has a very real and unfortunate effect on our international relations. It often weakens the perfectly sincere and honest efforts on the part of our Government to throw its influence on the side of humanity and justice when racial outrages occur in other parts of the world. Since this question has been dealt with from various angles by others, I have confined myself to the effect of inadequate antilynching legislation upon our international relations.

Senator VAN NUYS. Thank you very much.

STATEMENT OF MARC CONNELLY, REPRESENTING THE WRITERS' LEAGUE AGAINST LYNCHING

Senator VAN NUYS. I understand that Mr. Marc Connelly is present at this time. He has been before another committee. Mr. Connelly represents the Writers' League Against Lynching, is a playwright, director of the Dramatists' Guild of the Authors' League of America, and author of "Green Pastures."

Mr. CONNELLY. Mr. Chairman and gentlemen, I will speak very briefly. As an American author and as an amateur but earnest sociologist, I presume I may know something concerning race conflict. I have studied the Negro and studied his political and economic adventures at various times in various States of the South. I am the employer of a group of Negro artists whom I have studied for the last 4 years, whom I have worked with, whose point of view I have assimilated, whose Americanism I have appreciated, and I have never been free from the feeling of the constant threat over the heads of all the Negroes I ever met who lived in the South as to the future of Negroes, particularly when placed in the hands of the South where lynching has become such a common outrage.

As a writer and as an American I was one of a group of writers who formed themselves into a committee to do their best to stop lynching in this country. It seems to me that too many States have professed a sort of bankruptcy of integrity, and it is about time for the Federal Government to see that those States regain their ancient integrity and function as communities in which every resident has a sense of justice.

I am so filled with horror over what I have read and heard and studied, the facts that I have digested, that I simply want to register as one person my earnest conviction that this bill is a vital need to the safety of every American.

I thank you.

Senator VAN NUYS. We appreciate your observations very much, Mr. Connelly.

STATEMENT OF MISS ELIZABETH GILMAN, REPRESENTING THE CHURCH LEAGUE FOR INDUSTRIAL DEMOCRACY

Senator VAN NUYS. I will now call upon Miss Elisabeth Gilman, representing the Church League for Industrial Democracy.

Miss GILMAN. Mr. Chairman, I have been asked to come here by the Church League on Industrial Democracy, which is an organization of religious people throughout the United States. We have for our president Bishop Parsons of California, who has come out bravely and courageously in respect to the attitude of Governor Rolph. Our secretary is William B. Spofford, another clergyman. Our purpose is by study, prayer, and action to promote what we believe to be the principles of Christ in industrial life.

We maintain that social justice must be free to every one, black or white. We do not feel that in this present situation in many of our States that can be accomplished merely by State laws. I happen to be a citizen of Maryland. We sometimes get a little tired of being called the "Free State of Maryland." It is not free for the Negro race. They do not have the same social justice that the white people have. I am firmly convinced that had they had that in Maryland we would have had convictions in the case of the lynching in Princess Anne. I even feel that the lynching need not have taken place.

At the special session of our legislature a month and a half ago the Anti-Lynching Federation of Maryland, representing about 32 organizations, both white and Negro, had a bill prepared by one of

our leading attorneys, J. H. Steel, of Baltimore, and introduced into the committee on the judiciary of the Maryland Senate. We had a hearing. We could see by looking at the people that they were not interested, and we lost. There is no real strong antilynching sentiment in Maryland, I fear; at least, it is not widespread, not a majority.

I happened to be asked about that time to speak before a club, one of the leading clubs of business men, on how possibly lynching might be prevented. I did not say anything very radical or revolutionary, and when the question was discussed it was very evident, it seemed to me, that probably three fourths of that group of business men, a fair cross-section of Baltimore business men, did not feel it was so bad that we had a lynching.

I have a strong feeling against lynching, and I feel that under many circumstances it can be avoided. I feel that in a State that is white-minded, where the Negro does not get social justice, we must have a Federal law to support local legislation. Therefore, I am strongly in favor of the bill now being considered and presented by Senator Costigan and Senator Wagner.

Senator VAN NUYS. Thank you very kindly.

STATEMENT OF MISS ELIZABETH YATES WEBB, INSTRUCTOR IN HISTORY AT VASSAR COLLEGE

Senator VAN NUYS. May I next introduce Miss Elizabeth Yates Webb, instructor in history, Vassar College; native of Shelby, N.C.; daughter of former Representative and Judge Webb; niece of ex-Governor O. Max Gardner, of North Carolina.

Miss WEBB. Mr. Chairman, I am not here as an expert on lynching or the details of this proposed law. I should like to say something about public opinion in the South on the subject, and from a good many different points of view from what has been said. I am not representing any organization at all, but I know that if what I want to bring out is not representative of something more than my own opinion, it would not be worth much to you.

I should like to say to you that there are really thousands of southern white men and women—especially women, I think—who care a great deal about helping to bring about more decent race relations. Not quite so many, but a considerable minority have come to the point where they are willing for the Federal Government to help do that. Perhaps, in the face of conflicting evidence on that point, you might like to know how I know that is true. I am southern. I was born and brought up in the South. The four generations before me in my family have been southern, and I expect for four generations more we shall continue to be southern. I was educated there. Perhaps more important than any of that is the fact that I know a good deal about what community opinion is in a small southern town.

Mob violence is not confined to any part of the country, but I realize, not only from what has been said here, but from what has been said in the South, that the races, and to a very considerable extent the white race, are interested in the question of getting this bill passed. It is on this second point that I wish to speak to you.

There are men and women in the South who have tried for many years to do something to bring about better race relations and to curb lynchings. I hope someone will be here to speak for them and about them. The people belong to the older half of the present generation. I want to tell you something about my own contemporaries, about the younger half of the present generation.

For the time being we are the submerged element. We are too old to be represented by college organizations and too young to be represented through the important organizations, but we are deeply concerned in what is going on about us.

I have had an unusual opportunity to know my generation very well. During my undergraduate days and for several years afterward, I was connected with student movements which kept me in very close contact through travel and conference with students in about 200 colleges in 10 Southern States. I knew as well as any what my generation was studying and thinking about, when they were thinking at all.

You know how it is when young people first become really aware of the world in which they live. We are very serious about all these new-found problems. To many of you we may seem very gay and comfortable, but we are very much concerned about these problems, we find confronting us. We are concerned with domestic problems, with international relations, with industrial questions and, of course, racial questions. I think it was really because of our youthful limitations that we came to the point where we did not refuse to deal with the question of racial relations as a problem that we must cope with. We felt that we had to face it squarely. That is more really more difficult to achieve, I think, in the South than it is in the North or California or somewhere else. A good many draw back and more turn back. But I assure you that thousands of us have tried very hard to think this thing through without fear. I think you can count on those of us, no matter who we are or what we are doing today to support any intelligent and decent measure that will help bring about better race relations.

I do not mean to tell you that my college generation came through to that point of view where we felt we had found a solution, but I think even the youngest of us became quite convinced that a solution can be found, and that we are doing something beneficial to the community in which we live. That is something quite aside from the mere matter of race justice. We feel that there is a sort of moral fiber in our own communities that will work intelligently and exhaustively to achieve a decent solution of our race question. We found and realized that for better or for worse we have got to work out a common solution in the South, a solution that concerns both races.

We cannot get rid of it. I think we saw that this matter of lynching was a stupid repudiation of all the things that our education meant. We have become so convinced that this is true that the difficulty of details in carrying it out have become secondary. I do not mean we have overlooked them, but we are convinced that something needs to be done, and we sincerely believe it can be done.

I should say, as a very conservative estimate, that better than 20 percent of my generation have come to feel that we will have to

make an earnest and vigorous attempt to face our race problem. I assure you that a far greater percentage feels very intensely against lynching. I am not forgetting that we do have the grave question of intolerance to fight; I am not forgetting that these things can be overturned, as they have been in the past, and must be attacked again and again; but I hope and believe the point of view I am trying to explain to you may be considered representative of southern opinion on this broad question, and that our social problems cannot be handled in an atmosphere of enmity and prejudice.

When a crisis arises in a community, organization and legislation and constructive measures break down. Many communities in the South have been faced with questions like that. Under such circumstances there is not much chance for Negro justice when people are in a frenzy like that. The only thing to do is to prevent the outbreak. The majority is against it. I assure you that that is so. If you have a different opinion, it is because of certain communities in which there have been crises at times, but you cannot judge general sentiment in the South by those.

We have no way of coping with the lynching situation except through the law, and I can say to you that the most of my generation have become convinced that it will have to be through a Federal law. We are not really strong enough to handle it, and we would like for you to strengthen our hands in facing this problem by passing a law that will make the community more decent and safe to work in and to live in. In getting this bill enacted into law, it is not going to be difficult to make a case against lynching, but the difficulty will be to make a case for the Federal Government. I suppose you know that at times in the South the Federal Government has not had a very good reputation.

We have talked a good deal in the South about State rights. We have talked this State rights matter more than personal rights and more than human rights and more than national rights. At this time there are many people in the South who are earnestly desirous of justice between the races, and are willing to have the Federal Government take a part in bringing that about.

The phrase "coerce the States" is no answer to anything. Some of us who are still too young to be thoroughly orthodox consider it a little metaphysical. I am not saying that the constitutional issue is not important. It is, but it seems a little metaphysical to bring that answer up whenever this question is raised. Personally, I would rather see the Federal Government assert some of the authority of the State than to see the mob do it. I do not think that is necessarily the choice, but if it were I would not hesitate very long about it.

I would consider it very unfortunate and very unfair to challenge this law on the ground that it is directed against Southern States, and is designed to usurp the authority vested in the States. I look upon it as an aid to the States, something that will tend to uphold the judicial integrity of our States. We do not question the right of the Federal Government to send troops in when local justice breaks down. I would much rather see the Federal Government take a part in such things through law and judicial action than to have to wait until troops are sent in.

I was brought up in a State rights school of thought, but I know very well that the Federal Government does have a constitutional obligation to make good its guaranty through the Constitution that every citizen is entitled to equal protection of the law, and that no person shall be deprived of life, liberty, or property without due process of law.

On the other hand, I have been taught, and I know, that the police power of the State stands as a stumbling block to that. I think a very strong constitutional case can be made on both those bases. I think not only that one can be, but that one will be. It is not for us to decide whether this is a constitutional measure. That is something for the courts to decide. I feel sure a clear-cut issue of constitutionality can be presented.

I think I might say in conclusion that opinion in the South, and especially among my generation, is rapidly becoming more pragmatic than egoistic; that it is becoming more really realistic than traditional. There are thousands of us who care so much about this that we are willing to receive help from any quarter, even from our National Government. I really believe and hope our representatives in Congress will consider this overwhelming proportion of intelligent southern opinion, and when confronted with a choice between curbing lynching and curbing the Federal Government they will choose the former.

Senator VAN NUYS. Thank you very much, Miss Webb.

The next speaker is Charles H. Houston, dean of the Howard University Law School. At the request of the Attorney General of the United States Mr. Houston prepared a brief on the lynching of the Negroes at Tuscaloosa, Ala., in August 1933.

STATEMENT OF CHARLES H. HOUSTON, DEAN OF HOWARD UNIVERSITY LAW SCHOOL, WASHINGTON, D.C.

Mr. HOUSTON. If it please the committee, I appear before you as a citizen sworn to uphold the Constitution by three separate oaths: As a Reserve officer, as a lawyer, and as a member of the Board of Education of the District of Columbia. I mention this so that you may judge what I have to say not as the rash statements of a person who has nothing to lose and no faith to keep, but as the sober statement of one who is fully conscious of his duties and who speaks as a friend. I also want to speak as a war veteran, not as one who was drafted but as one who voluntarily enlisted; and finally from a standpoint of public obligation, as the administrator of a law school which is training young men to respect and try to improve the legal order.

I am not here to discuss the constitutionality of the bill, as that will be handled by others who have made a special study of this question. My primary purpose is to discuss the international and domestic implications of lynchings in the United States, and to point out the need why Federal legislation must be enacted and then firmly enforced.

The international implications of lynchings have two aspects, the effect of lynchings on foreign nations and their peoples, and the effect of lynchings on the people of the United States as related

to international situations. If the press can be believed, there is hardly an incident in which our Government attempts to warn foreign nations about their inability to suppress internal disorders that the foreign nation either officially or through its press does not challenge this country for its failure to suppress mob murders at home. The United States has no standing to criticize the riots in Paris and Vienna while mobs range in this land from Maryland to California. The failure of this country to suppress the lynching evil cripples its prestige and exposes its attempts to interfere or dictate in West Indian and Central American affairs as hypocrisy and special privilege. And certainly among nations having a non-Caucasian element in their populations, the existence of the lynching evil directed as it is mainly against blacks, furnishes the basis for a propaganda which will arouse their populations to fanatical fury against the United States. We are near enough to the World War to understand what clever persistent propaganda will do.

The notorious Scottsboro cases, which are not the kind of lynchings which this bill is aimed to reach, are nevertheless close enough to illustrate my point. I should now like to exhibit for the record a series of posters from various countries showing the use which foreign peoples can make of the lynching evil.

This is a Dutch poster, which was posted up at an open-air protest. This one is a French poster, and I call the committee's attention to "Save the Scottsboro Negroes", at the bottom. I should like to call attention to another poster. It is printed in a Scandinavian language. The picture is a picture of Ada Wright, the mother of one of the Scottsboro boys. She and a gentleman named Engahl made a trip to Europe and spoke in 30 different countries. This is a German poster: "Seven Negro workers condemned to death." I have here another French poster. Finally, I have another poster in Scandinavian, which again is an announcement of a meeting by Mrs. Wright.

When one considers that these posters are only samples; that entire cities were plastered with them; that Scottsboro indignation and protest meetings were held in all countries of the civilized world, one can begin to glimpse in a small way what the lynching evil is costing the United States from an international point of view. The riots and protests which were staged in front of United States embassies and consulates in the principal cities of Europe and South America are more indicators of this country's loss of prestige.

Now, Mr. Walter White and others have already told you that the Negro is sick and tired of being lynched and generally mistreated in spite of his hitherto unwavering loyalty to this country. Perhaps you have not thought about this. But foreign nations have, and there is not a single foreign nation which envisions the possibility of war with the United States that does not gamble on the possibility of Negro defection. Less than 2 months ago a supposedly semiofficial provocative Japanese book was seized and all copies in Hawaii confiscated. This book was supposed to be a narrative of a future war between the United States and Japan, and according to the Afro-American, January 27, 1934—

* * * American Fleet starts through the Panama Canal in an effort to reach the Pacific coast before the Japanese battle fleet. The captain has

trouble with a Negro who is supposed to have deserted the ship at Habana, and while the captain is discussing his safety with his officers the Negro slips into his cabin and causes a terrific explosion which wrecks the ship.

The story then states that: "The President of the United States issues an order that no Negro may become a soldier of the United States, thereby cutting down on the forces."

The next question is whether there is any basis for this Japanese propaganda. May I quote from the *Harlem Liberator*, February 3, 1934, "Negroes speak of war", by Langdon Hughes:

When the time comes for the next war, I'm asking you, remember the last war. I'm asking you what you fought for and what you would be fighting for again? I'm asking how many of the lies you were told do you still believe? Does any Negro believe, for instance, that the world was actually saved for democracy? Does any Negro believe, any more, in closing ranks with the war makers? Maybe a few soldiers believed Dr. Moton when he came over to France talking about, "Be nice and fight for the nice white folks. Be meek and shoot some Germans." But do any Negroes believe him now, with lynched black workers hanging on trees all around Tuskegee? I'm asking you?

I was in France and heard Dr. Moton say that.

And after the Chicago riots, and the Washington riots, and the East St. Louis riots, and more recently the bonus march, is it some foreign army needs to be fought?

And listen, I'm asking you, with all the war ships and marines and officers and Secretary of the Navy going to Cuba, can't they send even one sergeant after Shamblyn in Alabama?

* * * * *

And even if I was studying fighting, which I ain't, why couldn't I do a little killing in the Navy without wrassling with pots and pans, or join the Marines, the illy-white Marines, and see the world, or go in the air force where you never admitted Negroes yet? I'd like to be above the battle too. Or do you think you gonna use me for stevedoring again?

* * * * *

And when the next war comes, I want to know whose war and why. For instance, if it's the Japanese you're speaking of—there's plenty of perils for me right here at home that needs attending to; what about them labor unions that won't admit Negroes? And what about all of them factories where I can't work, if even there was work? And what about the schools I can't go to, and the States I can't vote in, and the juries I can't sit on? And what about all them sheriffs that can never find out who did the lynching? And what about something to eat without putting on a uniform and going out to killing folks I never saw to get it? And what about them "separate colored" codes in the N.R.A.? And what about a voice in whose running this country and why—before I even think about crossing the water and fighting again?

Who said I want to go to war? If I do, it ain't going to be the same war the President wants to go to. No, sir. I been hanging on a rope in Alabama too long.

I confess that Langdon Hughes is a poet and a radical, but the point to be impressed is that sober Negroes who are keeping their mouths shut have the same thoughts in the backs of their heads. Only last Sunday, 2 days ago, Congressman DePriest gave a musical in the auditorium of the new House Office Building. A large gathering of the leading Negroes of the city were there; all the Negro officials almost. Mr. William Tyler Page, former Clerk of the House, was the principal speaker. After the proper oratorical approach he swept to his climax that the Negro had never deserted the country in time of need and the United States can always count on his unwavering loyalty. Not even a decent ripple of applause trickled through the room. If you think I exaggerate, you can ask any of the several Congressmen who were present.

May I call your attention to the situation in the last war? If you examine the records of the War Department you will find that the established Negroes, the leading Negroes, did not enter the Army. Fort Des Moines, where the first Negro officers were trained, was a camp of boys except for the Regular Army men who were there. Out of more than 100 civilians who went to the officers' training camp from the District of Columbia I can only recall two men commissioned who were over the age of the first draft, and they were both members of the metropolitan police department: Wormley Jones and Paul Jones.

I am not trying to raise a bogey or scare anybody. Personally I realize that our salvation lies in sharing the hazards of the national life. But I think you and the country both should know that there is grave disillusionment and deep distrust among large elements of the Negro population, especially in the South. It does not show on the surface. The southern Negro is far too canny for that; he knows he has not got a chance in case of open resistance. But week in and week out, the Negro press is feeding the Negro population with stories of lynchings, stories of oppression which are all too true, and they cannot help but take effect. And the time may come in an international crisis when the loyalty or disloyalty of one tenth of the population may spell the difference between national success and national disaster; and that day, unless sooner wiped out, the country may reap the lynching harvest.

Why? Because the South will be afraid for the country to arm Negroes in any large numbers. You may recall that a large part of the Negro troops were not called until a month after the white troops. You may also recall that the Negro officers were not called into camp until a month after the white officers; that the Twenty-fourth Infantry had arrived at Houston, and immediately afterwards changes were made in the plans for mobilization of the Ninety-second Division, and it was never mobilized until it reached France. What happened was that the Negro troops were kept back until the white troops had been put into camp. I was in the Three Hundred and Sixty-eighth Infantry, which was at Camp Meade, and the Three Hundred and Fifty-first Artillery. The purpose of that was because another Houston outbreak on the part of the troops was feared, and it was arranged so that any unrest on the part of the Negro troops could be smothered. That was the situation back in 1917, and conditions are much worse at the present time.

And the South will be likewise afraid to go off to fight with a discontented Negro population left at home. The result will be that the national effort will be paralyzed before it even gets under way. I respectfully submit and urge upon you that this is not merely a matter of State concern, but a matter which goes to the roots of the national life and must be met by the full strength of the Federal Government where the States have failed.

I should like now to speak of some of the domestic implications of lynchings. First of all, from the standpoint of white and black alike, the breakdown of orderly government. With the unrest in his country among whites and blacks both, a mob lynching a Negro may any day go on to attack the Government itself. The open rebellion against the State on the Eastern Shore of Maryland last

November is an indication what this country may expect if the lynching spirit is not first curbed, then completely stamped out. The startling spectacle of Governor Rolph practically abdicating to mob rule casts its shadow into the future. Instead of a government by responsible public officials with some measure of accountability, the community becomes the prey of irresponsible mobs and secret societies. Quoting from the report of the southern commission on the study of lynching, issued November 24, 1933, as a result of its investigation of the Tuscaloosa lynchings in August 1933, I call your attention to the conditions found by the most authoritative body in the South:

Contributing to the extreme community hysteria in Tuscaloosa was the effort of the International Labor Defense to enter the case as counsel for the accused Negroes—an effort repelled by mob violence. Immediate responsibility for this reaction, and probably for the lynchings themselves, rests upon a local secret organization, the Citizens' Protective League, with an elaborate system of espionage and intimidation. The membership of this organization runs into the hundreds and reaches into the courthouse and into some of the families prominently connected with the recently organized council against crime. Much of the hysteria observed in the Tuscaloosa vicinity is directly traceable to a pervasive, unreasoning fear, even on the part of the most intelligent people, that Communist agents had actually organized conspiracies of violence, outrage, and insurrection among the large Negro population of the county.

Even had these rumors been true, they would have afforded no justification for an orgy of murder and intimidation. As a matter of fact, however, the most careful search failed to reveal any insurgent spirit whatever among the Negro population, or even any evidence of sustained effort on the part of the Communists to gain Negro support. The fears of the community on this score seem so unjustified that one must question whether they have not grown up as defenses and excuses. Communism is Tuscaloosa's scapegoat.

* * *

At present Tuscaloosa Negroes in all walks of life are fearful of their security. They feel that they cannot depend upon the constituted authorities for protection. Many Negroes interpret the recent repeated failures of the police and courts to mean that they must look to their own strength. Nevertheless, they have exercised commendable restraint and forbearance. Fearful as it is, Tuscaloosa's list of casualties might have been—and may yet be—much longer. The underlying causes are still there.

The white man's control of the Negro group, particularly in the rural areas, has been carried to surprising lengths. All Negro meetings must be held in the daytime; suspicious strangers are on the proscribed list. A white landlord spies on a Negro church service, meeting at 3 o'clock Friday afternoon and later dispels a rumor of its radical nature by saying, "No; that was no Communist meeting; I was there myself; just a handful of crippled old 'nigger women."

Herbert K. Stockton, in his brief supporting the Dyer antilynching bill, in 1922, warned the Congress of the United States, and particularly the Senate Committee on the Judiciary (p. 7):

The evil is rampant, it is hellish in particular instances, it is dangerous to the Nation in its increasing threats of race war and mob rule. To cure such a cruel cancer in our body politic every curative force should be set in motion.

Let me next point out the utter demoralization of the law-enforcement officers themselves as a result of the lynching evil. I quote from James Harmon Chadbourn's *Lynching and the Law, 1933*, University of North Carolina, as to a representative attitude of peace officers in some of the 1930 lynching cases:

"Do you think I am going to risk my life protecting a nigger?" * * * In the majority of cases the sheriff and other peace officers merely stood by while the mob did its work. After the tragedy they said that the mob had

taken them completely by surprise, or that, though aware of the impending danger, they were unwilling to shoot into the crowd lest they kill innocent men, women, and children. At Marion, Cartersville, Scooba, Union, and Plant City the sheriffs or other peace officers were either in connivance with the mob or else extremely stupid. In each case the mob took possession of the accused in the presence of the officer who did not fire a shot or make any other real effort to protect the accused.

In Bolivar County, Miss., the local deputy sheriffs rode out to the place where the man hunt was under way. When he found that the accused Negro was certain of being caught, he returned to his courthouse office, quite content with the way the thing was being handled. In two other plantation counties—Brazos, Tex., and Sumter, Ala.—the officers deliberately left matters in the hands of the local people.

A tradition in these counties, respected by sheriff and peace officers as well as by the public, leaves to the planter and his overseer the settlement of any trouble which arises on the plantation among the Negroes themselves or between him and the overseer or planter. Most crimes in these counties are looked upon as labor troubles, to be settled by those who own and control the plantations. As a corollary, to all practical purposes, the sheriff and other peace officers are the planters' agents.

On the direct point of collusion between law-enforcement officers and mobs, for a typical case I refer you to the Tuscaloosa lynchings in 1933, where the southern commission made an express finding that—

Unquestionably the officers of Tuscaloosa County have not performed their duty in safeguarding these prisoners or protecting them from violence. We are convinced that some of the county officers connived in the taking of the three Negroes seized.

This illustration could be multiplied many times over by even a casual examination of Chadbourn Raper's *The Tragedy of Lynching* or White's *Rope and Faggot*. All the authorities point out that the local judiciary and local peace officers are afraid to antagonize their local electorate, and, as the travesty on the Eastern Shore in December showed, the Negro is put to death and the lynchers go free, with official sanction. Venality is made the price of political success.

Another point which the Congress cannot afford to overlook is the effect of lynching in brutalizing the white population. In the 1933 lynchings the most striking feature of nearly every press photograph is the number of women and little children present at the festivities. And the more open and notorious the lynching is the greater the sadistic atrocities the mob leaders indulge in for the benefit of the spectators. Henry Lowry, Mississippi, 1920, burned by inches after the afternoon papers had been advised to issue "extras" as to time, place, and other arrangements. Mary Turner, in Georgia, strung up by the ankles and her unborn child ripped from her belly. George Armwood strung up and roasted in Maryland and his body left in the Negro section. Victims dragged face downward through the Negro section at the end of a rope attached to an automobile. Yet people say it is not time for the Congress of the United States to step in.

I should like to say a few words on what the Negro knows about the causes of lynchings. Lynching apologists have passed through certain definite patterns. First, it was the gag that lynchings were resorted to only in sex crimes; but even Southern white authorities admit that less than one sixth of the Negroes lynched have been accused of sex crimes. Then with that apology exploded, the next defense was the breakdown and delay in the courts. But again

Southern authorities themselves point out that there has been no breakdown in the courts so far as Negroes are concerned. Chadbourn says (p. 10) that the evidence is convincing that Negroes who are tried for serious crimes in lynching communities are more drastically punished than are white similarly circumstanced.

A Negro was lynched in Waco, Tex., in 1916, after he had been convicted and sentenced to death, having first waived his right to a change of venue and to an appeal. The three Lowmans were lynched on the outskirts of Aiken, S.C., in 1925, after being acquitted. So that it cannot be ascribed to a breakdown in the courts. Now the current excuse is communism.

Communism is blamed for the recent outbreaks on the Eastern Shore. The community is supposed to resent communistic interference in the Euel Lee case. But the community does not state that repeated attempts were made to lynch Lee before communists ever contacted him, and that they did not contact him until after he had been brought to Baltimore for safe-keeping. In Tuscaloosa, communism is blamed for the lynchings of Pippen, Harden, and Clark last August. But the first attempt to lynch the three boys was made June 21, almost a month before the communists entered the case. And they were actually lynched on the night of August 12-13, 2 days after the communist lawyers had been put entirely out of the case by the court and the defense of the boys turned over completely to members of the local bar appointed by the court. The southern commission finds that—

Communism is Tuscaloosa's scapegoat. If the community were really afraid of communism, its best defense would lie in extending to Negroes full protection under the law. Certainly the Tuscaloosa community could hardly have placed itself in a worse light than it did by insisting that the Negroes' defense be left in local hands, and then permitting them to be lynched, and the lynchers to go unpunished.

The truth of the matter is that lynching is not to protect southern women but southern profits, to continue the exploitation of the Negro, and to terrorize him to the point that he dare not make any resistance or protest. The southern commission itself finds that "at the bottom of much of this so-called "defense of lynching" lies the determination of many white people to continue the economic exploitation of the Negro. May I illustrate by the cotton-crop situation in Tuscaloosa County? There pursuant to recent Government policy certain cotton acreage was plowed under. Six thousand cotton checks were sent into the county as compensation for the plowed under cotton. In spite of the fact that Negro farmers represent over 80 percent of the farm occupiers, and in spite of the notorious fact how they are cheated in their accounts by their white landlords, only 115 of the 6,000 checks were made out to Negroes, and even as to these 115 checks the southern commission could not find a single instance where a Negro farmer got the actual proceeds of the check. There is the secret for lynching, both in Alabama and on the Eastern Shore of Maryland.

The Negro also knows that the lynchers go free. So far as I know, there is not a single case pending where any fair chance of convicting a 1933 lyncher exists. In the Washington Herald, February 7, 1934, Dr. Will W. Alexander, of the Commission on Interracial Cooperation, urging a Federal law, stated that in the 1880 recorded lynch-

ings from 1900 to 1930, convictions were obtained in only 12 cases, less than 1 percent of the total.

Further, the Negro knows that even the local judges cannot be depended upon; that they will change their stories under pressure. Judge Duer changed his story on the Salisbury lynching; Judge Foster changed his story in the Tuscaloosa lynching. The day after the lynching the press quoted him as saying that nobody had gotten his consent to move the boys from Tuscaloosa to Birmingham as required under Alabama law. But when the southern commission made its report 3 months later he is quoted as saying that he had consented for the boys to be moved. Either the commission, the press, or Judge Foster is wrong.

The Negro knows that the liberal southern press, the liberal organizations in the South, and the southern liberals themselves are powerless. There never has been a lynching which has aroused stronger protest in the South than the Tuscaloosa lynchings. The Governor of Alabama offered rewards; the liberals of Alabama issued signed statements urging support of law and punishment of the lynchers; the press clamored for convictions, but nothing happened. If nobody else in this country knows it, the Negro knows that the States have failed.

May I also call your attention to a quotation from the brief with the Attorney General, taken from the Montgomery Assizer of August 17, 1933:

A state that does not offer protection to the most loyal of its residents does not deserve the right to call itself a sovereign State.

Finally, may I say that the Negro not only expects legislation from Congress to curb and wipe out the lynching evil but he also expects that this legislation will not be a mere gesture. He expects it to be enforced. If the Department of Justice does not do any more with the new legislation than it has done with the legislation already on the books covering State action in depriving Negro citizens of their civil rights, the law will be a dead letter before it is enacted. I say to you in all sincerity, as one sworn to uphold the law, that if the Negro is to remain loyal, if he is to keep faith in time of national need, he demands protection not as a beggar or ward of the Government but as a citizen of the State where he resides.

Senator VAN NUYS. Are there any questions?

Senator DIETERICH. Have you studied this proposed legislation?

Mr. HOUSTON. To some extent, sir. I have not studied it critically.

Senator DIETERICH. Your recitation of conditions down there is very interesting. I assume that you are generally familiar with this bill.

Mr. HOUSTON. Yes.

Senator DIETERICH. You understand there is no provision in this bill by which the Federal Government may undertake to prosecute the mob that commits the crime, do you not?

Mr. HOUSTON. I appreciate that.

Senator DIETERICH. But it does undertake to prosecute those officers who, by reason of their negligence, have made possible the commission of that crime?

Mr. HOUSTON. If the people of the State do not prosecute.

Senator DIETERICH. You made the statement that you expect the Federal Congress not only to pass legislation but to see that it is enforced.

Mr. HOUSTON. Yes, sir.

Senator DIETERICH. Without any qualification as to that statement, you could not expect the Federal Congress to do more than it has the power to do, could you?

Mr. HOUSTON. Except that the Federal Congress, through the Senate, has the power of impeachment.

Senator DIETERICH. And those officers would be prosecuted in the Federal district court of the district in which the offense was committed?

Mr. HOUSTON. Yes, sir.

Senator DIETERICH. You cannot hold the Congress responsible, can you, if the Federal court or the prosecuting officer or juries in that court would be motivated by the same things that now motivate the circuit judges and the juries and the prosecuting officers who are elected from the counties?

Mr. HOUSTON. We do not expect to hold the Congress to anything more than the Congress can do. All the Congress can do is to pass the legislation, and then it seems to me the Senate, by its power of confirmation, and also both Houses of Congress, by their power of impeachment, can certainly see that individuals of the proper type shall be selected to carry on the enforcement.

Senator DIETERICH. You understand, of course, that Congress has no power to take the police authority to itself.

Mr. HOUSTON. We are not asking that. When we say the law should be enforced we mean there is a certain point where it all depends upon the human being filling the office.

Senator DIETERICH. It all depends upon the officers charged with the enforcement of that Federal law.

Mr. HOUSTON. That is quite true.

Senator DIETERICH. They must be selected from the particular locality.

Mr. HOUSTON. But Congress in making that selection, or approving the selection, should first, it seems to me, examine into the antecedents of these individuals and make the proper investigation to determine whether or not they would enforce the law. Then, when they have taken office, after confirmation by the Senate, I think the Congress is not entitled to sit down and say its job is done. Congress has the power through impeachment, although that is a very unusual proceeding, to correct.

Senator DIETERICH. Congress has the power if it gets the correct information. Sometimes controversies arise and Congress is unable to determine the real truth. You realize that fact, do you not?

Mr. HOUSTON. We are aware of the fact that the whole thing is a human machine. We are asking for a bona fide, honest effort.

Senator DIETERICH. You have a right to expect that?

Mr. HOUSTON. Yes.

Senator DIETERICH. Your statement, as well as that of others, seems to cover the Southern States. Have you any complaint as to conditions in any of the Northern States, outside of a few little cases, such as labor outbreaks?

Mr. HOUSTON. I should say to you, Senator, that if I went into that I should probably be going beyond the scope of this particular hearing. We have many complaints, but I do not think this is the time to bring them out.

Senator DIETERICH. I suppose that you have had some complaints from our State?

Mr. HOUSTON. Yes.

Senator DIETERICH. Such as East St. Louis and Chicago?

Mr. HOUSTON. Yes.

Senator DIETERICH. Those were more or less labor disturbances, a sort of resentment of local labor to things that might have happened if they had not been members of the Negro race.

Mr. HOUSTON. There was also a little more than that. You can appreciate that the question of property ownership was also involved on the South Side, the Negroes moving into certain sections.

Senator DIETERICH. I understand.

Mr. HOUSTON. None of these questions can be picked out one from the other. I think we cannot say the job is finished when legislation is passed. It is just one instrumentality toward reaching a solution of all these troublesome questions, about which the last speaker said the members of her generation were going to face.

Senator DIETERICH. You are a lawyer. What do you say as to the question of providing a penalty of \$10,000 against a county or State?

Mr. HOUSTON. I have been paying attention to the question that has been asked. I have two answers to it. The first is, it seems to me, leaving out the question as to when a man comes within the provisions, a mob killing just a person alone—

Senator DIETERICH. Not in the custody of the officers.

Mr. HOUSTON. Addressing ourselves first to the penalty, I think you have in mind circumstances where the officers have done everything in their power to prevent the occurrence, and a penalty of \$10,000 may be imposed upon the county.

Senator DIETERICH. Yes.

Mr. HOUSTON. I should say that would be an extreme case. That would be an exception to the general situation and probably would be more or less a case in which the county should be more or less released. What we are trying to do is to make it so much the business of the entire county, so much the sense of responsibility of every taxpayer in the county, that lynching will be stopped before it gets started.

We have another thing I may call attention to. Since you have raised the question of prosecution in the district court, I may say the form of penalty is a civil action, I take it. Perhaps a civil action to recover damages as a result of mob violence would be more effective than a criminal prosecution, because of the power to direct a verdict and other conditions which give more control of a civil action.

Senator DIETERICH. I am just thinking aloud and not expressing my own views. The difficulty I see is that this proposed legislation must have general application to every State in the Union.

Mr. HOUSTON. I grant you that.

Senator DIETERICH. It must have general application to all citizens, regardless of color.

Mr. HOUSTON. Yes.

Senator DIETERICH. I am wondering if there could not be some provision in this bill that would protect those communities that have not been in the habit of practicing lynching. There are many communities in the United States that have not been in that habit, and it seems to me very unjust to penalize a community when the officers have tried to do what they could do to protect the victim of a mob. I am not talking about the colored race, but I have in mind more particularly three or four people taking a man out and killing him.

Mr. HOUSTON. May I say that I do not think the Negro wants to penalize anybody. The only thing he wants is protection.

Senator DIETERICH. I understand that.

Mr. HOUSTON. As to the second point, as to those counties where you do not have this same situation, the kind of places you have been talking about, it may very well be that in the examination of the bill the committee may be able to make improvements. I have not studied the bill sufficiently to go into that, but I might call attention to one point, that we must recognize that whatever is the minimum penalty or damages established in the bill, that is going to be the amount that will ordinarily be recovered.

Senator DIETERICH. If we act upon that assumption, do you think we will be justified in disregarding the broad principle of justice that only those who are guilty shall be punished?

Mr. HOUSTON. Is it not true that this bill also provides a liability of the officers?

Senator DIETERICH. Yes; but I am talking particularly about the matter of the State or county.

Mr. HOUSTON. This much seems to me to be true in that regard: Again we get back to the proposition of the selection of officers who will discharge their duties properly. If the county chooses to elect irresponsible officers, it seems to me that is a problem of the county. It seems to me the county has possibilities of protecting itself with these officers. It has the possibility of requiring sufficient bond. It has many possibilities. I do not want to see any county unjustly penalized. It seems to me the question of the penalty is one of the most vital points.

Senator DIETERICH. I am in sympathy with the principle of the bill and to that section as applied to those who are negligent in protecting human life.

Mr. HOUSTON. May I call attention to a statement by Mr. Chadbourn? I think it might be interesting, Senator, on this particular point:

1894. R. C. O. Benjamin. "Let it be intelligently understood in the beginning that there are good people in the South as well as there are bad people in the South, and that we do not hold the former responsible for the inhuman brutalities of the latter, only so far as lies in their power to prevent them. A failure on the part of the good people of the South, through carelessness, indifference, or wilful neglect, to enforce the law of the land against those who commit crimes, makes them morally responsible for the crimes committed. The smoking ruins of devastated homes and the unsightly aspect of the unburied bodies of murdered Negroes * * * is no less blameworthy upon the good people of the South who look on with utter indifference than it is upon the bad people of the South who actually committed the wrongs."

Translating that to this situation, I can say that as a prophylactic measure I think it is necessary to make it so much the business of

every taxpayer that he will be a committee of one, whenever any condition arises which is likely to result in a lynching, to do his best to stop it, because he would be pecuniarily liable for it.

Does that answer your question?

Senator DIETERICH. It answers my question; but I think that there is a vast difference between the two situations to which I have referred, and a vast difference between different sections of the country. I realize that what you say has very great application to conditions that you have described in your testimony.

Mr. HOUSTON. May I make a further answer by saying that, as to the other sections of the country, the chances are the law will never have to be called into effect?

Senator DIETERICH. I understand it would never have to be called into effect for the purpose you are talking about, but it would be called into effect every time three people got together and killed somebody.

Mr. HOUSTON. I have not quite made up my mind as to that, but I think the committee in going over the bill might find it advisable to revamp it in some respects.

STATEMENT OF HERBERT K. STOCKTON, REPRESENTING THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Senator VAN NUYS. May I next call upon Mr. Herbert K. Stockton, representing the National Association for the Advancement of Colored People, as a member of its national legal committee.

I understand that he wants to discuss the constitutionality of the bill.

Mr. STOCKTON. I thought if I might add a few words on that subject, it might be helpful to the committee. I worked on the brief on the Dyer bill for Senator Shortridge.

Senator VAN NUYS. State your connection and your experience and your address.

Mr. STOCKTON. My name is Herbert K. Stockton, an attorney of 27 Williams Street, New York City. I am a member of the legal committee of the National Association for the Advancement of Colored People. I am an active practicing lawyer at that address and have been for 30 years. In 1922 I got into the briefing of the Dyer antilynching bill, at the suggestion of Senator Borah. Following that I joined the legal committee of the National Association for the Advancement of Colored People, and was for a time on the board of directors. I had to leave that because of the pressure of other work. I am now on the legal committee, and appear here in that capacity. I have done some work in the revising of the draft of this bill and in looking into its constitutionality as compared with the Dyer bill.

Senator VAN NUYS. You may proceed.

Mr. STOCKTON. I wish to make the point that we do not need to fear the bugaboo of unconstitutionality. This bill is an improvement over the Dyer bill. I believe the bill is constitutional, and a little later I will state very briefly why.

In the second place, I think it would not be good policy to refuse to pass the bill because it may be similar to what was known as the "Force Bill." This bill has nothing in common with the bills which were resented by the South. This is a bill to help that element in the South and in other States—North, South, East, and West, which are fighting against the prevalence of lynching and trying to stop it.

Assuming that we have a genuine desire to stop lynching, there are two questions which we may reasonably want to have answered before recommending or voting in favor of an antilynching bill in the form proposed by Senators Costigan and Wagner. First, is it sound policy to enact a Federal law against lynching? Second, is the proposed law constitutional?

It ought to be clear to us now that mob violence in the form of lynching is a step toward the disintegration of civilization. Cancer has been described as the anarchic revolt of cells which break loose from their internal control and invade surrounding tissue. It is not far-fetched to call lynching a cancer of the body politic. The potentialities for disaster in such a habit of violent anarchy should be enough to make us want to forestall and control such antisocial violence, especially in view of what we have witnessed since August 1914, and in view of what we see in the headlines of current newspapers.

If the enactment of a Federal antilynching law meant that the Federal Government was going to have to act repressively against a unanimously apathetic or hostile State this policy might well be examined with some trepidation. Fortunately there is not a State of this country today where there are not active and in many instances effective individuals and agencies working against the lynching habit. These elements within the States, however, are obviously handicapped and sometimes paralyzed by a strong local antisocial sentiment which stalls the machinery of safety and justice and leaves the rest of the State no way of acting. Or the whole State machinery may be paralyzed, as recently in California. In such situations the obvious agency of law and order to be employed is one which will not be affected by the anarchistic sentiment of the locality or of the controlling State officials. The role of the Federal Government then may with all propriety be that of a guarantor, who is called into action only if officials of the State fail or refuse to act. This is the foundation, the purpose, and the tenor of this bill.

The fourteenth amendment of the Constitution as construed by the courts provides for and authorizes just such a guarantee. Section 1 of the fourteenth amendment provides:

1. Nor shall any State * * * deny to any person within its jurisdiction the equal protection of the laws.

And section 5 provides:

5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

We all know that a most characteristic feature of lynching is that the victim of the lynching mob does not get the same protection, either through prevention or through punishment, as does the victim of other forms of crime; that State and county officials do

not try to prevent this crime as they try to prevent other crimes, that they do not try to punish for this crime as they try to punish for other crimes; in other words, the victim of a lynching mob does not get the equal protection of the State's laws. This discrimination very frequently results from the failure to act or from the wrongful acts of sheriffs, wardens, and other administrative, executive, or judicial officials of the State or of its subdivisions.

There is no doubt that the provisions of the amendment apply to discriminatory laws. The Supreme Court and other Federal courts have made it equally clear that the amendment applies to discriminatory enforcement.

I take it you are familiar with the history of the fourteenth amendment. After the Civil War the amendment was passed at the instance of extremists who wanted to change the whole system of the Government and make it a Federal controlled Government and abolish State rights. There was litigation resulting in tremendously important Supreme Court decisions about the year 1878 and about the year 1884, since when there has been no litigation nor Supreme Court decision on the particular point that confronts us here, which is the constitutionality of a bill designed to protect the rights of citizens of States.

The former decisions of the Supreme Court in the Slaughter House cases and Civil Rights cases made it perfectly clear that the court would not allow the amendment to take the effect that has undoubtedly been intended of giving the Federal Government direct rights in actions against individuals in States. It has held that the amendment could only act against the States and not against the individuals, asserting that it was confined and would be confined in the future to protecting the rights of citizens of States guaranteed by the Constitution.

There were, however, several decisions which have opened up avenues down which this bill can travel constitutionally. One of those decisions was *Ex Parte Virginia* (100 U.S.). A bill was passed by this Congress requiring that there be no discrimination in selecting juries as between white and colored races. A Virginia Judge was indicted under that law for discriminating, and he took the case to the Supreme Court of the United States, which held the law was good and the judge was amenable to the punishment of the law for discriminating in selecting a jury as between whites and colored. The court held that went to the officers of the State and did not relate to individuals.

The Supreme Court of the United States also said of discrimination, by exclusion of Negroes from jury panels, in the case of *Tarrance v. Florida* (188 U.S. 519).

Such an actual discrimination is as potential in creating a denial of equality of rights as a discrimination made by law.

In a Chinese case, *Yick Wo v. Hopkins* (118 U.S. 356), in California, when the anti-Chinese feeling was running strong, there was a discriminatory statute which was enforced only against the Chinese as to their laundries and not against the whites' laundries. The Supreme Court of the United States held that the law, while apparently fair and equal on its face, was intended to be and was in fact

applied in an unequal way and with a desire to favor one as against another. The court said:

Can a court be blind to what must necessarily be known to every intelligent person in the State? * * * The facts shown establish an administration directed so exclusively against a particular class of persons as to warrant and require the conclusion that, whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration, and thus representing the State itself, with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured to the petitioners as to all other persons, by the broad and benign provisions of the fourteenth amendment to the Constitution of the United States. Though the law itself be fair on its face and impartial in appearance, yet if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminating between persons in similar circumstances, material to their rights, the denial of equal rights is still within the prohibition of the Constitution. * * *

The fact of this discrimination is admitted. No reason for it is shown, and the conclusion cannot be resisted that no reason for it exists except hostility to the race and nationality to which the petitioners belong, and which in the eye of the law is not justified. The discrimination is, therefore, illegal, and the public administration which enforces it is a denial of the equal protection of the laws and a violation of the fourteenth amendment of the Constitution.

In *United States v. Blackburn* (Fed. Cas. No. 14603), the judge said:

By the equal protection of the laws, spoken of in the indictment, is meant that the ordinary means and appliances which the law has provided shall be used and put in operation in all cases of violation of law. Hence if the outrages and crimes shown to have been committed in the case before you were well known to the community at large, and that community and the officers of the law willfully failed to employ the means provided by law to ferret out and bring to trial the offenders because of the victims being colored, it is depriving them of the equal protection of the law.

And in 1912, in *Home Telephone & Telegraph Co. v. Los Angeles* (227 U.S. 278), Mr. Chief Justice White said, at pages 286, 287:

* * * The provisions of the (fourteenth) amendment, as conclusively fixed by previous decisions are generic in their terms, are addressed, of course, to the States, but also to every person, whether natural or judicial, who is the repository of State power.

* * * * *
The settled construction of the amendment is that it presupposes the possibility of an abuse by a State officer or representative of the powers possessed and deals with such a contingency.

And at page 296:

The immediate and efficient Federal right to enforce the contract clause of the Constitution as against those who violate or attempt to violate its prohibition, which has always been exerted without question, is but typical of the power which exists to enforce the guarantees of the fourteenth amendment.

The bill before you, the Costigan-Wagner bill (S. 1978), constitutes appropriate legislation to discourage lynching and to assure to the victims, of whatever race, creed, or color full and equal protection of the laws of the State. The provisions of the act are confined to the subject of lynching by the title, which might perhaps be better worded, "To prevent and punish lynching by assuring to persons within the jurisdiction of every State the equal protection of the laws."

Summarized, the bill provides:

That if a State (acting, of course, through its officials) fails, neglects, or refuses to provide and maintain protection to the life or person of any individual against a mob or riotous assemblage, the State shall be deemed to have denied the equal protection of its laws to such person.

That any State officer or employee, having the duty of protection of the life or person of such an individual, who fails or refuses to make all diligent efforts to protect such an individual, or to arrest or prosecute members of a mob, is guilty of a felony punishable by fine or imprisonment.

That any State officer or employee who conspires to harm or kill his prisoner or to let him be taken by a mob, shall with his confederates be guilty of a felony punishable by a fine or imprisonment.

That the Federal court of the district shall have jurisdiction over the lynchers on a showing that the State officers have failed to arrest or prosecute, or that the jurors are so biased that there is no probability of conviction. The failure to arrest or indict any one within 30 days, or to prosecute diligently, is prima facie evidence giving Federal jurisdiction.

That the county where the person is lynched shall forfeit \$10,000, recoverable for the use of the family of the victim.

That the lynching of a citizen of a foreign country constitutes a Federal crime.

It is obvious that these provisions are appropriate to employ the Federal guaranty of equal protection in such a way as to discourage lynchings, to prevent their recurrence, and to punish those responsible for them. That the courts take this view of such provisions is shown by the opinion of the Supreme Court of Illinois in *People v. Nellis* (249 Ill. 12), affirming a judgment ousting a sheriff whose prisoners, 1 Negro and 1 white man, were taken from his custody and killed by a mob, and following which the governor removed him under the Illinois act of 1905 entitled "An act to suppress mob violence", the court said, at page 17:

The first section defines the meaning of the term "serious injury" to persons and property, as used in the act. The third section makes the persons who compose a mob with intent to inflict damage or injury upon the person or property of an individual charged with crime guilty of a misdemeanor and subject to a fine and imprisonment in the county jail. The fourth section makes it a felony for persons composing a mob to by violence inflict material damage upon the property or serious injury upon the person of another under pretense of exercising correctional powers over such person, and makes the penalty for said offense imprisonment in the penitentiary not exceeding 5 years. The last clause of said section provides that any person suffering material damage to property or injury to person by a mob shall have a right of action against the county or city in which the injury is inflicted for such damages as he may sustain, to an amount not exceeding \$5,000. The fifth section gives a right of action to the surviving spouse, lineal heirs or adopted children of a person who shall suffer death by lynching at the hands of a mob, against the county or city for damages in a sum not exceeding \$5,000.

The sixth section provided that a lynching should be prima facie evidence of the sheriff's failure to do his duty upon which the Governor must remove him, and provided that he might be reinstated if he could show that "he had done all in his power to protect the life of such prisoner and perform the duties required of him by existing laws respecting the protection of prisoners.

In finding that the provisions of the act effectuated the object expressed in its title, the court said, at page 19:

It is, we think, too clear for argument that those provisions of said act which provide that persons engaging in mob violence shall be guilty of an felony and subject to imprisonment in the penitentiary will tend to prevent men from joining mobs when assembling and will tend to the suppression of mob violence, and it is, we think, equally clear that the imposing of a liability for damages upon the county or city in favor of the victim of a mob whenever mobs are permitted to assemble, or, in case of his death, in favor of his widow or heirs or adopted children, will cause the taxpayers of such county or city to discourage the assembling of mobs within such municipalities and will cause all law-abiding men residing in such communities to condemn and denounce mob violence, the result of which must be to create respect for the law and its enforcement and to discourage the assembling of mobs. The fact that the sheriffs, of the several counties of the State are subject to removal from office in a summary manner for neglect of duty and a failure on their part to protect prisoners in their custody from being taken from their custody and hanged by a mob will certainly tend to make the sheriffs of the several counties of the State more vigilant and cause them to make greater effort to protect persons in their custody than they would be were they not subject to removal from office and more earnest and courageous in dispersing riotous assemblies, which must have the direct effect to suppress mob violence. We are therefore impressed with the fact that each provision of the act in question will fairly tend to effectuate the object expressed in the title to said act, viz, the suppression of mob violence. While it is true that the title of the act is quite general, that is no objection to the title, as the more general the title the greater the number of particular or subordinate subjects that may be legitimately included within the act (*Rouse v. Thompson*, 228 Ill. 522).

I respectfully urge that it is vitally important to stop lynching; that it is sound policy to enact a Federal law in performance of a Federal guaranty of equal protection of the laws to those individuals who are or may be subject to lynching in any of the States; that the Costigan-Wagner bill is well devised to fulfill this guaranty and help do away with lynching; that the bill is appropriate legislation within the provisions of the fourteenth amendment and should be held constitutional by the Supreme Court.

I need hardly urge the importance of having Congress set an example to the country and furnish leadership of those responsible elements which in the various States are striving under their handicaps to abolish lynching. The passage of this bill by this Congress will, I submit, do more than any other one thing to strengthen the hands of these responsible elements and at last remove the opprobrium of these recurrent lynchings which our country now bears in the eyes of the world.

It need not be argued before this committee that the lynchers, the victims, the officers who have failed to prevent it or conspired with those committing the act, are all treated in the same way under the laws of the State as are those officers or individuals in the case of other crimes. That has been made most abundantly clear recently by the reaction of both church and State in favor of lynching in the California case.

The law which is proposed provides that the State, if it fails to give equal protection shall be deemed to have denied such equal protection; that the State officers who failed in their duty to prevent the lynching are guilty of a felony; that a State officer who conspires with a mob is guilty of a felony; and that the Federal court of the district shall have jurisdiction over the lynchers themselves if it be shown that the State officers have failed to prosecute. It

also provides that in case of a death as the result of mob violence, the county or municipality shall be penalized in the sum of \$10,000 for the use of the family or dependents of the victim. It is clear that those provisions are designed to discourage and prevent lynching as a whole and, therefore, they come within the terms of the amendment which gives this Congress the power to pass appropriate legislation to enforce the equal protection of the laws.

I should like to devote my attention briefly to the point that has been raised again and again about section 5, which fixes a fine of \$10,000 on the county where a lynching occurs. I believe that is important. As Professor Lleyellyn said, "It is the core of the bill." I think it is the preventive that is more likely to discourage lynching, because it touches the pocketbook.

Senator McCARRAN. Do you think lynching is ever tolerated by a community?

Mr. STOCKTON. Yes.

Senator McCARRAN. Do you know, as a matter of fact, that mobs are organized in an hour or two, and the members of the community have no knowledge of it? How can a community stop an act of that kind?

Mr. STOCKTON. I think lynching is more frequent in communities where public opinion is in favor than where public opinion does not sanction it. I think the fact that it springs up within an hour is not the whole story. It goes back to the thought that lynching is, after all, a very useful method of keeping other races in order.

Senator McCARRAN. What is the history of lynching prior to the Emancipation?

Mr. STOCKTON. I think it has been stated before you. Prior to that, I understand, it was merely a matter of border difficulties. In other words, it was something akin to the California vigilantes. It was an incident of violations of the moral law, in places where there was no established law and order.

Senator McCARRAN. I had reference to the lynching of colored people. Is there any history of lynching of colored people before the Civil War? I have never looked into it.

Mr. STOCKTON. I have done so, and my understanding is that there was lynching of colored people before the Civil War, but that it was probably more evenly divided between the races at that time, and that there were many instances of the lynching of white people, although the lynching of colored people undoubtedly predominated. I think that before the Civil War it was more a feature of the unsettled country, but since that time it results from a complexity of causes, some of which Professor Chadbourn has pointed out.

Senator McCARRAN. My first question may be rather abrupt, but I had this thought in mind: Suppose that you lived in a community where the lynching took place, and the responsible people of the community knew nothing about the event until it was all over. We propose by this legislation to impose a penalty on those people who knew nothing about it, and who were willing, ready and able to see the law carried out in its proper channels. Is that the idea you have in mind as to what should be done?

Mr. STOCKTON. Yes. I would be willing to take my share of the taxpayers' burden on that. Since the California lynching I have talked to editors of metropolitan New York newspapers and business

men of all types. Some of them were very apathetic over the lynching, and thought it was probably the solution. I think if there was a lynching in New York that very idea of a condonation of lynching would be to a considerable extent responsible for it, and I think we ought to pay for it.

Senator McCARRAN. I think the California incident was exaggerated by reason of the expression of the executive of that State, which was unnecessary and uncalled-for and unwarranted, as far as that is concerned, but it happened to accentuate the situation.

Mr. STOCKTON. Yes; but you will remember that it immediately produced a very enthusiastic approval from one of the major churches of New York City.

Senator DIETERICH. Let me cite another example to you and see whether you think it falls within this law. We have in a great many communities groups of citizens that are referred to as "gangs". They usually take the law into their own hands, because they are dealing in lawless matters. Usually they believe they cannot proceed in our courts, because they have no standing in court. They do not come into court with clean hands. Suppose a member of that gang gets into disfavor with the rest of them, and 5 or 6 of them take him out and kill him. Do you think the State should pay the widow of that victim \$10,000?

Mr. STOCKTON. No.

Senator DIETERICH. Do you not think that that is covered by this bill?

Mr. STOCKTON. No.

Senator DIETERICH. Why is it not covered by this bill?

Mr. STOCKTON. I suggest that some change in that respect be made in this bill.

Senator DIETERICH. As it is written now, it is not covered by this bill?

Mr. STOCKTON. I do not think it is, but it might be well to change it to make sure it would not be. The change I would suggest is the one to which I referred a short time ago in the title, which I think should read, "An act to prevent and punish lynching by assuring to persons within the jurisdiction of every State the equal protection of the laws."

Now, sir, this bill as written does not define lynching. That gets you into legal technicalities. There are half a dozen definitions in different States, and they must be construed by the courts. While a title is not required in a congressional bill, it is usually proper and in some cases quite necessary to read it with the rest of the bill. I believe no judge would hold that a gang taking somebody for a "ride" would come within that definition. If he did, he would certainly be reversed.

Senator DIETERICH. You would not be able to prove it was a gang. All you would be able to prove would be that 5 or 6 people killed this man. You could not prove who did it, except that they took him out and killed him.

Mr. STOCKTON. Yes; but your argument would go to the point of three hold-up men holding up a man and shooting him down in the street.

Senator DIETERICH. Yes. Is not that in this bill?

Mr. STOCKTON. No. I think the title, as I have suggested it, saying that it is a bill to punish and prevent lynching, "lynching" being a word known to everyone, would mean that no court would hold that 3 highwaymen shooting somebody or 5 gangsters taking somebody for a "ride" would constitute a mob or riotous assemblage under the heading of a law to punish and prevent lynching.

Senator DIETERICH. I just wanted to get your view of it.

Mr. STOCKTON. Your question is very pertinent.

Senator WAGNER. "Mobs" and "riotous assemblages" have a different meaning, do they not?

Mr. STOCKTON. Yes, sir. I think they mean something quite different from a gang or a few highwaymen. I don't believe any judge would decide or would be supported in holding that would apply to a case of that sort.

Senator McCARRAN. It is all a question of degree, at any rate. If a number of men take a man out and hang him, they are criminals, just as much as those who might take him for a "ride."

Senator DIETERICH. They are assembled for an unlawful purpose.

Mr. STOCKTON. There is a difference in the kind of act.

Senator DIETERICH. Do you not think that could be clarified?

Mr. STOCKTON. I have given a good deal of thought to that, and I find it extremely difficult, without weakening the bill. We want this to be as strong as possible, and if you attempt to define "lynching", I think that you would weaken it.

Senator KEAN. You were talking about lynching before the Civil War.

Mr. STOCKTON. Yes, sir.

Senator KEAN. Lynching Negroes before the Civil War would have been the destruction of so much property, would it not?

Mr. STOCKTON. That is true.

Senator KEAN. A Negro before the Civil War was worth approximately \$1,000.

Mr. STOCKTON. Yes, sir.

Senator KEAN. Therefore, they would be destroying property, and consequently, there was very little lynching before the Civil War.

Mr. STOCKTON. I think that is very pertinent, Senator. Most of these questions in regard to this section have come from the Senator from Illinois, and I will simply refer again to the case I cited awhile ago, in the Supreme Court of Illinois, *People v. Nellis*, in the Two Hundred and Forty-ninth Illinois Reports.

Senator DIETERICH. That law was passed without any reference to the colored situation.

Mr. STOCKTON. Yes.

Senator DIETERICH. That was done because there were a good many mobs assembled, strikes, and such as that.

Mr. STOCKTON. Did I understand the Senator to say he would not favor a law that helped the colored man?

Senator DIETERICH. You did not understand me to say that at all. I am in full accord with what you are trying to do, but I don't want to inflict an injustice upon a community that is perfectly innocent.

Mr. STOCKTON. I can only point out that in the early English law there was this fine which Mr. Houston pointed out.

Senator DIETERICH. Yes. Let me say further for this record that I am perhaps doing more in a constructive way to try to get a law through than you are by stubbornly holding to something that might be controversial. The idea is to get a law that will stop the atrocious lynchings that have been committed, and not a law that will penalize some innocent community, the taxpayers of which were in no way responsible for the crime. If you think it is better to leave that in, of course, that is your judgment.

Mr. STOCKTON. The last thing I want to do, Senator, is to be opinionated on a thing of so much importance as this. I would only submit to your own knowledge and experience this question, which I think is very important, as to whether this cannot be kept in this form. The minute you limit it to lynching of people taken from the authorities, you rule out about 25 percent of the lynchings.

Senator DIETERICH. But the Illinois law was not passed with reference to any race troubles. It was placed upon the statute books to prevent corporations from suffering losses or damage to property by reason of strikes and such as that. Because it is the law of Illinois, I am not necessarily in sympathy with that kind of a law. I do not think any innocent community or officers should be penalized for something they were unable to prevent.

Mr. STOCKTON. I read the opinion of the court because it appeared, sir, that the Supreme Court of Illinois found no difficulty in upholding the law. It was applied in the case of two parties, one Negro and one white, who were taken from the officers and lynched. And may I suggest that, with reference to this \$10,000 provision, one exactly identical with it was included in the Dyer bill, which in 1922 passed the House of Representatives by a large majority, and which was prevented by filibuster from passage in the Senate. It seems to me there was at that time no feeling in the House of Representatives that there was any injustice in that provision; that the Supreme Court of Illinois felt that it was a reasonable provision; that lynching is a crime that depends for its existence upon public opinion; and that nothing will have a greater effect upon changing public opinion than to have it pay for its mistakes.

Senator VAN NUYS. There are several witnesses who cannot be heard. I warned witnesses there were 25 people to be heard and they should curtail their statements. They have not done so. Tomorrow I will do it for them. We have 10 minutes left. The committee must adjourn at 5 o'clock. The members of the committee have not had lunch, and I hope you appreciate their patience. We have 10 minutes to hear Mr. Clarence Pickett and Mr. Broadus Mitchell.

STATEMENT OF CLARENCE E. PICKETT, PHILADELPHIA, PA. REPRESENTING THE SOCIETY OF FRIENDS

Senator VAN NUYS. I now call upon Mr. Clarence Pickett, Secretary of the American Friendly Service Committee of Philadelphia, representing the Society of Friends.

Senator McCARRAN. Where do you reside?

Mr. PICKETT. Philadelphia.

Senator VAN NUYS. You may proceed.

Mr. PICKETT. I want to make only one point which has come to my mind in going over the things that have to do with the atrocity of lynching, and I have nothing to contribute to the legal side.

I have had occasion recently to be impressed with the increasing prestige which actions of the Federal Government have on our public opinion, especially in matters of race and questions of segregation, and so on. The attitude that the Federal Government takes has an influence, I think, much beyond what we usually attribute to it, and I am sure this will increase when there comes a time when we do not think in State terms or State boundaries, but of river boundaries or regional terms, or even in Federal terms.

I feel very clearly convinced that the action which is now requested by this bill of Congress is important, not primarily because it is going to punish some county because it has a lynching, not because it seems to be a reflection on any State in which lynchings have occurred, but because it marks the stamp of distinct disapproval of the Federal Government on a practice which is a practice in the United States and not in any particular section of the United States. I come from the North, but when there is a lynching in the United States it spreads its infection to the North in the same way it does in the community where it is generated.

I think we were all impressed with the reaction to the support for lynching given by the Governor of California. I think it will have a great influence upon the sentiment in the country generally if Congress takes the attitude that the Federal Government places the stamp of disapproval on this great social issue, will have a great influence in the way of restraining a community.

I can see the point that was just made, that it is not fair to tax the good citizens for the things which the bad citizens do; but it would seem to me that part of the bill is of primary importance as an announcement that the Senate and House of Representatives have taken the stand which this bill requires them to take, in case it is enacted into law, which I think will have an extremely effective restraining influence on the whole of our public opinion. From that point of view and its restraining effect by putting the stamp of approval on legal methods of procedure as against mob violence or illegal methods of procedure, I believe we are very much inclined to underestimate the significance of this measure.

I am a member of the Society of Friends, and I like to use all other methods of restraint that are possible rather than coercion. I think here is a chance to use a method which, I believe, will have a psychological effect and which will be a tremendous influence. I hope very much that this side of the effect of this action will not escape our attention.

Senator DIETERICH. May I ask you a question?

Mr. PICKETT. Yes, sir.

Senator DIETERICH. You think if the Government would place its stamp of disapproval upon lynching it would have a tremendous effect?

Mr. PICKETT. Yes, sir.

Senator DIETERICH. And that would be true even though we would take out all of section 5. I am not asking you to answer that. But if a bill could not pass the Congress without some modification of

that section, it would be better to have it with some modification than not to have the bill passed?

Mr. PICKETT. I should think so. I believe there will be a wonderful effect from the stamp of disapproval and the attitude suggested by the bill.

Mr. Chairman, I could say much more, but I do not want to take the time from my friend, Broadus Mitchell.

STATEMENT OF BROADUS MITCHELL, BALTIMORE, MD., REPRESENTING THE LEAGUE FOR INDUSTRIAL DEMOCRACY

Senator VAN NUYS. The next proponent is Broadus Mitchell, representing the League for Industrial Democracy; instructor in political economy at Johns Hopkins University, Baltimore, Md.; member of the executive committee of the American Economic Association.

Mr. MITCHELL. Mr. Chairman, I would like to touch first on one point as to which I think Senator Dieterich has very much apprehension. It has several times been brought out by him that the bill is directed against officers who neglect to do their duty and not against members of the mob. The copy of the bill which has been furnished to me says in section 4:

The district court of the judicial district wherein the person is injured or put to death by a mob or riotous assemblage shall have jurisdiction to try and to punish, in accordance with the laws of the State where the injury is inflicted or the homicide is committed, any and all persons who participate therein.

Then it contains a provision that it shall first be shown that the officers had been negligent.

Senator DIETERICH. I understand that.

Mr. MITCHELL. I should like to tell you very briefly of our experience in Maryland. I am a citizen of Maryland, and I have made some observations regarding our two recent lynchings, one at Salisbury on the Eastern Shore, and one a few miles away at Princess Anne 18 months later.

We have found that the local officers did not want to do their duty, and the State officers were under constitutional disability and, I am constrained to say, have shown considerable indifference. The attorney general of the State named seven persons accused of the Princess Anne lynching and requested their indictment. The local authorities of the county in the last instance refused the request of the attorney general of the State to arrest these seven persons. Mr. Anderson, the assistant attorney general, told me that there is no question as to the guilt of these people; that his office can describe their movements before the mob action and during the assault of the mob at Princess Anne, so much so that he can make a graph representing the movements of each of these men, but they have been unable to secure the cooperation of the State's attorney in that county.

My State has been the head and front of the State rights movement in America in recent years. Our Governor has stood for the Maryland Free State idea. When it comes to a practical expression of that theory we are a total loss, and every conscientious resident of Maryland feels humiliated at our record in these past two lynchings.

I want to say one other thing. It has been suggested by Senators that the most intelligent and educated group in the community does

not approve of these lynchings. In the case of Maryland, a former Maryland Senator came out with a long letter in the Baltimore Sun, condoning the lynching at Salisbury.

Senator VAN NUYS. A former State senator of Maryland?

Mr. MITCHELL. I believe he was a former State senator. The former United States Senator was William Cabell Bruce. That represented a tremendous support to the criminal element, the ignorant element in our State. Those who conducted the lynchings are well aware of that sentiment. But I am sure that we are supported in our views by thousands of people of the State of Maryland who have no particular way of making their disapproval known.

Those of us who abhor lynching and are sure of the inability of the State of Maryland to deal with it ask for the interference of the Federal Government, after our break-down of the local administration of justice.

Senator VAN NUYS. Do you think that this bill under consideration will accomplish that end?

Mr. MITCHELL. I do.

Senator VAN NUYS. Do you have any suggestions or amendments to offer?

Mr. MITCHELL. No, sir. I agree with the testimony of one of the previous witnesses, in reference to the point raised by Senator Dierich, that when the committee reaches the point of final consideration of the bill that and other matters will no doubt be subject to scrutiny.

Senator VAN NUYS. Thank you very much for your succinct and able statement.

The committee will now recess until 10:30 tomorrow morning.

(Whereupon, at 5 p.m., a recess was taken until the following day, Wednesday, February 21, 1934, at 10:30 a.m.)

PUNISHMENT FOR THE CRIME OF LYNCHING

WEDNESDAY, FEBRUARY 21, 1934

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

The committee met at 10:30 a.m. in the caucus room, 318 Senate Office Building, Senator Frederick Van Nuys presiding.

Present: Senators Van Nuys (presiding), McCarran, and Dieterich.

Present also: Hon. Edward P. Costigan, Senator from the State of Colorado; Hon. Robert F. Wagner, Senator from the State of New York; and Hon. Thomas F. Ford, a Representative from the State of California.

Senator VAN NUYS. The committee will be in order. We are ready to proceed.

STATEMENT OF REV. ASBURY SMITH, CHAIRMAN MARYLAND ANTYLYNCHING FEDERATION

Senator VAN NUYS. Rev. Asbury Smith, representing the Maryland Antilynching Federation, will be heard first this morning. You may proceed, Reverend Smith, if you are ready.

Mr. SMITH. Mr. Chairman and members of the committee, I am appearing this morning as chairman of the Maryland Antilynching Federation. This organization is a federation of 32 social and religious organizations in the State of Maryland. I will leave with the committee for your record a list of the constituent organizations.

In October 1931 Matthew Williams was lynched in Salisbury, Md. I was born and raised near this city and graduated from Salisbury High School. In October 1933 George Armwood was lynched at Princess Anne. My father was raised near this town. Both of these communities are well known to me.

I have here a record of the major events in the case of the lynching of George Armwood and the attempt to prosecute the members of the mob. It is brief and although later testimony will no doubt give it in more detail, I think it well to place it before the committee at this time. The order of events in the lynching of George Armwood is as follows:

October 16: George Armwood accused of assault upon an aged woman, Mrs. Mary Dentson, was arrested in Princess Anne and taken to the Baltimore jail.

October 17: He was returned to Princess Anne 5 days before the grand jury was to be called (3 a.m.).

October 17: Rumors of a mob bent on lynching were so persistent that reporters took a 5-hour drive and arrived long before the lynching.

October 17: George Armwood lynched while 21 State police stood by without using firearms (8:30 p.m.).

November 17: Attorney General Lane presented evidence against members of the mob to States Attorney Robbins requesting their arrest with a public hear-

ing before a magistrate. This evidence had been gathered from the State police on duty at the lynching.

November 17: Robbins refused to follow Lane's request.

November 28: Governor Ritchie ordered out the militia and arrested four of the accused men.

November 28: The mob was so violent that instead of arraigning the men before a magistrate they were brought to Baltimore.

November 29: The four men were released on a writ of habeas corpus.

January 24: The grand jury met and failed to return a true bill against any member of the lynching mob.

I do want to draw a few conclusions in this case that to me are beyond reasonable doubt. Local officials deliberately exposed George Armwood to the danger of lynching. The State police failed to use adequate force to protect the prisoner. Since the lynching local officials have used the power of their office to protect rather than to prosecute members of the mob. The calling out of the militia by Governor Ritchie was excellent national publicity for our State and for our Governor. It, however, utterly failed in its purpose of forcing a public hearing, for the bayonets of the soldiers were overpowered by the brickbats of the mob. The attorney general himself barely escaped injury from the mob that shouted "lynch Lane."

In Maryland, as in all other States, local law has broken down in its attempt to punish lynchers.

In the testimony presented yesterday much time was taken up trying to define a mob. I can see the difficulty in framing a definition that punishes lynchers in Princess Anne that might not be applied unjustly to the gang warfare of Chicago. I have no satisfactory legal definition, but in common use we all recognize the act. I am sure the good legal minds of the committee can solve this problem without emasculating the bill.

There seems to be some objection to the provision of this bill that penalizes the entire community for the act of the lower element of the community. Any man who has ever lived in a lynching community would not stress this objection. The citizens of Wicomico and Somerset Counties almost without exception approve the lynching of Matthew Williams and of George Armwood. They all agree that lynching in general is wrong, but under certain conditions, such as existed at Salisbury in October 1931 and at Princess Anne in October 1933, lynching is not only justifiable but highly commendable. I know this to be true from intimate personal contact. I further know it to be true, because all Eastern Shore newspapers take that attitude. It is also borne out by the fact that not a single person from the Eastern Shore has spoken publicly against the two lynchings that occurred there. Indeed, the sentiment of the Eastern Shore is so strong in approval of the lynching that its citizens actually conducted a boycott against Baltimore business concerns because the Baltimore Sun strongly condemned these two lynchings.

In practically all communities in which a lynching occurs it has the overwhelming approval of the people. I would like to repeat that sentence, because I think it is largely the heart of the argument: In practically all communities in which a lynching occurs it has the overwhelming approval of the people. This explains the inability to get witnesses to testify, grand juries to indict, State's attorneys to prosecute, judges to expedite procedure, or petit juries to convict.

The question was raised, can the Federal court be any more successful than the State courts in the control of lynching? In Maryland the Federal courts could have helped greatly. On the Eastern Shore lynching is generally approved, but in Baltimore, where our Federal court sits, the situation differs. Here some do approve lynching, but the majority are far enough from the scene of tension to disapprove it. Therefore, in a Federal court in Maryland lynchings might be convicted or negligent officers of the law prosecuted.

There are times when an entire State may approve a lynching. Then criminal action in a Federal court will be almost as useless as State action is at present. It is in such a situation as this that we would need section 5 of the proposed bill. In this section the question of guilt or innocence is not an issue. The mere fact that a lynching had occurred would place a financial penalty upon the community and would act as a deterrent against future lawlessness.

I hope that you will report this bill favorably, including section 5, which, to my mind, is even more important than section 3 or section 4.

Senator VAN NUYS. Those people who seemingly favor lynching and are supposed to be of the better element of the community, if they were charged with crime, would be among the very first to claim the protection of the law, would they not? Is not that true?

Mr. SMITH. Quite right, sir.

Senator VAN NUYS. That is true of all mobs?

Mr. SMITH. That is quite right, sir. Last night, if I may say it, I was discussing this question in a small group. Some of the men had been to the scene of the lynching the day after it occurred and one said you could smell the odor of burned flesh of the victim even that long after the event. He said, "The people of the Eastern Shore are all hellish fiends." I told him that, having lived there, I knew that was not quite right; that they were ordinary citizens, but that in time of stress such as this any community loses its power of self-control and becomes temporarily deranged through the stress of the emotions under which the citizens are placed. That to my mind is one reason why we need to bring to bear the national sentiment of the country as a whole.

Senator DIETERICH. You say that section 5 is the most important part of the bill?

Mr. SMITH. Yes.

Senator DIETERICH. That is the section which provides that any county in which a person is put to death by a mob or riotous assemblage shall forfeit \$10,000. Do you think that should be levied regardless of the attitude of the officers and citizenship of the particular county?

Mr. SMITH. Yes, sir; I do.

Senator DIETERICH. Do you think that comports with your sense of justice?

Mr. SMITH. That is my feeling.

Senator DIETERICH. In other words, you want to penalize the people of a county and the officers of the county even though they have done everything in the world they could to discourage and prevent these acts?

Mr. SMITH. My reason for feeling that way is as I have stated.

Senator DIETERICH. If you put the penalty at \$25,000 do you think it would be still more effective?

Mr. SMITH. Perhaps so. It would need to be \$25,000 or perhaps \$100,000 in a city like Chicago.

Senator DIETERICH. Do you think that money should be collected from the taxpayers of the county, not at fault in any way, and turned over to the representatives of the deceased?

Mr. SMITH. Quite right, sir.

Senator DIETERICH. Regardless of any attitude of the citizenship of the county?

Mr. SMITH. I think the fallacy in your argument is that the community is divided between a sentiment that condemns lynching and a sentiment that approves it.

Senator DIETERICH. I am not talking about the highly inflamed communities that you have just mentioned. You are favoring a bill which is general in its application all over the United States. I am talking about law-abiding communities. I am talking about communities where the officers have an abiding desire to enforce the law, to protect the life and liberty of the citizens. I am talking about the influence of this section upon that community and not upon the inflammatory community about which you have been talking, where you say they all act in concert.

Mr. SMITH. That I think is a question of the definition of a mob. As I said, I do not find myself able to distinguish between an inflammatory community and a community that is not inflamed, but I do think the distinction is there between them. I do not know how to state it in satisfactory legal terms.

Senator DIETERICH. You think that ought to be done regardless of the character of the person who might suffer from mob violence?

Mr. SMITH. I think that has no weight at all. A man is a man and is entitled to the equal protection of the law.

Mr. DIETERICH. No matter if he was a convict escaping from a penitentiary? If he was a convict escaping from a penitentiary and a mob had followed him up after his escape and after he had killed some officer of the penitentiary in escaping, and a group of citizens went after him and caught him and killed him without due process of law, you think the county should be fined \$10,000 and that the money should be given to his representatives? I am not talking about color now at all.

Mr. SMITH. I understand that point.

Senator DIETERICH. I am talking about citizens. Do you think that is a proper provision in the bill?

Mr. SMITH. I think your illustration is not very much in point, in that such a situation rarely arises.

Senator DIETERICH. I am talking about the bill you are proposing to have enacted into law and put upon the statute books.

Mr. SMITH. I should say that any person not legally or lawfully deputized, who takes a life, should subject his county to this penalty. He should be deputized if he is going to take life.

Senator DIETERICH. That is your individual opinion?

Mr. SMITH. That is my individual opinion; yes, sir.

Senator VAN NUYS. Thank you, Mr. Smith; that is all.

**STATEMENT OF HON. WILLIAM PRESTON LANE, JR., ATTORNEY
GENERAL FOR MARYLAND**

Senator VAN NUYS. I now take pleasure in introducing Hon. W. Preston Lane, Jr., attorney general for Maryland, who is here under subpoena. I will say to you, Mr. Attorney General, that the scope of your testimony will be largely determined by yourself, the committee taking judicial notice of certain happenings in your State. We were interested in having you, as a citizen, give your version or views with relation to the bill and any amendments or any suggestions which you care to make.

Will you first state your full name and official position?

Attorney General LANE. My name is William Preston Lane, Jr., attorney general for Maryland.

Senator VAN NUYS. Would you rather proceed in your own way or would you rather be questioned?

Attorney General LANE. I should be glad if you would give me an idea or an outline of what the committee would like to have, whether it is a comment with reference to the bill or whether it is with reference to the facts as to the occurrences and lynchings in Maryland.

Senator VAN NUYS. We have under consideration Senate bill 1978, with which you are familiar, I take it, introduced by Senators Costigan and Wagner. Are you familiar with the terms of that bill?

Attorney General LANE. I have had only an opportunity to read it over. I have not had an opportunity to make a study of it.

Senator VAN NUYS. Are you in a position to give us your observations as to the legality or constitutionality of the bill, and also the question of policy involved in the enactment of this kind of measure?

Attorney General LANE. I would hesitate now to comment on the question of the constitutionality, not because I doubt the question of constitutionality, but only because I have not had sufficient opportunity to make a study of the bill. I did not see a copy of the bill until, I believe, last Friday.

Senator VAN NUYS. As to the policy of enacting this sort of measure, are you prepared to give us some suggestions or observations? Getting right down to the point involved, you had some lynchings in Maryland. We understand that you are familiar with the facts and circumstances and that you made a very exhaustive examination of the facts. From that study we would judge that you are in a position to determine whether State legislation is sufficient or whether Federal legislation is necessary. If you care to do so we would be delighted to have your observations.

Attorney General LANE. There are, I suppose, a great many people who are perfectly willing to express their opinions. I hesitate to do that only because I have not had a sufficient opportunity to study the results of laws that have been enacted.

First, I think that any legislative effort to stamp out lynching or any form of mob violence is highly commendable, whether it would be State legislation or national legislation. I believe, however, from the little study I have been able to make outside of the incidents in Maryland, and I believe it for what it is worth, that mob violence in respect to lynchings could better be prevented by action

before lynchings than punitive action afterwards. I believe there are 10 States that have enacted antilynching legislation.

I had an opportunity to read a book on the subject published by Professor Chadbourne. As I recall it, the statistics which he submitted from the 10 States for a 5-year period following the enactment of the legislation in the States resulted in an improvement of about five tenths of 1 percent.

It is very difficult in the case of prevented lynchings to get the facts. I think in the year 1930-31 a record of 85 prevented lynchings disclosed that 54 of them were accomplished by the removal of the prisoner. I believe, as the result, that some effective means in affected areas for the prompt removal of prisoners would do more than anything else I can think of from the meagre study I have had time to make.

As I said, the other types of legislation are punitive. I think another thing that would promote it would be more adequate police protection. It is probably true that you cannot put your finger on any one isolated cause for lynchings. It often is an accumulation of circumstances. By adequate police protection, I mean a police force not only for the protection of prisoners, but in the policing of areas in which lynchings might occur. I think statistics show that the large majority of lynchings occur in the sparsely settled sections of the country, perhaps as the result of psychology that because it is a sparsely settled section of the country, the people have to look out more for their own protection.

When I say more adequate police protection, I think the police protection by the State authorities is meant rather than local county authorities. It is largely true in this country, and I know it is true in the State of Maryland, that local police officials are elected locally, and therefore, they are amenable to whatever political influence there might be when questions of the propriety of their actions might arise. Probably through more effective State police rather than local police something could be accomplished.

Specifically with reference to the bill which you have under consideration—and again I want to say that I regard myself as hardly qualified to comment, but treating it with the greatest candor that I can, this thought occurs to me.

I should think that the States would divide themselves into two classes, first, those States in which the public psychology is that they are ready and would be anxious and willing to enact legislation or do anything that was necessary to stamp out lynching or mob violence; and, second, those in which the public psychology might be dilatory or in which it might be found to be antagonistic.

I cannot help feeling that insofar as the first class of States is concerned it may be a slower evolution, but those States would accomplish some progress. As to those in which the public psychology was dilatory or possibly antagonistic, I do not know how effective Federal legislation might be in respect to those States.

As to the various penalties in the bill, I do not know that I could comment on them or upon any penalty that is proposed to be imposed. As a matter of practice it would probably have some effect. I do not know how effective the penalties proposed in this bill would be.

Senator VAN NUYS. Mr. Attorney General, we are recognizing your official position and I hope you understand that. We did not bring you before the committee with a subpoena duces tecum. I am leaving that matter to you. Are you in possession of the names of people, several in number, against whom you think you have sufficient evidence to convict of the lynching of George Armwood?

Attorney General LANE. I am.

Senator VAN NUYS. Do you care to leave that information with the subcommittee or not? I am leaving that wholly with you.

Attorney General LANE. If the committee asks for it I will be very glad to give the committee anything that I have in my possession.

Senator VAN NUYS. Would you leave it with the committee as a privileged bit of evidence or as a part of the open hearing?

Attorney General LANE. I doubt whether I would have the right to label it when I gave it to the committee. I would not attempt to restrict the committee. I would give it as any other information or opinion that I might express to the committee.

Senator VAN NUYS. Would you leave it to the committee as to the privileged or nonprivileged character of the evidence?

Attorney General LANE. Entirely so.

Senator VAN NUYS. Will you submit that to the committee at this time?

Attorney General LANE. I would like to make this statement to the committee: The information that I have obtained has been obtained in such form as to facilitate cross-examination. It is not in a chronological form or in the form of a statement as a matter of information.

In the case of the lynching of George Armwood there were 24 State policemen who were present protecting the jail, not as State policemen, but as deputy sheriffs of Somerset County. Under our State law the State police jurisdiction is limited to motor-vehicle cases and violations of the traffic laws. I have no further jurisdiction in Maryland and the State police must be sworn in in the particular county by the sheriff as deputy sheriffs. On this occasion, I think all of the 24 had been sworn in the day of the lynching. I examined the 24 State policemen and the information that I have to turn over to the committee is comprised of statements gotten from them. There is also correspondence that I had with State's Attorney Robins, of Somerset County, in one letter of which the names of the different individuals that I thought should be arrested are included. Would the committee care to have that too?

Senator VAN NUYS. I think the committee would like to have that, Mr. Attorney General.

Attorney General LANE. Very well; I hand the papers to the committee now. The first stenographic report which I have handed you is the result of the first examination I made of the State police. Following that and after obtaining that information, I got more condensed statements from them that bear directly upon the question that I wanted to investigate, and they are contained in the two volumes which I now hand the committee.

Senator VAN NUYS. I will ask our official reporter to mark these four manuscripts as exhibits A, B, C, and D, and the committee

will determine in executive session whether they shall be printed as a part of the public hearings or not.

(The four documents referred to were marked, respectively, "Exhibit A", "Exhibit B", "Exhibit C", and "Exhibit D", and filed with the committee.)

Senator VAN NUY. By Senator Dieterich, a member of the subcommittee, it has been suggested that it would appear that the exhibits just filed are so voluminous that it is almost prohibitive to print them as a part of the record. Would you be willing to state concisely, Mr. Attorney General, what they contain, or are you in a position to do that?

Attorney General LANE. If I may go a little further, I think I have some other things that I will turn over to the committee, and this matter may work itself out.

Senator VAN NUY. Very well; proceed in your own way.

Attorney General LANE. In addition to the first stenographic reports which I have handed the committee, there were additional statements taken from the various police. These should go with the first report. The first statement is by the captain of State police, Captain Johnson, and the second is by Lieutenant Ridgely, of the State police. These contain a description of what occurred from the time Armwood was arrested on Monday, October 16—

Senator COSTIGAN. 1933?

Attorney General LANE. Yes; Monday, October 16, 1933, until after the lynching on Wednesday, October 18.

In addition to that, with respect to each of the individuals that I thought should be arrested, there is a brief résumé of the testimony with respect to each one.

Senator DIETERICH. Does the résumé cover the matter set out in detail in the documentary evidence which you have submitted to the committee?

Attorney General LANE. It does, but it is a very brief résumé. There is more than is contained in these brief statements.

Senator DIETERICH. I understand that that would give a general idea of what the documentary evidence would show?

Attorney General LANE. That is true.

Senator DIETERICH. I would suggest that that be set forth in the record.

Attorney General LANE. I also have, with respect to each individual that I thought should be arrested, a résumé giving his name, the officers who would be witnesses against him, and a brief description of where he was and the part that he took.

Senator VAN NUY. That also will be marked as an exhibit and with the consent of the committee will be set forth in full in the record. However, before that is done it would be well to have the record show the exhibits which have been submitted by the witness and marked up to this time.

(The exhibits referred to are as follows: Exhibit D, statement of E. Q. Quandt and others; exhibit E, statement of George Armwood; exhibit F, statement of E. S. Haddaway; exhibit G, statement of C. W. Cabbage; exhibit H, statement of G. G. Carlson; exhibit I, statement of J. J. Cassidy; exhibit J, statement of C. B. Durham; exhibit K, statement of M. T. Bohler; exhibit L, statement of A. E.

Markley; exhibit M, statement of A. G. McKewen; exhibit N, statement of C. F. Schleuter; exhibit O, statement of E. C. Langrall.)

Senator VAN NUYS. You may proceed, Mr. Attorney General.

Attorney General LANE. I have also one copy of the testimony that had been taken before the coroner at the coroner's inquest, which began on October 24. I have but the one copy of that. I was not present at the coroner's inquest. Does the committee wish that?

Senator VAN NUYS. We would be glad to have it.

Attorney General LANE. Very well; here it is [handing document to Senator Van Nuys].

Senator VAN NUYS. Calling your attention to the document marked "Exhibit P", entitled "Re George Armwood, résumé and comment on individual cases", will you at this time take that résumé and submit it to the committee in detail, making any comment that you care to make? Have you any objection to doing that?

Attorney General LANE. Not at all if the committee wishes me to do so.

Senator VAN NUYS. You may proceed, then.

Attorney General LANE. I will read it to the committee:

RE GEORGE ARMWOOD

RÉSUMÉ AND COMMENT ON INDIVIDUAL CASES

Rusty Heath. Full name is believed to be Marby L. Heath. Occupation, unknown, but was formerly jailer at the jail at Salisbury. Address, Princess Anne, formerly Salisbury.

Heath is well known by sight by many of the force who were present at the night of the lynching. He is positively identified by Officers Bradley, Serman, Schleuter, Durham, Corporal Falkenstein, Sergeants Dryden, Haddaway, Weber, and Lieutenant Ridgely.

Senator COSTIGAN. Will you permit an interruption at that point?

Attorney General LANE. Certainly.

Senator COSTIGAN. Is the lynching about which you were testifying known as the "Princess Anne lynching"?

Attorney General LANE. It has been called that.

Senator COSTIGAN. Why was it so designated?

Attorney General LANE. Because it took place in the town of Princess Anne.

Senator COSTIGAN. Thank you. You may proceed.

Attorney General LANE. He was seen in front of the hotel at the Deals Island intersection before the jail, at the tree where the Negro was first hung and by Judge Duer's car as he made his speech. He was drunk, was in the front of the crowd shoving, yelling, and encouraging the crowd, while in front of the jail he was shoving to get on the steps, and while at the first hanging had the rope in his hand as the Negro's body was lying on the ground. He was also seen pulling on the other end of the rope while the Negro was hung.

William P. Hearn. Occupation, contract hauler by truck. Address, Salisbury, Md.

Positively identified by Sergeant Weber, Corporal Norris. It is believed that he can be identified also by some of the following officers—that is, Corporal Norris, Sergeant Spiroh, Officer Miller, Corporal Falkenstein, and Officer Schleuter. He was seen by Officers Weber and Serman shoving, yelling, and pushing in front of the jail and attempting to get on the steps and shoving the policemen off. If identified by the other officers beforementioned, he will

be placed before the jail attacking the officers, agitating and directing the crowd, and he may be the man who threw the rope over the tree at the first hanging.

Irving Adkins. Occupation, track foreman for the Pennsylvania Railroad. Address, Loretta, which is the first station from Princess Anne, where the old road crosses the new road on the way to Salisbury.

Adkins was positively identified by Sergeant Dryden and Lieutenant Ridgely. Sergeant Dryden has known Adkins for some years, and he pointed him out to Lieutenant Ridgely at the time he first noticed him in front of the hotel. It is almost certain that Adkins will also be identified by several of the following officers: Randall, Serman, Durham, Weber, and Schleuter. Adkins was seen by Officer Dryden in front of the hotel when the crowd was gathering. He was the leader of this crowd and is the one who yelled "Let's go", and led the crowd to the jail. He was subsequently seen by Lieutenant Ridgely at the south side of the jail and at the northeast intersection when Judge Duer made his speech. On both of these occasions he was yelling, "Come on; follow me; they won't shoot", and was leading or attempting to lead the crowd. It is believed that he is one of the men who had a hold of the ram at the jail which hit Officer Serman, and that he will be recognized as one of the first leaders of the crowd at the northeast intersection by Officer Durham, as well as a leader in front of the jail by Sergeant Weber. Positive identification by Officers Randall, Serman, Durham, Weber, and Bohler depends upon obtaining either a picture or seeing Adkins.

William H. Thompson; occupation, unknown; address, Princess Anne, Md.

Was picked out by Officers Bradley and Quandt as the seventh man on the coroner's jury from a photograph of the coroner's jury. He was in front of the jail, pushing against the police line, yelling to the crowd to get a pole, and had a hold of the ram with which it crashed the jail door.

Jack Walloper, full name; is known as "Jack Walloper", but his real name is reported to be Jack Sterling or Jackson Sterling or Randolph Sterling. Occupation, unknown; address, Crisfield, Md.

Officer Wheeler has known him for some time and positively identified him as pulling on the rope at the second hanging. It is possible that he may be identified by Officers Wheeler, Cabbage, and Sergeant Weber upon being seen by them. If he is identified by Officers Wheeler, Cabbage, and Sergeant Weber, he will be in the crowd in front of the jail at the Deals Island intersection and at the first hanging, at all of which places he was a leader.

Shelburn Lester; occupation, meterman for the Eastern Shore Public Service Co.; address, Salisbury, Md.

Is identified by Officer Bradley before the jail, where he was yelling, going into the police, and in the front of the mob. He is supposed to be the man who hit Captain Johnson.

Big Boy Smith; occupation, prizefighter; address, Salisbury, Md.

Is known as "Big Boy Smith." Fights under this name and is registered in the State Athletic Commission under this name. Smith is identified by Officer Durham, who recognized him and knew him, having seen him fight at Laurel. Is also recognized by Officer Bohler, who recognized the photograph of Smith when he was shown the same. Smith was in the front of the crowd at the northeast intersection on the north side of the jail, pushing against the police line. He was later seen by the side of the jail with a brick in his hand, which he refused to drop at the command of Officer Bohler.

The next had to do with a man by the name of Gordon Butler, who was a brother of the woman who was alleged to have been raped. I might say in that connection, that the night the arrests were made the officers and those who thought they could identify him went to his house, and when they saw him they promptly said he was not the man they had in mind. For that reason, I do not think he would be a part of this proceeding, and therefore I do not read the one relating to him.

The last one is as follows:

Martin Duer. Occupation, unknown. Address, Pocomoke or Snow Hill.

There are three Duers in Pocomoke and Salisbury, and it is impossible to know which Duer this is. A boy giving his name as Martin Duer can be identified at the first hanging with the rope in his hand while the Negro's

body was on the ground with the rope at the first hanging, by Lieutenant Ridgely, Sergeant Weber, Officers Schleuter, Langrall, Kuhn, and possibly Corporal Wheeler. He was at the hanging holding the rope and by Officer Schleuter was seen pulling the rope.

That was the information that was forwarded on November 15. Since that time there have been additional officers who have identified the four individuals who were arrested.

There was one man who was arrested that is not in that list. His name is McQuay. He was arrested subsequent to the obtaining of that information. Sergeant Weber sought him out and recognized him. His name is contained in one of the exhibits that I gave the committee, but he was not among the original nine whose arrest I had asked. He is identified before the jail in the fight to get into the jail, by Sergeant Weber, Officers Bradley, Tower, Sprock, and also by Sergeant Haddaway. The reason for that was that from one of the officers in the early part of what transpired I learned there was a man by the name of McQuay in the crowd. The other officers gave a description of him, but did not know him by name and he was subsequently identified as the same individual.

Some additional information or the same information in more brief form will be found in the document which has been marked "Exhibit R." I have on this exhibit added in pencil, with respect to each individual, the officers who will also identify them in their activities, with brief pencil notes as to what the text of the information would be.

Senator DIETERICH. Is this a duplicate of what is in the record already?

Attorney General LANE. It is a brief résumé of the larger record, and some supplements; that is, there is something additional to what is in the other record to the extent of the pencil notations.

Senator DIETERICH. Why not substitute this for the other and then we will have what is already in the record with this additional information.

Attorney General LANE. Some of this is inaccurate. Its accuracy could be best determined by reading the same condensed statements—not the first large statement, but the second one.

Senator DIETERICH. Evidently you do not understand me. You have already in the record an exhibit that is a copy of this one with the exception of the pencil notations. Why not substitute this and then we will have what we already have in the record together with the pencil notations, and will not in that way encumber the record.

Attorney General LANE. I gave you that copy first, and then took it back and am substituting this one for it.

Senator DIETERICH. Very well; that makes it clear.

Senator VAN NUYS. This last document has been marked "Exhibit R."

Moving now to the question of the necessity for Federal legislation—

Attorney General LANE (interposing). There is just one other thing, Senator, if I may.

Senator VAN NUYS. Certainly.

Attorney General LANE. I do not know whether you want, in addition to that, any correspondence that I had with reference to the matter. You mentioned it before.

Senator VAN NUYS. Yes. Please complete your statement.

Attorney General LANE. Just to give the committee a brief outline of the progress of the investigation, I repeat that Armwood was arrested Monday, October 16, 1933, and the lynching occurred Wednesday night, October 18. On Friday of that week, October 20, Judge Pattison, who is chief judge of the first judicial circuit, called me on the telephone and asked me to go into it and assist the State's attorney. He pictured a deplorable situation. I called his attention to the fact that the constitution of Maryland requires an application of that kind to be made by the State's attorney of the county to the Governor, and the Governor directs the attorney general to assist.

Mr. Robins, State's attorney, sent an open telegram to the Governor on Saturday, October 21. I began examination of the State police on Monday, October 23. After concluding that and getting the information in the form in which I have given it to the committee, I asked for a conference with the judges in Annapolis on Friday, November 3, at 2 p.m., stating that I had information that warranted in my opinion the arrest of those persons and raised the question as to how the arrest could or should be made. The judges said that they thought, under all the circumstances, it should be made by local officers, and they undertook to see the State's attorney and sheriff. I understand the conference of the judges and the State's attorney and the sheriff took place at Cambridge, on the Eastern Shore, on Monday, November 6.

I again met Judge Pattison in Annapolis on November 8, and he asked me then to send information to Mr. Robins, which I did, with a letter dated November 15, as follows:

NOVEMBER 15, 1933.

Hon. JOHN B. ROBINS,
State's Attorney, Crispfield, Md.

DEAR MR. ROBINS: In compliance with your request to the Governor asking for my assistance in connection with the investigation to determine the persons responsible for the lynching of George Armwood at Princess Anne on the night of October 18, 1933, I have carried on an extensive investigation of this occurrence and have obtained information that warrants the immediate arrest of nine persons who participated in this crime. Copies of statements of witnesses who identify these participants are herewith enclosed, and from these copies you will observe that the following persons took part in the commission of the crime: Rusty Heath, William P. Hearn, Irving Adkins, William H. Thompson, Jack Walloper, Shelburn Lester, Big Boy Smith, Gordon Butler, and Martin Duer.

The names, addresses, and occupations of each of the witnesses are enclosed in the respective copies.

To kill by lynching is to commit murder. The leading of the crowd to the jail, the assault upon it, and any effort to break into it, or inciting the mob to do so, the taking of the Negro out of the jail, are all a part of the same crime, and participants in the whole or any portion of the crime are equally guilty and should be apprehended and prosecuted.

I have heard it said that because of strong feelings of resentment and animosity on the part of many people in the county against George Armwood, growing out of the beastly and outrageous crime which he had committed, there would be increased difficulty in prosecution.

In my opinion, the best way to meet that situation is to promptly make the arrests that the information enclosed warrants and bring the persons arrested before a committing magistrate for a hearing. In view of the character of the information now in hand, no justice of the peace could legally refuse to hold for the action of the grand jury, which can then be promptly called, and I recommend that you follow this procedure.

The means to be employed in bringing about the arrests can best be determined by you, because of your greater familiarity with local conditions. I have discussed this with the judges of the circuit, and they are definitely of the opinion that any arrests should be made by local officers.

I had completed the investigation as disclosed by the enclosed papers last week, but when I found you intended to be away until today, I deferred sending them to you until your return.

Very truly yours,

—————, *Attorney General.*

I should say that the Gordon Butler mentioned in the letter is the brother to whom I referred previously and that has since been shown to be a case of misidentification.

I received under date of November 16, 1933, a letter from Mr. Robins, reading as follows:

GEORGE ARMWOOD LYNCHING CASE

Hon. WILLIAM PRESTON LANE, JR.,
Attorney General of Maryland,
Baltimore Trust Building, Baltimore, Md.

DEAR MR. LANE: I am acknowledging your communication bearing date November 15 with enclosures and have carefully read and considered the various statements of the witnesses examined by you.

I agree with you as to your interpretation of the law as expressed in your said letter.

I regret that I cannot agree with you as to the procedure that should be followed. You advise me to swear out warrants for the arrest of certain persons and have these parties apprehended by the sheriff and given a hearing before a justice of the peace. I cannot see the advantage of such a proceeding and doubt very seriously the wisdom thereof.

You are in Baltimore and I believe do not visualize the situation here. The swearing out of such warrants and the apprehension of the parties would in my humble judgment create a condition that might be serious. The persons arrested would demand a hearing, and they would be so entitled, and this would attract a crowd, and if the magistrate should hold these parties without bond, which would be proper in view of the fact that they would be charged with murder, I hesitate to express my opinion as to what would then happen. We can not judge the temper of a crowd inflamed by passion, etc., and if these parties charged with the crime were committed to jail to await the action of a grand jury, I do not believe they would thus remain very long, and if the sheriff should endeavor to take them to Baltimore City for safe keeping I doubt seriously if it could be done without serious trouble. I have written as one sworn officer of the State to another sworn officer of the State, and though you may not agree with me, I ask that you may believe in my honesty of expression of my views.

I cannot see the wisdom or the practical effect of such a procedure, because these people are all residents apparently of these parts, and there would not seem to be any danger of a failure to apprehend them if the grand jury should indict. And what would be the good of all this excitement and labor if the same could be peacefully carried into effect, if it should develop that the grand jury might not indict, and as you know an indictment is entirely within the province of such a body.

My opinion is that this whole matter should be put before a grand jury for its determination. You apparently do not wish to go before the coroner's jury, and in view of the testimony I can understand why you would not wish to do that. I think I should ask the coroner to close the coroner's inquest, and if you will indicate when you and your witnesses will be available to appear before the grand jury the court will reconvene the grand jury and a full and exhaustive investigation of this case can be made. You appear to have some doubt as to the validity and legality of an indictment if you should appear in person before the grand jury, and I can understand your difficulty in this respect, but surely if you would hesitate to appear in person before that body I am able to be present, and with the written depositions you have furnished I could see that the grand jury was put into possession of all the facts you have brought out, as well as any other facts that other witnesses may present.

The further advantage of a grand jury investigation is that in the event of an indictment the State could ask for a change of venue, and the cases could be tried in another county remote from the scene of the disturbance and excitement and bias.

I await your further advices.

Respectfully,

JOHN B. ROBINS,
The State's Attorney for Somerset County.

I replied to this letter on November 17, as follows:

NOVEMBER 17, 1933.

HON. JOHN B. ROBINS,
State's Attorney, Crisfield, Md.

DEAR MR. ROBINS: I have yours of the 16th instant, which I have carefully considered. You ask my further advice in view of the situation presented in your letter.

As stated to you in my letter of the 15th instant, the character of the information that I sent you is so definite that no magistrate could legally refuse to hold those arrested for the action of the grand jury, and for the same reason the grand jury would not be justified in refusing to return indictments.

If the reason for not making the arrests is because of the probability of interferences by an aroused crowd, then it would be incumbent upon the sheriff to obtain such assistance as may be necessary for him to perform his duty.

I realize that in performing your responsibility you have first-hand information that is not available to me, but nevertheless, where the question arises as to whether law and order are to be maintained and the orderly administration of justice is to proceed, there should be but one answer.

As expressed to you in my previous letter, I am of the opinion that you should have the sheriff make the arrests and bring the persons arrested before a committing magistrate for a hearing.

Very truly yours,

WM. P. LANE, JR., *Attorney General.*

In that connection also, because of previous conferences with the judges of that circuit, I sent copies of that correspondence to each of the three, accompanied by a letter in which I said:

HON. JOHN R. PATTISON,
Cambridge, Md.

NOVEMBER 18, 1933.

DEAR JUDGE PATTISON: I think it is appropriate that you should have a copy of my letter to State's Attorney Robins, under date of November 15, enclosed with which I sent him the information that I had obtained in the investigation of the lynching of George Armwood, and from which I have deleted the names of the persons whose arrests I requested; a copy of his reply of November 16; and a copy of my further advice to him under date of November 17, all of which I herewith enclose.

I am sending the enclosed to you, not only because I think you should be informed upon the subject, but also because I understand that the judges of the circuit will discuss the matter of procedure in the next day or two, and will no doubt also consult with State's Attorney Robins on the subject.

With kind regards, I am,

Sincerely yours,

Attorney General.

After my letter of November 17, I received a reply from Mr. Robins dated November 20, as follows:

HON. WILLIAM PRESTON LANE, JR., •
The Attorney General of Maryland, Baltimore, Md.

MY DEAR MR. LANE: Acknowledgment is made of the receipt of your letter of November 17, which was apparently given to the press in advance of its receipt by me, and in which you reiterate your request that I as State's attorney for Somerset County, swear out warrants before a magistrate for the arrest of the nine persons accused of the murder of George Armwood. I must refuse to grant this request. In the first place, I consider this circuitous procedure inadvisable, for the reason that the case must ultimately come before the grand jury, and I can see how the State's case might be seriously affected

by this in the event of subsequent indictments, the State having disclosed the nature of its evidence, which would give those accused a better opportunity to prepare defenses. To justify this method of procedure, we must necessarily presume that the grand jury will not discharge its duty, and I also refuse to be a party to that. In the second place, I have reached the conclusion that in cases of homicide, where a coroner's inquisition has begun, any writs charging murder must be issued on the findings of that coroner's jury, and that warrants sworn out before a magistrate on information and belief would be void, and any person arrested under such warrants could be promptly released under habeas corpus proceeding.

As to this being the proper procedure, I would refer you to Hochheimer's Criminal Law, second edition, section 210, page 243, which reads in part as follows:

If one is accused by the verdict of murder or manslaughter, either as principal or accessory, the coroner must put in writing the effect of the evidence, bind the witnesses for the prosecution to appear at the next term of court having jurisdiction of the offense charged, certify such evidence and the recognizances together with the inquisition to the court and commit the accused for trial. If the accused is at large, the coroner issues his warrant for his arrest and commits him. If he is already in jail, the coroner issues a warrant of detention. The courts of this circuit have held that warrants issued by a magistrate in cases of this kind can be quashed upon motion. The Circuit Court for Wicomico County, in No. 4 Miscellaneous, January Term, 1923, which was a homicide case, quashed two writs issued by a magistrate for that reason. One writ was issued on information and belief and the other was issued on the finding of a coroner's inquest that was legally defective. In view of this decision which sustains the theory I have heretofore advanced, I see no reason why I should change the position that I have assumed from the beginning, and which I think is correct. If you can show me that this position is not sound, I shall be glad to have you do so. Even if a magistrate did have authority to issue such writs, as you wish, I feel that you should be the proper party to swear them out, inasmuch as you have personally examined the witnesses, and I have not had that opportunity, due to the fact that the examination was conducted in Baltimore by you.

You may, on your own initiative, feel free to appear before a magistrate and swear out the warrants. If you do not care to do this, then the State police officers may do it. You all have direct information, apparently, concerning the alleged culprits, and I have none. In the event you do this, I shall give the matter the same careful attention that I would give other warrants sworn out by private citizens, despite the fact that I believe the procedure neither proper nor advisable.

You are reported in the newspapers as saying that the principal reason you advance for the procedure advocated by you, is that the public may know all about the testimony that will be submitted to the grand jury. The natural and logical inference is that you think that if you can broadcast the testimony of the State troopers, the grand jury will be intimidated, and will have no alternative than to find an indictment. This I regard as an unfair aspersion and an undue reflection upon the members of the grand jury. You have no reason at all for assuming that the grand jury will not measure up to its duty and responsibility, and their oath of office. These men, individually and collectively, compare favorably with any 23 men that can be found anywhere. They are intelligent, honest, conscientious and honorable, and they will be true to themselves and to their oath of office. They will not be intimidated, but will consider the evidence calmly, fairly, and thoroughly, and they will act and vote according to their best judgment and the dictates of their conscience. The grand jury is a sovereign body, beyond the reach and control of the court, the State's attorney, and the public, the deliberations of which are secret, and even the State's attorney is not permitted to be present during these deliberations and voting. I am willing to trust a Somerset County grand jury, and for that matter a grand jury of any other county. The reason you give why these nine men should be arrested is an additional reason to me why I should not follow your course of procedure.

Then, again, have you lost sight of, or has it never occurred to you, that the testimony you furnished me is from men who were battling against a mob, in the nighttime, probably under the stress of great excitement, turmoil, and confusion. Has it occurred to you that under such circumstances there may

easily be a case of "mistaken identity". There were some people there that night, the sheriff tells me, who were unknown to him, and who instead of inciting people to lynch, were urging them to desist. Is it not possible, even probable, that the State troopers in fighting with their backs to the wall might have mistaken those who were attempting to restrain the mob as being those who were inciting the mob? The sheriff tells me a goodly number of people were in the crowd urging the participants to desist. It is possible that the witnesses confused these well-intentioned people with others not so well intentioned, and would you wish to have these men, innocent in law until proven guilty, incarcerated in a felon's cage until such time that the grand jury could hear and determine their cases?

Your plan of procedure is indirect, circuitous and inconclusive. My plan is direct and final. Under my plan the majesty and supremacy of the law will be continued and maintained without undue publicity and excitement.

In conclusion, I again decline to make the arrests that you demand. I shall ask the court to recall the grand jury immediately. If you wish to join me in this endeavor, I shall be glad to have your services. If you refuse, I will proceed alone.

I await your further advices.

Sincerely yours,

JOHN B. ROBINS,

State's Attorney for Somerset County.

Senator COSTIGAN. By whom was that letter signed?

Attorney General LANE. It was signed by John B. Robins, State's attorney for Somerset County.

I did not reply to that letter, but instead I wrote a letter to the judges of the judicial circuit on November 21, reading as follows:

NOVEMBER 21, 1933.

HON. JOHN R. PATTERSON,
Cambridge, Md.

DEAR JUDGE PATTERSON: In connection with the correspondence that I forwarded to you last, and your conference to try to work out some procedure, I am enclosing herewith copy of letter of November 20, that I have just received from State's Attorney Robins.

It seems hardly necessary for me to comment upon the right of the sheriff or any other peace officer of the county to make arrests without a warrant when he has reasonable grounds to suspect that a felony has been committed. In this case a felony has been actually committed. It is wholly immaterial whether the suspicion arises out of information imparted to the officer by someone else, or whether it was founded on the officer's own knowledge.

In the fourth and fifth paragraphs of my letter to Mr. Robins of November 15, I stated the reason why the procedure of arrests should be followed, and I reiterated that opinion in the fourth and fifth paragraphs of my letter of November 17. The only aspersion upon the grand jury is the one that Mr. Robins himself casts by the inference in his enclosed letter.

It is unnecessary for the State's attorney to raise the defensive question of mistaken identity. If arrested, I assume that each of the accused persons will be ably defended. Mr. Robins' duty is that of a prosecuting officer.

When we met at Annapolis I explained the legal difficulty about personally appearing before the grand jury. I would not do anything that would either provide an opportunity for an appeal or the slightest chance of voiding the indictments on a technicality.

I am not replying to Mr. Robins' last letter, because I felt that a continuance of that correspondence is not only ridiculous but rather disgraceful.

Respectfully,

WM. PRESTON LANE, JR.,

Attorney General.

Senator WAGNER. Is Mr. Robins holding an elective office?

Attorney General LANE. Yes; State's attorney of Somerset County.

Senator VAN NUYS. Did you have any other correspondence or exhibits which you care to submit to the committee at this time?

Attorney General LANE. None other than some notes of conferences that took place, and telephone conversations.

Senator VAN NUYS. Will you proceed with those, please?

Attorney General LANE. I do not know whether the committee wants the names of all the 24 State policemen who were defending the jail on the night of the lynching or not.

Senator VAN NUYS. I think that would be helpful, if you have it there, General.

Attorney General LANE. This is a report by the captain of State Police, giving the names of the officers who were on duty at the jail at Princess Anne on October 18, 1933; and this is a report of the officers who were summoned before the grand jury in January 1934.

Senator VAN NUYS. They may be marked as exhibits and made a part of the record.

(The report of the commanding officer of the Maryland State Police, giving the names of officers defending the Princess Anne jail on October 18, 1933, was marked "Exhibit T"; and the report giving the names of officers summoned before the grand jury was marked "Exhibit U", and read as follows:)

EXHIBIT T

JANUARY 18, 1934.

MEMORANDUM: LIEUT. RUXTON M. RIDGLEY, HEADQUARTERS

1. Attached hereto you will find summonses for members of this department, for their appearance before the grand jury for Somerset County on Tuesday, January 23, 1934, at 10 a.m.

Lt. R. M. Ridgley
 Corp. J. E. Wheeler
 Officer (1st cl.) J. M. Bradley
 Corp. C. W. Cabbage
 Officer M. T. Bohler
 Officer (1st cl.) C. B. Durham
 Officer E. R. Quandt
 Officer (1st cl.) C. C. Serman
 Sgt. E. D. Dryden
 Officer P. J. Randall

Corp. N. G. Faulkenstine
 Officer J. R. Miller
 Officer J. E. Kuhn
 Sgt. W. H. Weber
 Corp. J. F. Norris
 Officer R. H. Tower
 Officer E. C. Langrall
 Sgt. A. M. Sploch
 Officer C. F. Schlueter

EDWARD McK. JOHNSON,
Captain, Maryland State Police.

EXHIBIT U

OCTOBER, 23, 1933.

To: The commanding officer, Maryland State Police, headquarters, Baltimore, Md.

Subject: Assignment of officers, Princess Anne, Md., October 18, 1933.

1. The following are the names of officers that were defending the Princess Anne jail on Wednesday night, October 18, 1933.

Capt. Edward McK. Johnson
 Lieut. Ruxton M. Ridgely
 Sup. Sgt. M. D. Brubaker
 Sgt. E. S. Haddaway
 Sgt. A. M. Sploch
 Sgt. Wm. Weber
 Sgt. A. E. Markley
 Sgt. E. D. Dryden
 Corp. C. W. Cabbage
 Corp. N. G. Falkenstine
 Corp. J. F. Norris
 Corp. J. E. Wheeler

Officer (first class) J. M. Bradley
 Officer (first class) R. H. Tower
 Officer (first class) C. C. Serman
 Officer (first class) C. B. Durham
 Officer J. R. Miller
 Officer C. F. Schlueter
 Officer M. T. Bohler
 Officer B. J. Cassidy
 Officer E. R. Quandt
 Officer E. C. Langrall
 Officer A. G. McKewen
 Officer P. J. Randall

RUXTON M. RIDGELY,
Lieutenant, Maryland State Police.

Attorney General LANE. I have a copy of the notes that I made at a conference with the Governor and the judges on November 3, 1938.

Senator VAN NUYS. That may be marked as an exhibit and made part of the record.

(The document referred to was marked "Exhibit V", and is here set forth in full as follows:)

EXHIBIT V

NOVEMBER 3, 1938.

Conference governor's office, 2 p.m. Annapolis.

Present, Governor Ritchie, Chief Judge Pettison, Judges Bailey and Duer, Attorney General Lane, Assistant Attorney General G. C. A. Anderson.

Governor stated that purpose of meeting that I had collected information that would warrant the prosecution of a number of people for participation in the lynching at Princess Anne, and that he wanted to discuss with the judges the best procedure to follow as to making arrests, etc.

I stated that I had information that warranted the arrest of from 8 to 10 individuals as either principals in the second degree or accessories before the fact, but that upon information that I had gotten I did not believe that either the State police or the Baltimore city police could make those arrests without such force as would amount to martial law, and that these conditions pertained to Somerset County.

Judge Pattison could not conceive that such a situation could be possible. Judge Bailey asked if the individuals to be arrested were residents of the State and if so what counties. I told him mostly from Somerset County, two from Wicomico County, and one or two from Worcester.

I described the situation as reported to me by Lieutenant Itzel, Sergeant Flynn, and Lieutenant Ridgely.

I called in Itzel and Flynn who stated that in their opinion it would take a regiment to make arrests, that he did not think the State's Attorney Robins was interested in prosecution, and doubted if Sheriff Daugherty could make the arrests.

Judge Pattison said there was great resentment against what the people considered outside interference particularly against the State police and Baltimore police. He stated that if 500 militia were used there would be hell to pay, and recommended that local officers be used, if necessary the sheriff getting a posse comitatus. That use of the militia would cause such resentment that indictments would be impossible. That indictments would be hard enough to get anyway.

Judge Duer did not want to express an opinion on the matter because his judgment had been so poor before. Judge Pattison took me aside and told me he would like to have Judge Duer express his opinions because he lived in the county concerned, but that he was sensitive because he had been criticized and would not do so. He told me that the judges had wanted to get me into the investigation because they were doubtful about Robins. I told him that if the sheriff and State's attorney would not do their duties, there was no hope that I could accomplish anything.

The judges said that they would get hold of the sheriff and State's attorney and see whether they would do their duties. Judge Bailey wanted to see them the next day, but it was not convenient to Judge Duer, then it was set for Monday.

Attorney General LANE. I also have here the notes of the two telephone conversations with State's Attorney Robins on November 9. I have no copy of that.

Senator VAN NUYS. That is the original?

Attorney General LANE. Yes, sir.

Senator VAN NUYS. That must be returned to the witness. It may be marked "Exhibit W", and made a part of the record.

(The notes above referred to were marked "Exhibit W-1" and "Exhibit W-2", and will be found set forth in full below.)

Senator VAN NUYS. Could you give the committee a statement as to the telephone conversation with Mr. Robins?

Attorney General LANE. After the conference I had with Judge Pattison, on Wednesday, November 8, 1933, in which he asked me to get in touch with Mr. Robins, for the purpose of going over the testimony of the local officers, I had to come to Washington, and I asked one of my assistants, Mr. Anderson, to call Mr. Robins and ask him to come to Baltimore. Mr. Anderson gave me this memorandum of his telephone conversation that day:

EXHIBIT W-1

NOVEMBER 9, 1933.

Called Mr. Robins, State's attorney, on Thursday morning at 10:50 a.m. Got Robins at his office. Robins informed me it would be impossible for him to come to Baltimore this week; that he was leaving to see his mother at Kingston, N.Y.; Robins said his mother was 93 years old; that he had intended to see her before and had put it off when present difficulty arose and had made all arrangements to go to Kingston with his son, Stanley G. Robins, of Salisbury. He will leave Salisbury tomorrow about 5 o'clock. We can get him at his office this afternoon until about 3 o'clock, and at the home of Stanley G. Robins this evening around 6:30. The number of Stanley G. Robins' phone is Salisbury 464-M. He will not get back to his office until next Wednesday, November 15, and will not be able to come to Baltimore until the latter part of the week. He will come to Baltimore if it is necessary, but is not allowed traveling expenses, but, if it is necessary, he will come.

G. C. A. ANDERSON.

On my return from Washington that day, when I got this memorandum, I called Mr. Robins myself. [Reading:]

EXHIBIT W-2

Called State's Attorney John B. Robins at Crisfield and told him that Mr. Anderson had advised me about his telephone conversation earlier in the day and for that reason I was calling him back, because the information that I wanted to go over with him in reference to the lynching, in my opinion, warranted the arresting of about eight persons for participation. I wanted to go over that information with him and also the mechanics for accomplishing the arrests. Mr. Robins told me of his contemplated trip to Kingston, N.Y., and I impressed him with the necessity of determining upon pursuing a course of action as promptly as possible. I asked him whether it was possible for him to postpone his trip for a day or two. He told me that it was not possible; that he was leaving this afternoon.

Robins questioned the desirability of making arrests before taking the matter up with the grand jury, but I told him that I did not think that was the proper course to pursue; that I felt that arrests should be made, that then if with respect to any individual that might be arrested they had defenses what would warrant them not being held for the action of the grand jury, that could be accomplished without any more ado about it in their particular cases; that I felt that the information that I had was sufficiently definite; that I did not see how the grand jury could very well do without bringing in true bills.

Mr. Robins discussed the question of having arrests made by some one other than local authorities, and I told him that I had discussed that situation with the judges of the circuit, and that they were definitely of the opinion that if arrests were to be made, that they should be made by local authorities, because there would be a very definite public reaction against the making of arrests by either the State police or the Baltimore city police; the same being resented outside interference and that fact might mitigate against the obtention of indictments before the grand jury. Mr. Robins discussed with me the question of my going before the grand jury with him and I told him that in view of the decision of the court of appeals in the Coblenz case, I thought there might be some question about it, and that I did not want to do anything which

might in any way jeopardize the indictments by the grand jury on the ground of any such technicality. I told Mr. Robins that I would make a résumé of the whole matter and send it to him, together with a copy of the information that I had and my recommendations to him, so that he could have it upon his return next Wednesday.

Senator VAN NUYS. Did you have any other letters or additional statements to make along the lines you have been testifying? If so, you may do so at this time.

Attorney General LANE. This is in the main my testimony covering the entire investigation that I made. There may be some additional details, but I think this covers it.

Senator VAN NUYS. Would it be appropriate to ask you what was the result of the grand-jury investigation as to prosecution by the local authorities?

Attorney General LANE. The information that I have is only from the press. The grand jury met. There was a charge to the grand jury by the judge of that circuit, and I think in addition to the lynching investigation there were probably several other cases considered. The grand jury then adjourned, and there was no statement and no true bills were returned.

Senator VAN NUYS. Have there been any bills of any kind or character returned by the local grand jury against any of these persons named?

Attorney General LANE. Not to my knowledge.

Senator VAN NUYS. Senator Costigan would like to ask you some questions, with your permission.

Senator COSTIGAN. General, doubtless the various steps taken by you and other State officials have been detailed in the files you have submitted here. May I, however, ask you for the benefit of the committee to give us some particulars as to the developments surrounding the so-called "Princess Anne lynching"? When was your attention first drawn to any feature of the affair which culminated in the lynching?

Attorney General LANE. On Wednesday afternoon, October 18, somewhere about 4:30 or quarter to 5, I was attending in my official capacity the State convention for the repeal of the eighteenth amendment. There was a memorandum handed me, which I think came from one of the newspapers, stating that Armwood had been taken back to Princess Anne, was in the jail there, and there was some disturbance. As I recall it, the disturbance was pictured as some effort to organize a crowd in Virginia, around Chincoteague. I think that rumor was subsequently dispelled by someone in Baltimore. It was just a rumor that there was a disturbance down on the lower shore in Virginia.

Senator COSTIGAN. Under the law of Maryland, do you act on such information on your own responsibility, or only by direction of the Governor?

Attorney General LANE. The only authority with reference to the custody of prisoners in Maryland is with the sheriff of the particular county. His authority is not only that of custody, but it is for him to exercise the discretion as to whether or not a prisoner shall or shall not be removed. No State officer can override the discretion exercised by a sheriff, the Governor, attorney general or any other.

Senator COSTIGAN. What aroused your official concern? And what led you to act?

Attorney General LANE. I was not aroused or concerned until really after the lynching had occurred, when I found it out the following morning.

Senator COSTIGAN. In other words, there were no steps taken in advance of the lynching, either by you or by the Governor?

Attorney General LANE. Yes. When that notice was received about 4:30 in the afternoon, I went with the Governor to his office, where he made numerous telephone calls. He called the captain of the State police; he called Judge Duer, and he called several others. I think that he called State's Attorney Robins with reference to the situation that existed. I think some of the telephone calls were made after I left Annapolis and returned to Baltimore. It is my understanding that he was assured by every one that there was no difficulty and so trouble would be expected.

Senator DIETERICH. When did the grand jury meet in that county?

Senator VAN NUYS. This memorandum says January 24. Is that right?

Attorney General LANE. It was called for Tuesday, January 23. Witnesses were summoned for the 24th at 10 o'clock.

Senator DIETERICH. Was that the last grand jury that met?

Attorney General LANE. Yes, sir.

Senator DIETERICH. How often do grand juries meet in that county?

Attorney General LANE. There has been no set rule in Maryland. The rule in the different counties depends upon the local law. In the extraordinary session of the Maryland Legislature in November 1933 a new law was passed which requires the reconvening of the grand jury every 9 weeks.

Senator DIETERICH. Has that grand jury reconvened in pursuance of or in obedience to that law?

Attorney General LANE. I think the reconvening of the grand jury was in compliance with that new law.

Senator DIETERICH. And they reconvened within 9 weeks after that?

Attorney General LANE. On January 23, 1934.

Senator DIETERICH. Have you made a study of this bill?

Attorney General LANE. I have not had the opportunity, Senator. I have only had the opportunity to read it.

Senator DIETERICH. Do you not feel that you want to discuss any of the features of this bill as to its helpfulness in preventing occurrences of that kind?

Attorney General LANE. I have not had the opportunity to make a study of it from the standpoint of the question of policy. If I had an opportunity to make a study of the experience of lynching generally throughout the United States, I would be very glad to express an opinion, trying to be helpful to the committee, but I do not think I have given it sufficient study to warrant me in making such a statement.

Senator DIETERICH. What was the charge against the colored man who was lynched?

Attorney General LANE. Rape.

Senator DIETERICH. You never went into that part of it.

Attorney General LANE. No; I did not, other than the statements I have referred to. Armwood was arrested by the State police on

Monday, October 16, as I recall it, in the northern part of Somerset County. He was taken to the jail at Salisbury, which is in an adjoining county. There had been some difficulty there, I think, and a collection of people. Lieutenant Ridgely was in charge, and he took Anderson out of the jail in Maryland about 7:30 and took him north, finally taking him to the Baltimore city jail, where he arrived about 4 a.m.

Senator DIETERICH. That was done to prevent violence?

Attorney General LANE. Yes. On the way up he got somewhat of a confession from Armwood. On the following morning in the Baltimore city jail, I think Armwood again confessed in more detail to Lieutenant Itzel of the Baltimore city police force, and also to Lieutenant Ridgely of the State police force.

Senator DIETERICH. Referring to those nine men, who as your investigation disclosed, were connected with that crime, if I gather rightly from the names you gave, they were not of the highest type of the citizenship of that particular county, were they?

Attorney General LANE. Personally I do not know the individuals concerned.

Senator DIETERICH. I say that from the fact that there were some aliases.

Attorney General LANE. Except possibly one. I was in the military service, and I think one of the men was a member of one of the companies of our regiment.

Senator WAGNER. May I ask a question, Mr. Chairman?

Senator VAN NUYS. Yes; Senator Wagner.

Senator WAGNER. You asked Mr. Robins to act in this matter, did you not?

Attorney General LANE. I asked him to make some arrests.

Senator WAGNER. And you also communicated with the sheriff?

Attorney General LANE. I did not.

Senator WAGNER. You did communicate with the judge of that particular circuit?

Attorney General LANE. Yes.

Senator WAGNER. Do you know whether or not the grand jury has concluded its investigation of that matter?

Attorney General LANE. I understand it has adjourned.

Senator WAGNER. Which, in effect, means what?

Attorney General LANE. So far as I know, and my information is from the press, there was no comment made and no indictment returned.

Senator WAGNER. No action was taken?

Attorney General LANE. There was no statement in the press with reference to the lynching investigation, emanating from the grand jury.

Senator VAN NUYS. It is necessary, General, to recess now until 2 o'clock, if that meets with your convenience.

Attorney General LANE. Yes, sir.

Senator VAN NUYS. The committee will recess until 2 o'clock. (Whereupon, at 12 noon, a recess was taken until 2 p.m.)

AFTER RECESS

At the expiration of the recess, the committee reconvened at 2:35 p.m.

STATEMENT OF HON. WILLIAM PRESTON LANE, JR., ATTORNEY GENERAL OF THE STATE OF MARYLAND—Resumed

Senator VAN NUYS. We apologize, but were called to the floor, and may have to suspend, Mr. Attorney General, in a very few minutes for a vote, but we will try to proceed as rapidly as we can.

I am not sure just where we left off. Were you in the midst of some comment?

Attorney General LANE. I think I had just finished answering a question by one of the members of the committee.

Since the session of the committee this morning, I find that there is an additional statement, subject to the statements that I gave the committee, from members of the State police that has a bearing on the identification of some of the persons who were named. I would like to add that to the papers I gave you.

Senator VAN NUYS. That may be done. That may go in the record.

(The document referred to was marked "Exhibit X" and is here printed in full, as follows:)

EXHIBIT X

STATE OF MARYLAND,
COMMISSIONER OF MOTOR VEHICLES,
November 8, 1931.

STATEMENT OF OFFICER (FIRST CLASS) C. B. DURHAM

I positively identify "Big Boy" Smith as being in the crowd on the night of the lynching at Princess Anne. He was in front of the crowd pushing against the line.

I also positively identify Ralph Powell as being among the crowd on the night of the lynching.

I can also positively identify "Rusty" Heath. On the night of the lynching I saw him standing by the running board of Judge Duer's car while Judge Duer was making his second speech, about 7:45 p.m. He was talking and saying that he knew Judge Duer and that no one was going to harm Judge Duer while he was there. I also saw Heath at the inquest on October 24, and positively identified him.

STATEMENT OF OFFICER E. B. QUANDT

I positively identify William H. Thompson as being in the crowd in front of the jail on the night of the lynching. I first saw him under the arc light at the intersection of the Deals Island road and the road in front of the jail. This was about 7:15 p.m. I saw him from time to time from then on until the jail was broken into. About 5 minutes before the battering rams appeared, William Thompson, who was directly in front of the jail in a group of several men, shouted, "Let's get a pole." He then left the front of the jail and about 5 minutes later reappeared with about 15 other men, carrying a battering ram. They immediately started hitting the battering ram against the outer jail door. The pole that I call a battering ram was about 8 by 8 and about 20 feet long. It was roughly finished lumber. Thompson wore a black leather coat to his knees. He was 5 feet 6 inches tall, stocky build, 175 pounds, about 35 years old, dark beard, showing through powder, fat cheeks, clear complexion, gray felt hat, pushed up in front, light shirt, collar and tie.

STATEMENT OFFICER (1ST CL.) C. C. SERMAN

I positively identify "Rusty" Heath as being in the crowd in front of the jail on the night of the lynching. I have known "Rusty" Heath for 15 years. I first saw him at the intersection of Deals Island Road and the road in front of the jail.

STATEMENT OF OFFICER (1ST CL.) B. H. TOWES

I positively identify Gordon Butler as being at the intersection of Deals Island Road and the road in front of the jail at Princess Anne on the night of the lynching. Butler was shoving and pushing and attempted to break through our lines. We pushed him back, but he kept sidestepping our officers. He was always in front. He kept saying "Let me through; I am going to get in there." Butler had been drinking. He was an old man, about 60 years; 5 feet, 6 inches tall; 140 pounds; had on a dark felt hat. Several people in the crowd said he was the brother of Mrs. Denston.

STATEMENT OF OFFICER M. T. BOHLER

I positively identify "Big Boy" Smith as being at the northeast intersection of Deals Island Road and the road in front of the jail. Smith had a brick in his hand. Several of our men had been knocked down with bricks before I saw Smith with the brick in his hand. I told him to drop the brick and he replied, "Make me drop it." I tried to keep an eye on Smith, but he got lost in the crowd. Smith is about 6 feet tall; 160 pounds; about 25 years old and wore a baseball cap of different colors.

STATEMENT OF OFFICER J. R. MILLER

I positively identify Gordon Butler as being at the intersection of Deals Island Road and the jail road and also directly in front of the jail, shouting that he was going to get in—he dared and defied anybody to keep him out. He was always in front of the mob from the intersection up to the front of the jail. He stated so that everyone could hear him that he was the brother of Mrs. Denston.

STATEMENT OF OFFICER (1ST CL.) J. M. BRADLEY

I positively identify Gordon Butler. I first saw him at the intersection of the Deals Island road and the jail road. This was about 7:15 p.m. At that time he was in front encouraging the crowd, telling them to "Come on" and "Let's get him." I saw him practically all the time from then on until I was injured. Just before I was injured, he was in the crowd, directly in front of the jail door. He was shoving to get up on the steps and yelling, "Let's go—let's get him—we're going to get him." He had been drinking. Butler was roughly dressed. He had on a slouch hat and an old suit.

I can positively identify William H. Thompson as being in the mob. For three quarters of an hour before I was injured, I remembered seeing Thompson in the front row of the crowd, continually pushing forward. He was one of the most determined to get in the jail. When we were forced back to within 10 feet of the jail steps, I remember pushing him in the face to keep him back.

I positively identified Shelburn Lester as being directly in front of the jail door just before I was injured. Lester was shouting and shoving and trying his best to get past the police. Corporal Wheeler struck Lester on the head with his night stick. Lester was knocked back through the crowd about 20 feet, and a few minutes later I was injured. On October 20 I again saw Lester in Salisbury in front of the Read's drug store. Lester then had a bandage on his head.

I can positively identify "Rusty" Heath, who I knew before the war. I saw Heath first about 7:15 p.m. at the intersection of Deals Island road and the road in front of the jail. He was encouraging the mob and inciting them to action. I saw him off and on until I was forced back to the jail steps. At that time Heath was right in front of the crowd, shoving to get up the steps and yelling, "Let's go—let's get him." Heath had been drinking.

STATEMENT OF CORP. N. G. FALKENSTINE

I can positively identify "Rusty" Heath. I first saw him going to the courthouse to be sworn in before the lynching. This was about 5:30 p.m. I next saw him between Captain Johnson's car and the jail door. This was about 8:15 p.m. Heath was moving about in the crowd. He had been drinking.

STATEMENT OF SGT. WILLIAM WEBER

I positively identify Gordon Butler as the man who said he was the brother of Mrs. Denston. I first saw Butler about 7:15 p.m. at the intersection of Deals Island Road and the road in front of the jail. I also saw him when the police were forced back in front of the jail. He moved with the crowd. He was yelling, "Come on, you yellow ———; follow me, I'll go to the jail." He would continually break through the line and be pushed back. He was a leader among the mob on the south side of the jail.

I can positively identify McQuay. I first saw him in the crowd about 15 feet from the jail door. He asked where Sergeant Haddaway was. He steadily advanced with the rest of the mob toward the jail door. He kept shouting to the crowd to "Come on, that the police could not shoot." When the crowd forced the police back onto the steps, McQuay was still shoving and pushing in the front ranks. He was no. 1 man at the head of the step and kept shouting, "Let's go get the ———. Let's go."

I can positively identify the man that Judge Duer spoke to and addressed as Mays. Mays was standing in the mob that Judge Duer spoke to on the south side of the jail.

I can positively identify William P. Hearn. I saw him directly in front of the jail, just before the battering rams came up. He was a leader. He shouted, "Let's go get him." He came up to the door and attempted to shove us off the steps. He is very large shouldered, 6 feet 2 inches tall, 180 pounds, light or almost white hair, 28 years old, slouch hat (gray), blue coat and pants.

I can positively identify "Rusty" Heath. I first saw him about 7:15 p.m. at the intersection of Deals Island Road and the jail road. He was the leader of the first mob (about 100 men). I grabbed him and pushed him back. The second time he was standing by the tree where Armwood was being hung. He had hold of the rope and told Judge Duer not to be afraid to tell him your name as they couldn't do anything to you.

I can positively identify the driver of the State roads truck.

STATEMENT OF CORP. J. F. NORRIS

I can positively identify William P. Hearn. I first saw him about 7:30 p.m. on the south side of the jail. At this time he was in the mob just pushing forward with the rest of the people. Later I saw him in front of the jail before the main rush. This time he kept shouting, "Let's go—come on," just before the mob rushed. Then he ran to the jail steps, followed by the mob.

STATEMENT OF CORP. J. E. WHEELER

I can positively identify Jack Walloper.

Attorney General LANE. There is one matter of explanation that I think I should present to the committee. Among the individuals named there was the name of Martin Duer. I had the genealogy of the Duer family checked in three counties—Somerset County and the two adjoining counties—and I was unable to find anyone by the name of Martin Duer. My belief is that he gave a fictitious name.

Senator VAN NUYS. Senator Dieterich, I believe that you desire to ask the Attorney General some questions.

Senator DIETERICH. Yes; some few years ago there was an ax murder that took place in Maryland.

Attorney General LANE. What kind of murder?

Senator DIETERICH. An ax murder; a murder committed with an ax, where a family was murdered.

Attorney General LANE. I think that possibly the Senator refers to what is known as the *Euel Lee case*.

Senator DIETERICH. What is the Euel Lee case?

Attorney General LANE. It was a murder case in which a man, his wife, and two children were murdered in Dorchester County.

Senator DIETERICH. What has become of that case?

Attorney General LANE. Lee was arrested. He was taken to Baltimore. I do not know how fully the Senator wants me to go through this record.

Senator DIETERICH. Just generally.

Attorney General LANE. It was a case that caused a good deal of comment and, I think, a good deal of feeling in Maryland. The question of removal came up. Under our constitution the State's attorney of the county, in behalf of the prisoner or on behalf of the State, can request a removal. I presume a removal in behalf of the defendant was made in that case. The court then exercises its discretion as to where the case shall be sent. In capital cases removal is granted as a matter of right. There is no discretion on the part of the court, except as to what jurisdiction the case will be removed. The court granted the petition for removal, and ordered it removed to Dorchester County, which is two counties removed from the county in which the murder had been committed. The request on the part of the defense had been that the case be removed from the entire Eastern Shore. The court did not grant that request.

An appeal was taken to the court of appeals in December of 1931. The murder occurred, I think, in October of 1931. The court of appeals, passing upon the question of abuse of discretion, decided that the lower court had not abused its discretion; but, nevertheless, they added to their opinion a comment that the case should be removed, and indicated that if it came to them on final appeal and was not removed they might reverse it. Following that, the case was removed to Baltimore County, which is contiguous to Baltimore city.

In January of 1932 it was tried. There was a verdict of guilty and a sentence to be hanged. An appeal was taken to the court of appeals of Maryland, and the court of appeals reversed the case and sent it back for a new trial on the question of the selection of a jury. It was again tried in Baltimore County. It was again appealed to the court of appeals of Maryland.

Senator DIETERICH. What was the result of the second trial in Baltimore County?

Attorney General LANE. A verdict of guilty and a sentence to be hanged. It was again appealed to the Court of Appeals of Maryland. Again the sentence was sustained. There was an appeal to the Supreme Court of the United States, on a petition for a writ of certiorari, and that was denied. Again there was an appeal to the Federal district at Baltimore on a writ of habeas corpus. That was denied. Also, a request was made of the Federal district court for a certificate of probable cause, in order to obtain an appeal from that division. That was denied by the Federal district court, and application was made to the circuit court of appeals in Richmond for a certificate of probable cause. That was denied, and I understand that application was also made to Chief Justice Hughes for a certificate of probable cause, because he acted ex officio as a member of the circuit court of appeals for that circuit, and it was also denied, and the accused was hanged.

Senator DIETERICH. Is there any connection between that case and this case?

Attorney General LANE. Do you mean as a matter of public sentiment?

Senator DIETERICH. Yes; were they linked together in any way as a matter of public sentiment?

Attorney General LANE. I would not say that they were, except as a matter of public sentiment in that particular section of the State. There is evidence in some of the statements that I have given to the committee that some of the crowd that night at the jail when Armwood was lynched mentioned the Lee case. I think there was one comment in response to Judge Duer's speech to the crowd that night, when some of the members of the crowd commented on the Lee case.

Senator DIETERICH. Lee was the surname?

Attorney General LANE. Lee was the surname.

Senator DIETERICH. Did the Lee case occur in the same county?

Attorney General LANE. In an adjoining county.

Senator VAN NUYS. I have one or two questions. Did you find the collection of evidence against these lynchers more difficult to obtain than would ordinarily have been the case in relation to other crimes of violence?

Attorney General LANE. I have not had much experience, Senator, in the investigation of criminal matters, either in the matter of private practice before I became a State official or as a State official. The duty of the attorney general with reference to criminal matters is confined to the court of appeals, not to the nisi prius court.

Senator VAN NUYS. On that question you would not be in a position to express an opinion?

Attorney General LANE. I do not think I could express a very adequate opinion on that.

Senator VAN NUYS. Do you think the evidence which your office collected was sufficient to have warranted the grand jury in returning indictments against all or some of the men named as lynchers here this morning?

Attorney General LANE. I expressed that opinion in my letters of November 15 and 17.

Senator VAN NUYS. And you are still of the same opinion?

Attorney General LANE. I think so. I have not changed the opinion I expressed in those letters.

Senator VAN NUYS. Were these police officers heard by the grand jury in that local county?

Attorney General LANE. That I do not know. I have given the committee a list that was sent to me of the police officers that were summoned, and I know from a press report that quite a number of them were heard. I understood from the press that there were 42 witnesses heard, and I assume that all the State policemen on that list who were summoned were heard.

Senator VAN NUYS. Of course, you have no way of knowing whether that grand jury investigation was merely a perfunctory investigation or a bona-fide investigation?

Attorney General LANE. I have not.

Senator VAN NUYS. How long did it last?

Attorney General LANE. It is my understanding, again from the press, that the grand jury undertook to investigate several matters.

They were in session several days, the exact number I do not know, but 3 or 4 and possibly 5. The proportion of that time they devoted to a consideration of the lynching investigation I do not know.

Senator VAN NUYS. Are you familiar with the charge that the judge made when he impaneled the grand jury?

Attorney General LANE. I remember reading it in the paper. The text of it I do not now recall.

Senator VAN NUYS. You are not possessed of a copy of that?

Attorney General LANE. No; I do not have a copy of it. I remember its being published in the Baltimore papers where I read it, but the exact text I do not recall. It could be obtained.

Senator VAN NUYS. Do you think it would have been possible to impanel a grand jury in that locality which would have returned an indictment against these men?

Attorney General LANE. I am not sufficiently familiar with the county to adequately answer that question; but I should think, Senator, that it would be possible to impanel a jury in almost any county. It would be a very unusual case, it seems to me, in which we could not get a grand jury in any county that would indict.

Senator VAN NUYS. Is it not your observation that that is true with reference to all classes of crime, practically, except lynching?

Attorney General LANE. I do think that there is a distinction in that respect between lynching and other crimes in that there is no question about the fact that back of lynching there is very often a very intense public feeling which I think has its effect.

Senator VAN NUYS. In the matter of the enforcement of law, a local public officer is just about as good an officer as the public desires him to be? Is that not true?

Attorney General LANE. No; I would not go so far as that. I think, Senator, that sometimes some of the public officers are a little better than that.

Senator VAN NUYS. In a very truthful way, I want to say the witness on the stand appears to be one who is doing his duty irrespective of public opinion. I commend you on your testimony and activities, Mr. Attorney General, in this situation. [Applause.]

Are there any other questions?

Senator DIETERICH. No.

Senator VAN NUYS. I thank you very much, Mr. Attorney General.

STATEMENT OF HON. SIMON E. SOBELOFF, UNITED STATES ATTORNEY FOR THE DISTRICT OF MARYLAND

Senator VAN NUYS. The next witness is Mr. Simon E. Sobeloff, United States District Attorney for the District of Maryland.

Mr. Sobeloff, were you present during the testimony of the Attorney General?

Mr. SOBELOFF. Yes, sir.

Senator VAN NUYS. If you have a prepared statement or any observations to make to the committee pertinent to this inquiry, we shall be pleased to hear you.

Mr. SOBELOFF. I have no prepared statement. I have made a few notes on matters in which I thought the committee might be interested.

Senator VAN NUYS. In order to save time, you may proceed in your own way.

Mr. SOBLOFF. I had supposed, when I was notified by the Sergeant at Arms that my testimony was desired, that the committee might be interested to learn whether I had given any consideration to the propriety of proceedings in the Federal court in connection with the Armwood case. I was told that the committee was interested in that phase of the question.

It was quite natural that as a citizen of Maryland, and as the United States Attorney for the District of Maryland I should follow with deep interest the facts in the Armwood case as they were developed in the public press. I have given careful attention and consideration to the propriety of criminal proceedings in the United States court and to my duty in the premises. I examined the Civil Rights Statutes which are codified as sections 51 and 52 of title 18 of the United States Code, and have read the copy furnished me by the Civil Liberties Union of the brief submitted by them to the Attorney General of the United States asking Federal action in the Armwood lynching case, and also in the Tuscaloosa case. After a careful examination of the law, I was forced to the conclusion that in the existing state of the law the Federal court was without jurisdiction to deal with that case.

I might go into some further detail as to that, if the committee is interested.

Senator VAN NUYS. If you will, please.

Mr. SOBLOFF. There are several decisions by the Supreme Court of the United States which definitely foreclosed action by the Federal grand jury in the Armwood case. Perhaps the clearest authority on the point is the decision of the Supreme Court in the *Powell case* (212 U.S.). In that case an Alabama mob took a man from the custody of the sheriff and lynched him. Powell was indicted under the provisions of the Civil Rights Statutes. He challenged the validity of the indictment, questioning the jurisdiction of the Federal court. The United States District Court in Alabama wrote a careful opinion reviewing the question of jurisdiction, and concluded that Federal jurisdiction did not exist, for the reason that the violation of civil rights which occurred in that case was not the action of the State or of its officials, but was the work of individuals. The case finally reached the Supreme Court on appeal and the lower court's decision was affirmed on the authority of the *Hodges case* (208 U.S.).

The lower court in Alabama seemed inclined in favor of sustaining its jurisdiction, and the judge sought to escape the apparently binding force of the *Hodges case*, but felt constrained to follow that case. As I recall his reasoning, he tried to distinguish the *Hodges case* from the case before him, on the ground that the *Hodges case* dealt with the thirteenth amendment, whereas the question before him concerned the fourteenth. But the language in the *Hodges case* was broad enough to seem to him to be conclusive, and when the question was finally determined by the Supreme Court they said that the order denying jurisdiction of the Federal court was correct on the authority of their own holding in the *Hodges case*.

That decision, and the decision in the *Wheeler case*, with which, Senator, you are no doubt familiar, convinced me, along with other

authorities that I examined, that the Federal court was, under the circumstances of our case, without jurisdiction.

Does that answer the question?

Senator VAN NUYS. Yes.

Mr. SOBELOFF. I do not know whether you would like me to discuss the legislation that is before the committee or not.

Senator VAN NUYS. There are two questions involved. One is the constitutionality of the proposed bill, and the other is the policy. The point is usually raised that the passage of an act of this type by Congress creates confusion between the State and the Federal authorities, and perhaps results in confusion even more serious than the present condition of lynch law that has been discussed here today. If you are prepared to discuss any part of that, we shall be glad to hear you.

Mr. SOBELOFF. I approach the discussion of that very difficult constitutional question with some diffidence, because I do not profess to be an expert on the problem and have not had an opportunity to examine it very minutely, but I have given it some attention.

As a lawyer, I am not one of those who would be inclined to make the argument that a bill ought to be passed whether it is constitutional or not, and I would be lacking in candor with the committee if I expressed the idea that there are no serious questions to be argued affecting the constitutionality of the proposed measure; but I do believe that the probability of its being held constitutional is sufficient to warrant a favorable report and favorable action on the bill.

Of course, in the drafting of any legislation to deal with the lynching problem, we must bear in mind that the provisions of the fourteenth amendment are limitations on State action. We begin, therefore, with the definite proposition that to be valid the legislation must be directed against State action and not against the action of individuals. That has been definitely adjudicated by the highest court of the land. It is true enough, as the Supreme Court held in the leading Virginia case in 100 U.S., that the State acts through its individuals. You will recall, Senators, that in that case an indictment was found against the judge of a Virginia State court, under the provisions of the Civil Right Statutes of the United States. He was indicted for having denied the civil rights of a colored man on trial before him, in that the judge had excluded colored men from serving on the jury.

But, if you will examine the Virginia case, you will find that in that prosecution, while the Supreme Court held that the action of the judge was really the action of the State of Virginia, there was a very elaborate record built up in that case. The prosecution against the judge was not limited to a mere showing that he in that individual case had excluded colored men from the jury, but the record elaborately built up shows that that policy of exclusion was systematic and deliberate and had been practiced in Virginia for a long time. It was found as a fact by a majority of the Supreme Court that custom had been adopted as the policy of the State of Virginia and was therefore State action, and in that way the indictment was held valid.

Now, of course, when we come to lynching cases, as distinguished from a case like the Virginia case, which involved the exclusion from jury service of Negroes, the problem is somewhat more complicated.

It is quite an easy thing to say that in the selection of a jury a judge is acting for the State, acting as the agent of the State. Even that was not assumed as a fact. It was proven. It is much more difficult to presume as a fact that the sheriff is acting for the State when a lynching occurs. Of course, if it can be shown that the sheriff conspired with the mob, that situation can be dealt with under the existing law, but in the absence of clear evidence to establish such conspiracy, and in the nature of things such evidence is not easily obtained, a difficult problem is presented when we attempt to exercise Federal jurisdiction.

The fourteenth amendment, as I have already said, is a limitation on the State, and enjoins it from denying to any person within its jurisdiction the equal protection of the law. But it must be observed in that connection that the fourteenth amendment is not self-executing; that is, the fourth section of the fourteenth amendment is not self-executing, and the fifth section was added to that amendment, which definitely and clearly contemplates that Congress adopt supporting legislation. In my judgment, appropriate supporting legislation would be a law that has the sheriff *prima facie* liable for the denial of equal protection of the laws when there is a lynching. There is no such Federal legislation now.

Another piece of appropriate legislation in support of limitations on the State imposed by the fourteenth amendment would be the conferring of jurisdiction on the Federal courts to prosecute the members of the mob if the State fails to act within a reasonable time. This would be in the nature of a removal from a State court to a Federal court; that is, from the jurisdiction where the equal protection is denied to a court which the Federal Constitution and Congress say shall give vitality and force to the fourteenth amendment. As I view it, this is merely an extension of section 74 of title 28 of the United States Code, which has been held valid by the Supreme Court in *Strauder v. West Virginia*, in 100 U.S.

Of course, it cannot be claimed that the Federal court has primary jurisdiction to punish the State officials or the members of a mob where a lynching has occurred. Murder, assault and battery, and neglect of official duty are primarily offenses to be dealt with by the States; but if from the circumstances of the lynching and from the subsequent inaction of State officers to apprehend and prosecute the perpetrators of the lynching it can be fairly shown as a fact that a deprivation of the guaranties of the fourteenth amendment has taken place, and that through the action or the inaction of the State or its officers, then it seems to me it is competent for Congress in such a case to direct its courts, the Federal courts, to act in vindication of the constitutional guaranties.

As to the pending bill, as I see it, one possible constitutional door through which it may successfully pass, is the theory which I understand was adopted by the draftsmen who rely on that clause of the fourteenth amendment which prohibits the State from denying to any person within its jurisdiction the equal protection of the laws. The bill undertakes to create a presumption that a failure for more than 30 days after the commission of the offense to apprehend or indict the person suspected of it is *prima facie* evidence of failure on the part of the State to afford equal protection. Of course, a presumption to be valid must be reasonable. My own thought is

that such presumption as the bill makes, though I confess it goes further than any precedent that I know of, is probably sustainable.

It may be of some interest to note that the Attorney General of the United States yesterday submitted to Congress his recommendation of a series of bills creating new crimes and extending the Federal laws to deal with existing crimes. One of these bills provides that in a kidnaping case, where the victim has been detained for a period of 8 days or longer by the kidnapers, there shall arise a prima facie presumption that the kidnapers removed the victim across a State border or line. This proposed legislation was endorsed by the Attorney General of the United States. It seems to me that the presumption which is proposed by the measure before this committee is certainly valid and reasonable and as consistent as the presumption proposed by the Attorney General's bill.

There are a number of criticisms of the bill which I think merit consideration, and it perhaps will be of some service to the committee to have these matters pointed out.

In the first place, I feel that the penalties suggested are too severe. A statute does not necessarily gain strength from stringent penalties. Indeed, my own limited experience would suggest that convictions frequently become more difficult because of the possibility of extreme punishment. And when, as in the draft of the bill before you, that possibility is converted into almost an imperative necessity in some cases, as in paragraph (b) of the third section of the bill, which provides a minimum penalty of 5 years, a jury is given a powerful incentive to indulge in what it might call a reasonable doubt and acquit, whereas if the penalty were not fixed but could be made consistent with the justice of the case, the jury would not be so inclined to strain to avoid conviction. The important thing is to enhance the possibility of conviction. The important thing is not a very severe penalty. A severe penalty, if merited, can still be imposed, if there is a minimum provided in the statute.

Now, as to section 5, which imposes a liability of \$10,000 on the county, that presents some interesting questions. I was rather intrigued by the suggestion contained in the question of one of the Senators that pointed to the policy or propriety of making the innocent suffer for the guilty, to make the innocent citizens pay a part of the \$10,000 along with the citizens who are guilty of the lynching. It is a queer sort of argument to raise when the object of the legislation is to prevent lynching. I cannot imagine any form of procedure where the innocent and guilty are intermingled indiscriminately more than in a lynching party. However that may be, innocent people are penalized for all antisocial acts that occur in the community. Moreover, the decent people of a community would, I feel, prefer to have proper compensation paid to the family of a victim. And finally, I think it is fair to say that the provision is written as a preventive, as a prophylactic, and in the long run it might really be in the interest of the pocketbooks of the law-abiding people of the county if such a provision were contained in the bill, because it would tend to discourage the perpetration of the crime of lynching.

However, when we had so much with respect to the policy and propriety from the standpoint of fairness and justice of this provi-

sion, there are some questions that might be raised as to the legality, and I think the legality can be made more certain and some of the constitutional questions raised against it might be avoided by a redrafting of that section. If I may respectfully make suggestions along that line, I would like to observe that if the liability which is provided in that section might be regarded as a fine or penalty imposed by the United States on the county, it would perhaps be an anomaly in our law, because I do not personally know of any instance in which a State or its subdivision has by law of the United States been subjected to a penalty or fine, nor do I know of any constitutional basis for such legislation.

Of course there are cases like *Sturgis v. Illinois* (222 U.S.) where such provisions in State laws have been upheld as valid, but there you have a State dealing with its own creature, its county. It is a somewhat different and clearly distinguishable situation where the United States is attempting to impose a penalty on a State or subdivision thereof.

If, on the other hand, we regard the liability in this section not as a criminal penalty but in the nature of liquidated damages for an injury inflicted by the deprivation of equal protection of the law to the victim of a lynching, then it would perhaps be less objectionable, though it might still be subject to an attack as a diversion of tax money. It might be worth while to revise that section, so that it would avoid the objection that it is a penalty on a governmental agency of the State. Provision might be made for a civil action with certain minimum damages.

Incidentally, Senators, in redrafting this section it might be borne in mind that some subdivisions of some States have only very limited power to tax; and if the machinery does not exist in that particular subdivision or county for the imposition of taxes for the payment of judgments, then a mandamus would not lie, even though the statute authorized mandamus. I do not know exactly what suggestion to make as to that, but I am merely pointing out the problem as one deserving consideration, for otherwise it might happen that a judgment against a county would be recovered, but the hostile agents of the county would make no effort to collect it. It might be that some very salutary effect would result from a recovery of a judgment, but, of course, in the drafting of the law every effort should be made to insure that the judgment, when recovered, is collectible.

I have heard the criticism that the bill is so broad in its provisions that it may be utilized in situations very different from lynchings, as where three or more persons in a labor dispute inflict injury on some other persons. It might be wise to obviate this objection by narrowing the provisions somewhat by including a definition of lynching that would embrace the notion that the mob intended to be reached by the law is one whose object it is to usurp the State's prerogative to prevent and punish crime. If three or more persons commit murder or assault from some other motive, that is not the evil at which this legislation is directed, and it might strengthen the law to limit its scope to deal with the problem that the committee has in mind.

Now, finally, it has been objected that Congress should not pass this bill because it is of doubtful constitutionality. As I have indi-

cated, while my feeling is that the constitutional questions are serious. I also feel that there is sufficient probability of the law being held constitutional to warrant its passage. No one can say with any real confidence that the law is not constitutional. We have witnessed too many divisions of opinion in the highest court itself for anybody to express an opinion with great assurance on a question of this sort.

It has been stated by many to whom such legislation is distasteful that lynchings cannot be prevented by law, but by public opinion, and that the process is not additional legislation but education. This is perhaps true enough, but I respectfully suggest that the explicit declaration of the Congress of the United States against such atrocities would itself be a potent educational factor and would be deeply impressive to the mass of our people, and would in that indirect way further tend to achieve a desired aim, and is, therefore, well worth while.

If I may make an argument ad hominum to you gentlemen, in consideration of this question that was raised with respect to this bill based upon an interpretation of the fourteenth amendment, it is only fair to observe that the fourteenth amendment was passed primarily in the interest of the Negro race. We should not complain unduly when application is made to give the benefit of the amendment to that group in whose primary interest it was adopted.

Of course, in dealing with questions of the Constitution, even the courts resolve doubts in favor of constitutionality. I think this committee and the Senate and Congress may well adopt the same attitude.

I was interested in the observation of Attorney General Lane that preliminary action to prevent lynching is perhaps more important than anything that can be done under legislation that deals with a situation after it has occurred. I fully agree with that sentiment. It might be of interest to point out in that connection that your colleague, Senator Goldsborough of Maryland, when he was Governor of Maryland, had a situation in which a colored man was charged with a capital offense on the Eastern Shore of Maryland. Information came to him that a mob was gathering to deliver the man from the jail. He acted promptly by calling out the militia then, and the man was taken to Baltimore City for safekeeping, and the lynching was averted. Of course, such diligence is the best safeguard against a lawless mob.

However, on the whole, I should think that legislation of the kind that is now contemplated would have a very salutary effect as a deterrent, even though the provisions of the law simply deal with a situation after it has been committed. The theory of all criminal legislation is primarily to deter a repetition of the offense. It is not always feasible to have police at the place at the time an offense is threatened, but the law substitutes this other means, namely, a penalty, with the possibility, or a great probability of punishment of the mob. It seems to me that serves as a support to the law-abiding citizens, and as a deterrent to lawless offenses in the community.

Senator VAN NUYS. I appreciate your observations very much, and I am sure the members of the subcommittee will read your testimony with much interest.

How many divisions are there of the United States court in Maryland?

Mr. SOBELOFF. It is the United States Court of Maryland, one district. We have jury commissioners appointed by the district judge. Of course, our court has jurisdiction coextensive with the limits of the State of Maryland. It usually sits at Baltimore, which contributes a great bulk of the business, civil and criminal, that comes before that court. It holds two sessions a year at Cumberland, and two sessions a year at Denton on the Eastern Shore. Of course, the court is not obliged to sit at any particular place to hear any particular case. The court can very readily, if public sentiment at the time in any particular locality would prevent a fair trial, order a session at some other place in the district.

Senator VAN NUYS. A criminal case does not have to be tried in the division in which it arose?

Mr. SOBELOFF. The entire State of Maryland is one district or division, although the court sits in three places, these three places I have enumerated. There have been special sessions of the court, not required by statute, but permitted, at other places in the State. Some years ago Judge Soper, finding the facilities at Denton inadequate to hear a case involving a good many defendants, held a session at Easton. The judge may hold a session anywhere in the State.

Senator VAN NUYS. Do you feel that by drawing a jury throughout the entire district you could have a fair and impartial jury to a greater extent than could be done within the confines of a single county?

Mr. SOBELOFF. I think that is absolutely true. Of course, as a practical matter, jurors serving in Baltimore are usually drawn from Baltimore and the neighboring counties. When the court sits in western Maryland, they are drawn from that section of the State. But the court can, in order to exclude the possibility that its process would be unduly affected by local sentiment, meet that problem by deciding to hold the court in a remote part of the State. It could also supervise the selection of the jury. Of course, no man has the right to have a jury selected favorable to his case, but the law guarantees him the right to have a fair and impartial jury, properly selected.

Senator VAN NUYS. Thank you very much, indeed.

The committee must recess for a few minutes, to vote to the Senate. We will resume as quickly as possible.

(At 3:20 p.m., a recess was taken until 3:35 p.m.)

STATEMENT OF STRICKLAND GILLILAND, WASHINGTON, D.C.

Senator VAN NUYS. It is with much pleasure that I introduce at this time Mr. Strickland Gilliland, poet, radio commentator, and known to more public audiences than probably any other public speaker at this time.

Mr. GILLILAND. Thank you, Senator.

I am a little bit at a loss to know why I am called in on a matter of lynching in general, and I want to say to the gentlemen of the press that what I am going to say is not very important, either.

I am fully aware that I am taking long chances and much risk in saying anything about lynching, as I depend upon the Eastern Shore of Maryland for most of the fishing that I do. There may be some element of ingratitude in my saying anything whatever against lynching, because I have been speaking in public for many years and have practically never been lynched.

I have never looked favorably upon lynching. I have a friend who has always been bitter against it for a very peculiar reason. He said that some of his relatives were lynched one time down in Kentucky. The fact that the lynchers came afterward and told the wives of these two men that they had been mistaken, that the joke was on them, that the boys had not been guilty of the crime for which they were lynched, did not seem to furnish much balm to the widow. But his bitterness came more from the fact that they had used such poor judgment in selecting relatives of his to be lynched. He said he had other relatives he would so much rather have had lynched than the ones they took. He said that while he could not exactly say he had any relatives he would like to have lynched, yet if some of them had to be lynched, he would much rather have been given some choice about it, and he felt that he had some relatives that could have been better spared in a pinch.

One of the principal things against lynching is the lack of intelligence involved in it, which, by the way, is one of the principal things wrong with any human wrongdoing. I think that there is no wrongdoing in the world in which lack of intelligence is not the basis.

There is a good deal of talk in this country at this time about unemployment, but the most serious unemployment situation anywhere in America at any time is that which exists north of the human ears. It is common all over the country at all times, and I think it is the basis of all other unemployment.

When a crime is committed in a community, it grows from bestial stupidity. When a lynching comes a little later on, it grows from exactly the same root, with a little more widespread bestial stupidity. The basis of both is exactly the same, and you can always say truthfully that where a crime is committed, that community has not improved any since the crime. The criminal spirit has merely spread a little wider, and that is all.

I do believe that this law, which I do not understand in detail—and that is not the only thing I do not understand in detail, let me say—but this law seems to me to be well-founded, because it protects the community by the hand of the Government from its bestial stupidity that may run riot and rampant in that community at any given time. In speaking of stupidity, I mean either the natural or the acquired kind.

I believe that is all I have to say at this time.

Senator VAN NUYS. Thank you very much, Mr. Gilliland. I am sure, after this long, hard, tedious day, the little note of humor you have injected into our proceeding is refreshing. I thank you for your presence here today.

**STATEMENT OF LOUIS AZRAEL, ASSOCIATE EDITOR OF THE
BALTIMORE POST**

Senator VAN NUYS. Mr. Louis Azrael, associate editor of the Baltimore Post, is the next witness.

Mr. AZRAEL. Mr. Chairman, I am sorry that after this note of humor I have to send you back to the long, hard tediousness.

I do not know anything about any lynchings except the two in Maryland. Because of my work I had to find out some little bit about those and have some contact with them. I think if the committee wanted to create two sets of conditions as a laboratory experiment to illustrate the need for Federal legislation against lynching, it could not have created two conditions which demonstrate that need more clearly than the two lynchings which have occurred in Maryland within the last 8 years.

Attention has been concentrated here, I notice, on the second lynching, the George Armwood lynching. I think the first one, the lynching of a man named Matthew Williams, in December of 1931, is also worthy of attention. The two situations were entirely different. That represented, it seems to me, one extreme in the reaction of the State to a lynching, and the other represents what I am afraid is a more normal attitude. The other extreme is the one seen in California, which is simply a human abnormality. We do not run across that sort of thing very often. The two lynchings in Maryland represented, in the first instance, pretty much an apathetic attitude. The second demonstrates a situation in which the State governor, with the best of intentions, being just as active and vigorous as he could be, was absolutely helpless to prosecute the lynchers or punish them adequately.

Now, as to the first one, a man named Matthew Williams, who had shot a white man, was hanged in the court house square in the town of Salisbury, a town of 11,000 people, on December 5, 1931, I believe it was. There were at least 2,500 spectators of that lynching. The man was dragged from a hospital, dragged down the main street of the city, hanged, taken down, and his body was again dragged through the main street of the city. Efforts were made to burn him and he was hanged again. The details are unimportant, for the purpose of this hearing.

The town and county officers took no effective action for some time. The Governor asked Attorney General Lane, who testified here this morning, to assist in the investigation. Although under the Maryland law the legal powers of the Attorney General to assist in any investigation are not well defined, he was asked to investigate. The law does not say how far he may go nor what power he has.

The grand jury did not meet until March 15. He called 128 witnesses. While, of course, I was not in the grand jury room, I know that those 128 witnesses were examined in 2 days. Seventy witnesses were called in 1 day. It could not have been anything but a perfunctory sort of proceeding. No action was taken. The State's attorney of the county said he thought the grand jury had done excellent work. Mr. Lane said he believed no comment from him was necessary. The clergymen and the newspapers in the community either said nothing at all about the lynching, or else at-

tempted to give extenuating circumstances, or mitigating circumstances, for the community.

Now, in my opinion, I think the State government did not do its full duty in that case. It did not make a vigorous effort to prosecute the lynchers. There is ample evidence in the second case of what it could have done. I think it was a kind of apathy, a question of apathy in the first lynching. The answer to a situation like that might very well be that it was the fault of the people of the State; that they ought to elect officers who would be vigorous in the discharge of their duty. That is the State's rights argument carried to what I believe to be an unreasonable extreme. The answer to that argument is very beautifully demonstrated in the second lynching. The second lynching is a perfect answer, it seems to me, to the argument that the State ought to take care of the situation.

George Armwood was lynched on October 18, 1933, in Princess Anne, Somerset County. Princess Anne is a town of about 1,000 people. Over 2,000 attended the ceremony. Some hours previously, in trying to dispel a mob which obviously threatened, Judge Duer, standing in front of the crowd, said: "I know all of you people. Why don't you go home?" He said he knew them.

The State government, after the lynching, adopted an attitude entirely different from the one it had shown a year and a half or so previously. This may have been due to a high sense of responsibility. It may have been due to the fact that in the second case the man was taken from State policemen, or rather, State policemen were guarding the jail where he was imprisoned. It may also have been due to the fact that some blame rested directly upon the Governor of our State for the situation which made the lynching possible. I mean that George Armwood, after his arrest, was removed to Baltimore for safekeeping. Subsequently he was taken out of the Baltimore jail and taken back to the Eastern Shore. There was ample warning that some trouble might be expected.

Just to illustrate that, the last edition of the paper on which I am employed comes out on the streets at 6 o'clock in the afternoon. It must be written, of course, some time before that. The last edition of that paper carried an 8-column headline saying that "Mobs are forming on the Eastern Shore and there is grave danger that a lynching will occur tonight." That must have been written before 5:30. The lynching occurred at 9:30. There was plenty of time in which to remove that man from that jail. It was not done. I have no doubt that the officers who did not remove him thought it was perfectly safe not to do so. Certainly, although the Governor had the legal power to order him removed, I have no doubt that he thought he was absolutely safe. It happened that he was wrong about that. I think if there was any possibility at all of a lynching the man should have immediately been removed. However, that point was raised, and it may have been due to that that the State government was so extremely vigorous.

Immediately after the lynching Governor Ritchie demanded that the judges and the State's attorney act. He ordered Mr. Lane to go into the situation actively. State police and city police were sent down. Mr. Lane obtained the evidence that he presented to you this morning and asked an indictment. The State administration did everything it possibly could do after the lynching. The State's

attorney of the county, Mr. Robins, refused to ask for indictments. He said that he was willing to present the testimony to the grand jury. If they wished to indict, very well.

Well, of course, it is not necessary for me to point out to you gentlemen the difference involved in those two proceedings. The testimony would have been presented to the grand jury in secret. The grand jury could very well have done what the previous grand jury did in regard to the Williams case. At any rate, the Governor, for the first time I know of, in Maryland, invoked the full power of the State. He sent the militia down. Four men were arrested. The entire section went into almost a literal revolt. They attacked the building where the men were held prisoners. They made the militia retreat with their prisoners. The four men were taken to Baltimore, and immediately a judge on the Eastern Shore issued a writ of habeas corpus, and the men were brought back there and released. Just a few weeks ago the county went through the formality of a grand jury investigation and found no evidence.

Now, the eloquent thing about this, it seems to me, is that Maryland has a population of approximately 1,600,000 people. The two counties in which the action occurred, the one county in which the lynching occurred and the other county in which the men were held for safekeeping when the militia came, have a total population of something like 55,000 people. In other words, those two counties represent something like 3½ percent of the population of Maryland, and yet Maryland was helpless to do anything about it, because Maryland could not interfere in the jurisdiction of those two counties. There could be no indictment except an indictment issued by the grand juries of those counties. That had to be the starting point of any legal action toward punishing those men.

Now, the difficulty in that is perfectly obvious. A mob action, such as lynching ordinarily involves, especially in a small rural community, must in some measure express the psychology of the vicinity at the moment. A public official who acts very vigorously in that county to prosecute and punish the people would be in danger of becoming unpopular, at least with a considerable group of his constituents. And there also arises another factor, another psychological factor. A good many people in the vicinity who may be opposed to lynching in general, and opposed to this particular lynching, after it occurred got a sort of defensive loyalty toward their neighbors. They regretted the event, but because of that defensive loyalty it is very difficult to get any prosecution in that community. I have talked to any number of people down there who said, "Well, we are sorry it happened, but it happened. Now why carry it any further? Nothing can be done about it now."

Now, I might say that the answer to that is State-wide legislation. The legislature could theoretically very easily pass an act which would permit prosecutions to originate in some other jurisdiction than the one in which the crime occurred. For instance, there might have been legislation which would have permitted the issuance of warrants or indictments in Baltimore or on the western shore of the State, in order to remove it from that psychological condition which existed in the place where the lynching occurred. That is a good theory. We need to carry that out in Maryland. We don't do it. Legislation very much like the legislation you gentleman have under

consideration was introduced in the Maryland Legislature last December. It was at a special session not called for that specific purpose, but at any rate the bill was introduced. It was not passed. It met with determined opposition of the people from the Eastern Shore and some other sections of the State.

Now, as a practical matter, I am convinced that legislation could have been passed if the full power of the State administration had been exercised to pass it, but a very practical situation existed, a situation with which perhaps I do not have to acquaint you gentlemen. The State administration had other irons in the fire. It had other legislation it wanted passed and did not want to endanger that. So we have no legislation in Maryland now which will permit the State to punish a lynching, even though the State agents act vigorously in trying to do it, so long as one isolated community or county, which may have 1 percent of the population of the State, refuses to issue an indictment.

Those two cases, it seems to me—the one in which the State administration generally was apathetic about it and the other in which the State administration acted vigorously, but was helpless—illustrate very admirably the two types of situation which I dare say arise after the great majority of lynchings, and to me, at least, point out the great desirability of some sort of Federal antilynching legislation. As to whether this bill is the proper one or not is a matter for the judgment of you gentlemen. I simply want to add my humble bit of testimony to the effect that some sort of legislation is essential.

Senator VAN NUYS. What was the alleged crime in the Williams case?

Mr. AZRAEL. The testimony in the Williams case was very definite. The man had been employed by a lumber dealer, and there was, I think, some sort of mental condition. He came to the lumber dealer's office and shot him.

Senator VAN NUYS. Was he a white or a colored man?

Mr. AZRAEL. The lumber dealer?

Senator VAN NUYS. No.

Mr. AZRAEL. Williams was colored. The man he shot was white.

Senator VAN NUYS. Did you say the State government did all it reasonably could have been asked to do in the prosecution or attempted prosecution of the lynchings in the Armwood case?

Mr. AZRAEL. I should state that the State government, as distinguished from the county government, did everything it possibly could.

Senator VAN NUYS. I would judge so from the newspaper reports. I simply wanted your opinion. I have one or two other questions.

Do you feel from your observation of these two cases that the law as it existed then, with the local sentiment as it existed then, is inadequate to prevent lynch law?

Mr. AZRAEL. Certainly the law is. I think in most cases the sentiment in the locality in which lynching occurs is such as to prevent any effective local action.

Senator VAN NUYS. So that, as to the policy of this legislation, without going into the mechanics of this particular bill, do you think it would be good public policy for the Federal Government

to enter this field and enact some sort of legislation on this subject?

Mr. AZRAEL. There is no question about it.

Senator DIETERICH. The reason that you are prevented in your State from effective prosecution of violations of the kind you have just narrated is because of the fact that the Constitution provides that no man shall be punished for a crime unless he is indicted by a grand jury, and your law gives the grand jury of the county where the crime is committed the authority to indict?

Mr. AZRAEL. That is right.

Senator DIETERICH. And no other grand jury has that authority?

Mr. AZRAEL. Exactly.

Senator DIETERICH. Unless it could be removed to a Federal court, where the Federal grand jury could indict?

Mr. AZRAEL. It is possible to pass legislation. That is not a constitutional matter. It is a practical matter. It is possible to enact legislation which will confer State-wide jurisdiction.

Senator DIETERICH. In the matter of indictment?

Mr. AZRAEL. In the matter of indictment, theoretically.

Senator DIETERICH. Who would select the county in which that indictment should be returned?

Mr. AZRAEL. Well, I don't know offhand. I daresay probably that would be left to the attorney general, the chief legal officer of the State. I never thought about that, but I should say, generally speaking, that if I were drawing such an act I would first define mob action and say that in cases in which mob action is involved the attorney general should seek an indictment, or take such action as he thinks best. That is an off-hand suggestion.

Senator DIETERICH. You would leave it to the discretion of the attorney general as to where the indictment would be found and where the accused would be prosecuted?

Mr. AZRAEL. I don't see how it can be done in any other way. There are very practical difficulties to be found in enacting such legislation.

Senator DIETERICH. It would be rather expensive, would it not?

Mr. AZRAEL. It might be very expensive, particularly in cases of that sort which involved mob action.

Senator DIETERICH. Do you think it is more practical to provide that under certain conditions it is a Federal crime for the Federal grand jury to act upon, rather than the district or county?

Mr. AZRAEL. I don't think there is any question about that. I think the proper way is to make it a Federal crime, so the Federal grand jury can act.

Senator DIETERICH. Providing the local authorities do not enforce the State law. Our State has an adequate law against crimes of that kind, but it is not properly enforced.

Mr. AZRAEL. If the laws are not properly enforced; yes. There is no question about that.

Senator DIETERICH. Have you made a study of this bill?

Mr. AZRAEL. I have read it rather hastily.

Senator DIETERICH. You are not an attorney?

Mr. AZRAEL. I happen to be an attorney, but not a good one.

Senator DIETERICH. I have never found a good one. I have even looked the Senate over.

You have made no study of the bill which you will say you feel would warrant your entering into a discussion of the details of it?

Mr. AZRAEL. I would not want to enter into such a discussion.

Senator DIETERICH. Have you made a study of section 5 of this bill.

Mr. AZRAEL. If you will tell me what section that is, I can answer you.

Senator DIETERICH. That is the section imposing a penalty of \$10,000 upon the county where an occurrence of that kind happens.

Mr. AZRAEL. We had the same provision in the bill proposed in the Maryland Legislature, except that the amount was \$5,000. What have you in mind?

Senator DIETERICH. Do you not think there should be some distinction there between officers who have neglected to do their duty, such as in the case you have cited in Maryland, and where officers were diligent in doing their duty, and without any fault on their part whatever were unable to anticipate that a mob was forming for the purpose of doing violence? Would you not make a distinction there?

Mr. AZRAEL. I certainly would, Senator.

Senator DIETERICH. You would not be in favor of levying an execution upon the property of the county to satisfy whatever penalty might attach?

Mr. AZRAEL. No.

Senator DIETERICH. You understand that you cannot levy an execution upon the property of the county? You cannot sell a courthouse to satisfy a judgment.

Mr. AZRAEL. No.

Senator DIETERICH. You would not be in favor of that provision in the bill?

Mr. AZRAEL. No; but that could be obtained by some sort of provision which would possibly suspend payment of whatever damages were involved until the next legislature authorized it to raise the money.

Senator DIETERICH. I do not want to prolong this argument, but you know that it is a matter of public policy that you cannot sell under execution the property of a county.

Mr. AZRAEL. Exactly.

Senator DIETERICH. The only remedy is to compel it by mandamus to levy a tax to satisfy a judgment.

Mr. AZRAEL. Yes, sir.

Senator DIETERICH. You would change the bill to that extent, would you?

Mr. AZRAEL. Yes; I would.

Senator VAN NUYS. Thank you very much. Is Miss Detzer present?

Mr. JAMES W. FORD. I understand that this is the final session and will close at 5 o'clock. I have come here invited to represent my organization at great expense of money and time, and demand that I be allowed to testify in the name of my organization at this hearing.

Senator VAN NUYS. I told you, Mr. Ford, that we would try to give everybody an opportunity to be heard. Here is a lady who has been here 2 days now, and I propose to hear her testimony now.

Mr. FORD. I have been here 2 days myself. The last witness has testified for nearly half an hour, and it is impossible for all these witnesses who are left to be heard.

Senator VAN NUYS. As the chairman of this committee, I am calling upon Miss Detzer at this time.

Mr. FORD. Very well. I protest the action of this committee in inviting delegates here and not allowing them to testify.

Senator VAN NUYS. There are probably 15 people who have been here 2 days. I propose to try to give every one of them an opportunity to be heard, among them yourself.

Mr. FORD. It will be impossible in half an hour to do that.

Senator VAN NUYS. We shall try.

**STATEMENT OF MISS DOROTHY DETZER, EXECUTIVE SECRETARY
WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM**

Senator VAN NUYS. Miss Detzer, you may proceed.

Miss DETZER. Mr. Chairman, I am not here as a representative of any group or any organization. I come as a citizen and native of Tennessee, a resident of Nashville, a southern woman, with generations of southern ancestry back of me. My family has served actively for the betterment of the State since its territorial days. I have lived all my life in the South. I have worked with social and educational people for 25 years, who are leaders of both races.

There is one statement I should like to make that I think has not been previously recorded. Southern womanhood has from time to time gone on record against lynching. It does not wish to be used as an excuse for or as a defense of this atrocious crime. It stands for law observance and justice. I should like to read the declaration of the Association of Southern Women for the Prevention of Lynching:

We declare lynching is an indefensible crime destructive of all principles of government, hateful and hostile to every ideal of religion and humanity, debasing and degrading to every person involved. Though lynchings are not confined to any one section of the United States, we are aroused by the record which discloses our heavy responsibility for the presence of this crime in our country. We believe that this record has been achieved because public opinion has accepted too easily the claim of lynchers and mobsters that they were acting solely in defense of womanhood. In the light of facts, women dare not longer permit the claim to pass unchallenged nor allow themselves to be the cloak behind which those bent upon personal revenge and savagery commit acts of violence and lawlessness in the name of women. We repudiate this disgraceful claim for all time. In evidence of our purpose we solemnly pledge ourselves to create a new public opinion in the South which will not condone for any reason whatever acts of mobs or lynchers. We shall teach our children at home, at school, and at church a new interpretation of law and religion; we will assist all officials to uphold their oath of office; and finally we will join with every minister; editor, school teacher, and patriotic citizen in a program of education to eradicate lynching and mobs forever from our land.

I am convinced that a Federal law would greatly strengthen the arms of justice in this country and make it easier to curb the increasing disregard for law.

I am here with a delegation of Nashville people. You already have a record of the lynchings which recently occurred in our community. Time does not permit each one of this delegation to appear

in person. I ask your indulgence that a very few of them be permitted to make brief statements.

Senator VAN NUYS. We will do all we can to give everyone an opportunity to be heard. We thank you very much.

STATEMENT OF MRS. ALVA W. TAYLOR, NASHVILLE, TENN.

Mrs. TAYLOR. I was born and reared in a strip of Texas notorious for corrupt politics and lawlessness. The Texas Rangers, who attempted to supplement the law, became themselves instruments of mob rule on many occasions. I know first-hand the decivilizing effect in a community of such mob rule, as well as the helplessness of law-abiding citizens in such times of crisis. I therefore am deeply concerned that the Costigan-Wagner antilynching bill become a law, as an ally to local forces of law and order.

During the time I was a Y.W.C.A. secretary in Mexico, I realized the need for legislation empowering Federal interference in lynchings. It was humiliating to me as an American citizen to know that my Government had sent invading forces to compel law and order in sections in Mexico, but was powerless to deal with a form of violence and lawlessness within its own borders, constituting a disgrace among the civilized nations of the world.

For several years my home has been in Nashville, Tenn. I worked there with many community groups, because I share with thousands of other mothers the desire to provide a cleaner, better moral atmosphere for the social growth of our little children. All these groups have worked for 2 months on the Cordie Cheek case, without results to date. If we had had the backing of a Federal law, such as this bill outlines, there would most certainly have been action before this.

The experience of parents throws light upon this question of State's rights. Our States have been crying like lost children in the dark for Federal comfort and guidance in these last few years of economic crisis, and at least they have been heard. But, likewise, when one of these States so loses self-control that the rights and reputation of the whole family are at stake, it is not only the prerogative of the head of the family to interfere and restore the well-being of the whole; it is a manifest duty.

Senator VAN NUYS. Thank you.

STATEMENT OF JAMES W. FORD, NEW YORK CITY, REPRESENTING THE NEGRO STRUGGLE FOR NEGRO RIGHTS

Senator VAN NUYS. If the gentleman who came up a moment ago will come forward, we will give him a little time. These ladies and gentlemen will have to wait.

State your name.

Mr. FORD. James W. Ford.

Senator VAN NUYS. Where do you live?

Mr. FORD. I represent the Legal Struggle for Negro Rights, with headquarters in New York City.

Senator VAN NUYS. Are you talking in favor of the bill or against it?

Mr. FORD. We are in favor of any antilynching legislation.

Senator VAN NUYS. Very well. You may proceed.

Mr. FORD. First, I want to raise the question and discuss it briefly, why antilynching legislation is necessary. Never before in the history of this country has the exploitation of the poorer class of people, and particularly the Negro people, been as great as it is today. Capitalism, in the course of its development, has reached a very high peak, exploiting millions and millions of people today. Twelve or more millions of working people are unemployed and without adequate relief, food, or clothing. The working people are being attacked on every hand. The living standards have been reduced more than at any time in the history of this country. Every proposition by the Government and the employing class has brought no relief from that situation. The "new deal", the National Recovery Act, all proposals of the Roosevelt administration have not relieved the economic crisis. On the contrary unemployment increases, while production decreases.

Senator DIETERICH. Just a moment, Mr. Chairman.

What has what you are saying to do with the question of trying to prevent the crime of lynching?

Mr. FORD. I was here yesterday.

Senator DIETERICH. Just a moment.

Mr. FORD. I am going to answer your question.

Senator DIETERICH. Just a moment. This is not a political forum for the making of political speeches. We are here, as I understand it, for the purpose of trying to get information as to why this bill should be passed. So far what you have said has nothing whatever to do with this bill.

Mr. FORD. In answer to your question, I am proposing to show the economic background of why lynching exists, and therefore a fundamental reason—

Senator DIETERICH (interposing). Lynching took place long before these economic conditions took place. It has not decreased since.

Mr. FORD. It had an economic background. I am trying to show the enormity of that economic background or crisis.

Senator DIETERICH. How long have you lived in New York?

Mr. FORD. I have lived in New York for 7 years.

Senator DIETERICH. Where did you live prior to that time?

Mr. FORD. Chicago, and prior to that time, in Alabama.

Senator DIETERICH. How old are you?

Mr. FORD. Forty.

Senator DIETERICH. What is your profession or occupation?

Mr. FORD. I am an organizer of the revolutionary movement.

Senator DIETERICH. To what societies do you belong?

Mr. FORD. I belong to the Communist Party of the United States, and the Legal Struggle for Negro Rights.

Senator DIETERICH. What you are saying is nothing but a statement of communistic ideas.

Mr. FORD. No. What I am saying is an economic analysis of the background of this present situation.

Senator DIETERICH. Mr. Chairman, unless he proceeds with the subject, I shall object to his being heard. It is a reflection upon the law-abiding colored people of my State for this witness to come

here and consume the time of the committee with communistic arguments, when we are trying to find a solution for a great wrong.

Senator VAN NUYS. The objection will be sustained.

Mr. FORD. Under those circumstances it is necessary that I, under protest, proceed further with my speech as outlined, in view of the fact that the chairman refuses to allow me to proceed according to my idea of the proper method.

Are we for antilynching legislation? That is, the Legal Struggle for Negro Rights. Of course we are. I want to speak on this bill in particular. Despite the fact, as I have already said, that the Government in all its arms has afforded no relief to this situation, despite all these things, I want to take up some of the fallacies of this present bill.

Senator VAN NUYS. You informed me that you were in favor of the bill.

Mr. FORD. I am in favor of it.

Senator VAN NUYS. On another occasion those who are opposed will be heard. You should come in under the other category.

Mr. FORD. Under the circumstance, I am not opposed to it, but I have certain statements to make with regard to its inadequacies and its fallacies.

Senator VAN NUYS. Proceed.

Mr. FORD. No. 1, section 1, as to the definition of the phrase, "mob or riotous assemblage." Such a definition so worded would be, in my opinion, designed to work against the working-class of people, even strikers, when it is defined as a group of three or more people. It is so worded as to legalize the murder of Negroes by landlords. For example, let us take Camp Hill, in Alabama, where an organized group of three or more would resist seizure by a landlord of their land, tools, or livestock. A lynching mob would be defined as "a mob acting in concert without of law for the purpose of doing physical injury." I am, therefore, opposed to the definition as defined in section 1 of this bill.

Section 3. By giving the Federal courts jurisdiction to place a \$5,000 fine or other punishment on officers tends to create the illusion that there is a difference between Federal courts and local courts; that the Federal courts also would not rule in the interest of the oppressor against the oppressed. I want to give you an illustration. Take the Scottsboro case. When that case was first brought before the United States Supreme Court it tried to evade a ruling on the case.

Senator DIETERICH. So far you have been against every provision of the bill. What provision do you favor? Address yourself to that.

Mr. FORD. I want to point out—

Senator DIETERICH (interposing). You said that you were in favor of the bill. You have only given us your objections.

Mr. FORD. I have listened here to people in opposition to certain sections.

Senator DIETERICH. Address yourself to those provisions of the bill you think will help eradicate the thing you are against. In the first section you say you are opposed to the definition.

Mr. FORD. I am not the only one who has opposed certain parts of the bill. I think the Attorney General of Maryland did, as well as other different witnesses.

Proceeding on this question of section 8, again referring to the Supreme Court, I am trying to point out the so-called "difference" between the local and Federal courts. I think it is necessary for you who are framing this bill to understand that if you are going to frame a bill that will be effective—

Senator DIETERICH (interposing). We are not framing the bill. We are having a hearing upon this bill.

Mr. FORD. For the purpose—

Senator DIETERICH (interposing). For the purpose of reporting on this bill.

Mr. FORD. And to enact it, possibly. Later, when the Supreme Court was forced by mass pressure to hear the appeal of the Scottsboro case, filed by the International Labor Defense, the Court evaded the issue raised by the defense of the systematic exclusion of Negroes from jury service in Jackson and other counties in Alabama.

Another example in the case now before the Federal court in Baltimore, in which an attempt is being made to disbar Bernard Ades, who will testify here today, an International Labor Defense attorney, presumably for his defense of Euel Lee, and also his militant fight against lynching in Maryland.

Another fallacy, in my opinion, of this bill is that lynching is treated as something entirely different from the general oppression of the Negro people, of which lynching is one of the most manifest.

Another fallacy of this bill is that it says nothing about lynching frame-ups, such as a court-room lynching, of which the Scottsboro case is an outstanding example.

Senator DIETERICH. What do you mean by that?

Mr. FORD. I mean such as the Scottsboro case.

Senator DIETERICH. In what way?

Mr. FORD. As an example of a lynching frame-up. Another fallacy is that there is no demand for the death penalty against lynchers. The bill provides as a substitute that the relatives of persons who have been lynched can sue for \$10,000. We have a similar law existing in West Virginia. A county was fined on account of a lynching, and the county officers simply ignored the fine and stated that there were no funds in the treasury.

We, however, are not opposed to any antilynching legislation.

Senator DIETERICH. Whom do you mean by "we"?

Mr. FORD. The Legal Struggle for Negro Rights, which I am speaking for now. On the contrary, we are for all legislation aimed to achieving civil rights for the Negro people in the abolition of lynching. This is not the first time we have come forward with such a proposition. Last year our organization proposed a bill of civil rights. It was brought here by the Scottsboro marchers. It was taken to the President of the United States, President Roosevelt, to the House, to the Senate of the Congress. This bill of civil rights not only proposed legislation, but proposed that, in order for it to be effective, a mass movement must be built around it; that it must be used as a weapon to guard citizens against lynching, which is the only

way to stop it. The bill of civil rights that we proposed does not treat lynching as an isolated phenomenon but as a part of the old system of Jim Crowism.

Senator DIETERICH. Mr. Chairman, I object to any further continuation of this testimony. It has nothing whatever to do with this bill. He says nothing pertaining to the bill. He is now expounding some philosophy in regard to another bill, which is of no value to this committee in the consideration of this bill. So far everything he has said has been against this bill. I object to any further testimony from him.

Senator VAN NUYS. The objection is sustained.

Mr. FORD. Then I will have no further time?

Senator VAN NUYS. No further time. You have done practically nothing but attempt to expound communistic philosophy.

Mr. FORD. Yesterday Mr. Walter White tried to warn you of the spread of Communism.

Senator VAN NUYS. I am chairman of this committee, and I am going to call the next witness.

STATEMENT OF JOHN KNOX, CHAPLAIN OF FISK UNIVERSITY, NASHVILLE, TENN.

Mr. Knox. Mr. Chairman and gentlemen, I speak not only as a person who lives in the South but also as a person who has always lived in the South and whose father and mother and ancestors were southerners. It is a matter of common knowledge, of course, that Negroes in the South are denied virtually all their political and legal rights, a situation that I think all of us in this room will agree is intolerable and cannot be permitted or condoned. If I know anything about the history of the human race, and have some conception of the spirit of Negro youth, I think I can say that it is a thing which cannot and will not be permanently tolerated.

There is a growing bitterness and resentment among the Negroes of the South about which everyone interested in the future of the Republic must be concerned. Lynching is the worst single feature of that whole situation. There has been much said during the course of these hearings as to its brutality and all of that, which has been gone into sufficiently here. It is also the outstanding symbol of the old system of oppression.

If I might cite a case very briefly, because I will take only a few moments, it may serve to illustrate the situation. This occurred in our own community not two blocks from my home in Nashville recently. I think it will serve to indicate why we feel there must be Federal legislation on this subject. It is the case with which perhaps you are familiar, because it had some publicity in the press.

Cordie Cheek, a colored boy 17 years old, who had been released from custody because the grand jury of Maury County, Tenn., failed to bring in an indictment, was taken from the home of his uncle, two blocks from my home, in daylight, by eight men in two cars. The cars have been identified. The numbers are known by the police, and by the prosecuting officer of the county. He was taken out and murdered in the usual bestial fashion.

Nothing has been done about that. It happened December 15. Those of us in the city who are concerned about such matters have

brought every pressure to bear upon the officers of the city and county, but nothing has been done. The local district attorney is reported, in a manner I can not doubt as being authentic, as having said publicly that he felt the lynchers did a good job and were perfectly justified in the act. Some of us who are concerned about the matter are now engaged in raising money in order to engage a special prosecutor who will impartially investigate the facts and prosecute the case if the State's attorney will give him permission to do so. That is a difficult situation.

I have lived in the South all my life, and I am quite sure that local sentiment cannot be dependent upon to prosecute lynchers. Of course, there are decent people in the South, in the ordinary sense of the term; decent white people, I mean. There are persons who would not themselves participate in a lynching party, but who are not, I think I may say from my knowledge of conditions, and I have lived in six States of the South, the sort of persons who would support the efforts of local officers in prosecuting lynching or in preventing lynching.

I am in favor of this bill. The Negro ought to be a citizen, and he is not. He is not given equal justice. The courts have fallen down, not only in respect to punishing lynchers, but they have fallen down in the matter of denying justice to the Negro, in unjust severity of sentences. I hope the Federal Government will take cognizance of that situation and provide some sort of measure and pressure upon the States that will result in preventing lynching, and, if possible, prosecuting lynchers with a view to preventing future lynching. I think it would give a little hope to many millions of people who are almost without hope, that justice will be done, that justice can be arrived at, through the development of our institutions of government, through rational processes.

Senator VAN NURS. Do you think that this bill is founded on good public policy?

Mr. KNOX. I do, indeed, every part of it. I cannot agree with those who feel that even the fine should not be imposed indiscriminately.

Senator DIETERICH. Let me understand you. You are in favor of the principle of this bill?

Mr. KNOX. Yes, sir.

Senator DIETERICH. The principle of giving the Federal authorities the power to correct abuses where they occur?

Mr. KNOX. Yes, sir.

Senator DIETERICH. And I think that is true of every one who has ever studied this crime of lynching. You say you favor each and every provision of the bill. Has your study of this bill convinced you that each and every provision of it is perfect and proper for the lawmakers to write into a bill to accomplish the object you are in favor of?

Mr. KNOX. I cannot speak as a lawyer, but the principle of imposing a fine on the county appeals to me, with all my limitations—not being a lawyer, I mean—as being thoroughly appropriate.

Senator DIETERICH. That is, a county which is negligent through its officers in failing to give the equal protection of the law to all of its citizens.

Mr. KNOX. Whether or not it is negligent.

Senator DIETERICH. As a minister, you could not be in favor of punishing those who are innocent any more than you could be in favor of lynching. You could not be in favor of a law that would inflict an unjust punishment. What you want to do is to prevent crime, give the colored man, or any man in the United States, the full protection of the law as to his life and liberty and property.

Mr. KNOX. Certainly.

Senator DIETERICH. That is what I want.

Mr. KNOX. But I am not agreeing with all your statements.

Senator DIETERICH. I am not trying to argue with you. I am in sympathy with the spirit of this bill, and I want to see a bill finally written by this Congress, whose duty it is to write a bill, that will achieve the things that you are talking about, and will correct these abuses; but I am also in favor of writing a bill, that while it will correct one evil, will not perpetrate another.

Mr. KNOX. There is a very old principle, I think, that the innocent must pay for the wrongdoing of the guilty. It is in the nature of things. I think it is true everywhere that, in the very nature of things, the good have to suffer for the wrongs of the evil.

Senator DIETERICH. Providing the good are in any way responsible. The bill seeks to prosecute those who are charged by the law with protecting people.

Mr. KNOX. The practical consideration that occurs to me is that in most southern communities, if the people as a whole were opposed to lynching, it would not happen.

Senator DIETERICH. You would not want this provision left in the bill that you could levy on the property of the county, which is held by every court in every jurisdiction to be against public policy? You would not want to sell a court house for a moving picture show, to satisfy a judgment? You would want it collected or satisfied in the ordinary process of law, would you not?

Mr. KNOX. Well, I presume so.

Senator DIETERICH. You would want that correction made in the bill?

Mr. KNOX. I don't object to any small correction. I do think the spirit of that provision is thoroughly sound and appropriate.

Senator DIETERICH. I agree with you that it is thoroughly sound and appropriate as against those who have negligently failed to protect the lives or the liberty of the people. I further agree with you that under certain conditions it would be most unjust. I am getting completely away from south of the Mason and Dixon line and confining my remarks to the Northern States, where this bill would be applied not solely to the colored people but to everybody alike.

Mr. KNOX. Of course, as to how you would feel about that would depend upon yourself. I cannot help but feel as I do as the result of my experience. [Applause.]

Senator VAN NUYS. I am very glad, after these 2 days of trying sessions, we can be as happy as we are.

I have been handed a note that says "Miss Juanita Jackson is the only Negro woman who has appeared. Will you be kind enough to hear her?" We certainly shall.

**STATEMENT OF JUANITA E. JACKSON, PRESIDENT CITY-WIDE
YOUNG PEOPLE'S FORUM, BALTIMORE, MD.**

Senator VAN NUYS. Where do you live?

Miss JACKSON. Baltimore, Md.

Senator VAN NUYS. What organization, if any, do you represent?

Miss JACKSON. The City-wide Young People's Forum.

Senator VAN NUYS. Very well. You may proceed.

Miss JACKSON. Mr. Chairman and gentlemen of the committee, I have come to you in the interest of youth, of the Negro youth, of America and especially in the interest of the young citizens of my State, the so-called "Free State of Maryland."

Recently, after a period of 20 years, during which there was no lynching to blot the record of justice in Maryland, in the short space of 2 years, on the Eastern Shore, two Negro youths were taken by mobs and horribly lynched and burned upon mere suspicion of guilt. So complete was the disregard for local law and order that in one case the victim was lynched and burned on the courthouse lawn and the other in sight of the judge's home.

In the last mentioned case, that of the Armwood lynching, there was a complete breakdown of law, and a complete overthrow of State powers. The local authorities consistently refused to make arrests of lynch suspects. The Government gets State troops to bring the lynch suspects to the Baltimore city jail. Immediately, in complete defiance of State power and control, local authorities promptly issue habeas corpus writs and the four lynch suspects are immediately taken back to a hearing in the First Judicial Court of Princess Anne, where they are dismissed on the ground of insufficient evidence.

What a complete travesty of justice; the Government and attorney general had collided with legal impossibilities. Here we are confronted with a complete paralysis of the State before mob rule.

Had there been a law such as the Costigan-Wagner antilynch bill, which provides for the prosecution in Federal courts of delinquent and negligent officers of the law, the cases would have been removed from the hands of local authorities who, with their eyes on the next election, have proved that in nearly every case they are only too willing to cover up the evidence.

The chances of securing convictions from authorities devoid of lynch patterns of thought, and having no local votes to worry about, would have been much better than they were on the Eastern Shore of Maryland, where a local State's attorney successfully defied the sovereign authority of the State of Maryland.

This case shows us that if the matter is left in the hands of local authorities, popular passion prevent effective action.

Lynching can only be reduced to the minimum when conniving officers come to know that they will be liable, not to a local court which is sure to support them, but the Federal law. Federal intervention is the only power that local communities fear. Thus the only effective force in stamping out lynching in the United States must be provided by an adequate, antilynching law.

Had there been a law such as the Costigan-Wagner bill, which provides a fine of \$5,000, or imprisonment for not more than 5 years,

or both, which throws responsibility directly on the local enforcement, punishing severely all who fail to make all diligent efforts to protect an individual against lynching.

If such had been the case—

The local State's attorney would not have evaded his duty, and would not have made a more determined effort to resist the mob or to have brought the mob members to trial.

The deputy sheriff would not have left the jail and his prisoner, from early in the afternoon until the night of the lynching, in the hands of a few troopers. What is more, he, the official jailer of Princess Anne, could not have testified under oath that he could not recognize or name a member of the mob.

The local judge would not have fulfilled his dinner engagement, and would have more quickly jailed mob members.

The Governor of the State would have been more cautious and would not have been so ready to take the word of the local authorities and would have sent down adequate military protection for the prisoner.

Obviously this bill gets at the root of the lynchings; the apathy, indifference, negligence, delinquency of officials in failing to protect the lynched victim or in failing to apprehend and convict mob members.

North Carolina has a law which provides fines against lynchers who break into jail; a loophole. The lynch gangs simply seize their victims before they are imprisoned, and thus evade the law.

Professor Chadbourn, associate professor of law, University of North Carolina, in his book *Lynching and the Law*, found through careful study that in the nine States which made provisions for the removal of peace officers who failed, the statistics show a sharp decline in lynchings, especially after an ouster.

The argument has been advanced that it is unfair to make all the taxpayers of a county bear the financial burden of a group of its members as is provided in the Costigan-Wagner antilynching bill, which stipulates that \$10,000 damages be paid to the heirs of the lynched victim, collectible by a proceeding in the nearest Federal court against the offending county.

However, I do firmly believe that if there had been a Costigan-Wagner antilynching law the people of Princess Anne, Md., who are not lynchers but who are forced to pay, would have gotten busy themselves to prevent others from lynching. Lynching will never be stopped until public opinion stops it. The respectable element in the community must be moved to action, and the facts show that such action is quicker when delay costs money. The common good demands positive action, and a negative action is deserving of a penalty. More than that, when so moved the citizenry will elect the kind of local officials who will use all their powers to prevent lynching.

A further argument has been proposed—that all communities don't need this law; that it would be all very well for certain barbaric States, but would be superfluous in enlightened commonwealths where lynching is not a habit.

But the very happenings in California; yes, in Maryland, show that no community is immune from the danger of lynching, and good citizens everywhere should be on guard against it. According

to the study of the Southern Commission on Interracial Cooperation, in 1930, 11 of the 21 lynchings took place in counties in which there had been none for 30 years.

Many of 1930's lynchings, the Commission declares, could have been easily prevented this way.

In conclusion, permit me to say that lynching is an evidence of stagnant societies, backward rural communities, illiteracy. Of course, education is needed as well as an aroused public opinion.

Certainly lynching in most cases is an evidence of poverty, of once prosperous communities that have started on the down grade. And a sharing of economic profits among all men is needed.

But lynching is something more. It is an evidence of and means that unauthorized persons have taken the law into their own hands; an evidence of mob murder; a temporary overthrow of the State as in Maryland; more than that, it is an evidence that the States, thus far, though able to deal adequately with simple murder, are unable to cope with and powerless against mob law.

Thus, a Federal antilynch law is needed to help the States cope with mob violence. It has been said that this bill infringes on State rights, is unconstitutional in that the Constitution, although it provides for the equal protection of the laws, contains no mandatory provision requiring Congress to accord that protection by legislation.

But lynching is not simple murder—it is lawlessness. The Government has assumed enormous responsibility in combating the crime of kidnaping. The pursuit of kidnapers is relentless. The percentage of convictions is rather high. And yet of all the crimes of kidnapers, gunmen, racketeers, none are worse than those of the lynchers. Indeed, of all this brand, lynchers are the most destructive of civilization. We can never hope to have a republican Government under brutal mob rule. Not only that, the failure to punish lynchers has heretofore always meant another lynching. On the Eastern Shore lawless ones know that there is no firm determination to prevent lynching. State police are too polite to shoot at would-be lynchers. State administration twice has proved completely impotent to deal with lynchers. Why, then, should they hesitate to stage another lynching? As a result, law and order degenerate. Honest men becoming disgusted, resign, leaving the Government in corrupt, lawless, brutal men's hands.

As President Wilson said in 1918:

Every one of the lynchings has been a blow at the heart of ordered law and humane justice. No man who loves America, no man who really cares for her fame and character, or is truly loyal to her institutions, can justify mob action while the courts of justice are open, and the Governments of the States and the Nation, are ready and able to do their duty.

Therefore, in the name of youth, not only black youth, but the youth of America, whom the call of justice stirs, "like the cry of bugles going by", who would gladly and with abandon fling itself into the cause of making this a better world, as it was meant to be, a land where every man, regardless of race, color, and creed can live safe, happy, and free, we urge you, therefore, gentlemen, to lend your support to the passing of the Costigan-Wagner bill.

STATEMENT OF REV. RUSSELL J. CLINCHY, 1841 IRVING STREET, WASHINGTON, D.C.

Mr. Chairman, at the meeting of the commission on missions, at Evanston, last week, the following vote was passed:

"Voted that the Commission on Missions of the Congregational and Christian Churches express its approval of the Costigan-Wagner antilynching bill now before the Senate, and that we urge its enactment into law, and that the Reverend Russell J. Clinchy, of Washington, be authorized to represent this commission at the hearing on this bill."

STATEMENT OF CONSTANCE RUMBOUGH, MEMBER OF BUREAU OF CHRISTIAN SOCIAL RELATIONS OF THE WOMAN'S MISSIONARY COUNCIL, M. E. CHURCH, SOUTH

As secretary of children's work of the Board of Missions of the Southern Methodist Church, I have been helping children to develop friendly relations with persons of various races and nations. Though interested in all peoples, as southern children, they have been particularly concerned with those closest to them—the Negroes. Through experiments in good will, they have taken a long step forward in racial cooperation and understanding.

Recent increases in lynchings threaten to destroy the effects of this constructive work. A Negro was lynched in Florida. The next morning a friend of mine, walking near the spot of the crime, met a group of boys and girls going along to school who said, "Say, Mister, did you see the big show last night? Gee, it was fun." For the sake of the children something must be done. If State laws are not effective a Federal law must take their place.

As a member of the bureau of Christian social relations of the woman's missionary council of our church, I wish to state that southern women wish men who lynch to take the responsibility upon themselves, and not make the excuse that they do it for the sake of southern white women. We are not concerned with State's rights, we want effective government.

I wish to speak also from another angle. For several years I lived in Europe and Asia. Over and over pride in my country was forced to fall before questions on lynching. When foreigners think of the United States they almost invariably think of lynching. I have here a poster from Soviet Russia which states that the lynching of Negroes, which in their opinion is the basest and most abominable form of expression of race hatred, is in the United States the highest expression of culture and Christian morals, an act pleasing in the sight of God. This is what they say happens in "the land of God Almighty, the United States of America."

STATEMENT OF L. H. WOOD, CHAIRMAN NATIONAL URBAN LEAGUE

It is the considered opinion of the executive board of the National Urban League that the most effective immediate deterrent to the crime of lynching will be the passage of the Wagner-Costigan antilynching bill.

The number of lynchings in the past quarter of a century constitutes overwhelming evidence that State authorities alone cannot eradicate this evil which is a reproach to America.

If the rule of the mob is permitted to continue to usurp the orderly process of law, then the efforts of those who are attempting to build harmonious relations between the races will become enormously handicapped and will ultimately fail.

Without mutual trust and good will interracial cooperation is impossible, and anything that tends to destroy the faith of our Negro citizens in the agencies of government must inevitably lead to increasing antagonism between the two races.

That such a condition is the result of mob rule is vividly illustrated in The Tragedy of Lynching, a study by Arthur Raper, published under the auspices of the Southern Commission on the Study of Lynching, in which Mr. Raper, after an exhaustive investigation, says: "Lynching makes a mockery of court and citizenship. The State itself has been lynched."

For 23 years the National Urban League for Social Service Among Negroes has been engaged in an effort to improve race relations in America. Administered by an interracial board it has sought to substitute the calm and rea-

soned discussion of the conference table for unrestrained emotionalism and agitation. It has eschewed violence as a method of racial betterment and has sought to integrate the Negro citizen into the life of America by raising his standards of living, reducing crime, increasing his efficiency and opportunities as a worker and building his racial pride and esteem. Throughout these years the National Urban League has been committed to the doctrine that only by interracial cooperation can the racial problems be solved.

STATEMENT OF GEORGE L. REYNOLDS, ATTORNEY, NASHVILLE, TENN.

Mr. Chairman and members of the committee, it would be presumptuous of me, after the exceedingly able and convincing arguments which have been presented to this committee, to attempt to discuss the constitutionality of the Costigan-Wagner bill.

However, there is a particularly appropriate and powerfully convincing statement relating to its constitutionality I would like to call to your attention. It is from the pen of M. Ashby Jones, a prominent southern Baptist minister for half a century, writing in the Atlanta (Ga.) Constitution. Dr. Jones is of a famous southern family, steeped in southern traditions, whose namesake, General Ashby, was a famous Confederate cavalry leader and whose father was the personal chaplain of Robert E. Lee. Dr. Jones says:

"Nothing has been more deeply disappointing to the true patriot than the sudden increase during the past year of the number and the ferocity of the mob murders in the United States. Just when we thought we had succeeded in building a wholesome public opinion against this most barbarous form of lawlessness, it has not only increased in number but spread, in its deadly social infection, over a larger area of our body politic.

"Most seriously significant, too, has been the increasing number of influential voices raised in every part of the Nation in sympathetic approval of this cowardly form of vengeance. And we must face the depressing truth that, though these crimes have been committed in the open, with literally thousands of witnesses in most cases, there has not been a single conviction. In most instances there has not been even a serious effort to bring the perpetrators to trial. In a few cases where the accused have been indicted despite the testimony of eyewitnesses who identified them, they have been quickly acquitted.

" A COMMUNITY CRIME

"The lesson which we are forced to learn is that lynching is a community crime, growing out of the local standards and the social attitudes of the community. So in a very real sense it means that the community commits the crime, and then the same community is called upon to be the judge of its own act. Of course, this does not mean that everybody in a community where a lynching takes place approves of it, but it does, with few exceptions, mean that the dominant opinion, which we call "public opinion", permits the crime to be committed. This will be all the more apparent if one will study the lynching maps, which careful students of the history of this distinctly American crime have prepared. Those dark areas which mark the repetition of mob murders through the years reveal the startling truth that here are communities where public opinion is such that a mob may do its lawless work without fear of punishment.

"It is this essentially social and local element in the lynching crime which makes it such a delicate and difficult problem to deal with. These communities which we are considering are so intensely local in their consciousness that any attempt by the people of the rest of the Nation or even the rest of the State, to criticize or even to participate in their local affairs is resented as an invasion by aliens. This man whom they have put to death without any trial is not thought of as a citizen of the United States, nor do they think of themselves as citizens of this Republic.

" RIGHTS AND OBLIGATIONS "

"Just here we face a truth which is fundamental to the solution of this problem. The man who has been done to death, in violation of the fundamental principle of Anglo-Saxon justice, was a citizen of the United States. The Government of the United States is under obligation to protect the lives of

its citizens. Under our system of democracy, we have sought to give to the people as large a measure of local selfgovernment as possible. This policy has an educational value in developing in every community a sense of political responsibility. So the function of Government is divided into State, municipal, and county governments, and the obligation of the protection of our citizens rests to a large extent upon these authorities.

"We have talked a great deal, especially in the South, about 'State rights.' We mean the right of the State to govern within certain political areas. But the right to govern carries with it the responsibility of government. The right to arraign and try a citizen accused of a crime, carries with it the sacred responsibility to see that the citizen does secure a fair trial, and is only punished by 'due process of law.' It seems to me to be ethically clear that the failure to meet the responsibility of government forfeits the right to govern. When we are talking about the rights of a State, it will be fatal if we forget the rights of the citizen. Fundamental to our American doctrine of democracy is the principle, that the State exists for the benefit of the citizen, in contrast to the soviet doctrine, that the citizen exists for the benefit of the State.

"Whenever the demand is made for a Federal law for the control of lynching, it is opposed on the ground that it is a violation of 'State rights.' When we read the long, bloody record of these mob murders, usually ignored by the State authorities, and with scarcely a conviction recorded for this revolting crime, we must raise the question, if the States have not forfeited their right of jurisdiction, by their failure to meet their responsibility of jurisdiction?"

We carry this question of responsibility further than this in our system of jurisprudence. A child is taken from the arms of its own mother, in a court of justice, when that court decides that the mother no longer justifies the trust and the responsibility of motherhood. That sacred family right, more ancient than the Constitution itself, is violated, in the name of justice, and it is the just thing to do, because in the discretion of the court, that mother is no longer capable or fit to bear the responsibility this right carries with it as a natural corollary.

So, we say the States have forfeited their right of jurisdiction by their failure to meet their responsibility of jurisdiction.

And so, gentlemen, I plead for the passage of this bill, as a southerner who has seen the results of this brutal and inhuman crime from close range in my native State of Alabama and my adopted State of Tennessee; and as an American citizen, believing in the flexibility of a Constitution which would guarantee that no citizen shall be deprived of life, liberty, or property without due process of law.

STATEMENT OF BERNARD ADES, BALTIMORE, MD., REPRESENTING THE INTERNATIONAL LABOR DEFENSE

Senator VAN NUYS. We have several other witnesses, and Senator Dieterich has kindly consented to remain.

Mr. Bernard Ades is here, and promises to take not more than 5 minutes. He may do so at this time.

State your name, residence, and whom you represent.

Mr. ADES. Bernard Ades, Baltimore, Md. I represent the International Labor Defense. I appear before you as the representative of the International Labor Defense to express to you the views of our organization on the necessity of Federal legislation guaranteeing the civil rights of national minorities, among whom are included the Negro people, and especially of Federal legislation directed against lynching. In the first place, it is necessary, to understand that lynching is the governmental policy of many States in the Union, including especially the southern agricultural States in the Black Belt whose ruling landlord-capitalist class fattens on the super-exploitation of the Negro people, but not excluding other States such as Maryland, California, and Missouri in which the Government has adopted the policy of "divide and rule"; in which

the State governments in the face of terrifically bad economic conditions are attempting to direct the anger of the working class inwardly against its own members instead of against the powers that deny them relief from unemployment and starvation. Under this policy of "divide and rule" the State of Maryland has attempted to turn the poor white farmers of the Eastern Shore against the Negroes there in order to head off and divert into "safe" channels the impatience and temper of the people.

I want to deal especially with Maryland because you had here today the Attorney General of that State, who attempted to show that lynching is not the governmental policy of Maryland and I do not want you to draw from his statements the erroneous conclusion that Federal legislation is not necessary.

Senator VAN NUYS. What do you mean by that statement?

Mr. ADES. I am afraid that you might conclude the State government was doing everything possible to avoid lynching.

Senator DIETERICH. I did not understand the attorney general to even intimate that a law of this kind would not be helpful.

Mr. ADES. He did not say it would, either.

Senator DIETERICH. He did not say it would not be.

Mr. ADES. No. That is why I am trying to make it clear.

Senator DIETERICH. I think if every public officer manifested the disposition shown by the attorney general, that evil would have probably been corrected.

Mr. ADES. But you draw that conclusion on the basis of the statement he made. I can show what his real attitude was, if you will permit me to continue.

The recent lynchings in Maryland were the result of an open policy of support of lynching by the State government. In Maryland as elsewhere, attempt at murder is a crime; but on the various occasions on which mobs, composed of and led by the best citizens of that State, attempted to lynch Negroes, the State authorities calmly ignores the demand of our organization and of others that the would-be lynchers be punished. In the case of Euel Lee, in that of George Davis, and in that of Page Jupiter, the intention of the State government to not punish lynchers was made so evident that it was quite natural that the same forces should result in the lynching of Matthew Williams and of George Armwood.

Senator VAN NUYS. What do you mean when you refer to the State government. Do you refer to the local government or to the State government?

Mr. ADES. I do not separate the county from the State, and I don't believe the Congress can.

Senator VAN NUYS. Oh, yes. It has been recognized ever since 1787, when the Constitution was adopted.

Mr. ADES. In any event, in the case of George Armwood, as I will proceed to show, there were definite duties on the part of State officers as distinguished from county officers.

Senator VAN NUYS. That has nothing to do with the merits of his bill. You told me you were going to speak on the merits of this bill and in favor of it. Is that correct?

Mr. ADES. I thought I was.

Senator VAN NUYS. I do not think so. It has been nothing but criticism.

Mr. ADES. I am trying to show you that it is necessary to pass Federal legislation on the question of lynching.

Senator VAN NUYS. Can you not tell us that without reading that document?

Mr. ADES. I have gone through one third of it already.

Senator VAN NUYS. I do not care about that. What do you have to suggest?

Mr. ADES. Of course, it is quite possible for you to shut me up.

Senator VAN NUYS. I do not want to shut anyone up. This committee has gone without lunch on 2 days in order to attend to duties on the floor of the Senate, and trying to be kind and courteous to everybody.

Mr. ADES. If you will explain what you object to, I will try to conform to your desires.

Senator VAN NUYS. Did you prepare that paper yourself?

Mr. ADES. Yes.

Senator VAN NUYS. Then, can you not tell us briefly what it is, or put it in the record.

Mr. ADES. If you object to my reading it, I can. I would like to have the same privilege that others have had.

Senator VAN NUYS. All right. If you insist, you may read it.

Mr. ADES. The lynching of George Armwood is typical. He was arrested as a result of a quarrel with a Mrs. Denston which occurred in the presence of his white employer named Richardson. Both Armwood and Richardson were arrested. The only suggestion of any crime was the allegation that Armwood, during the argument and in the presence of Richardson had struck Mrs. Denston. Armwood was lodged in the Baltimore City jail and then, at a time when there was no possible excuse for taking him back to the Eastern Shore, when neither his arraignment nor his trial was yet in order, a plan was made to take him back and lynch him. Governor Ritchie was notified of what was to take place and refused to interfere.

Senator DIETERICH. You are making that accusation against the Governor of a sovereign State.

Mr. ADES. Yes, sir.

Senator DIETERICH. You say he was notified and refused to interfere?

Mr. ADES. Yes.

Senator DIETERICH. What evidence have you of that?

Mr. ADES. Mr. Milligan of the Baltimore Post, the superior officer of Mr. Louis Azrael, who appeared here today—

Senator DIETERICH (interposing). What is that organization?

Mr. ADES. A Scripps-Howard newspaper. He called up the Governor twice and told him what was going to happen.

Senator DIETERICH. Were you present when he called him up?

Mr. ADES. If you will let me finish—he told the Governor about that, and he denied it, and Mr. Milligan published the entire conversation between himself and the Governor on the front page of the Post, and Governor Ritchie has never denied it.

After the lynching Governor Ritchie first laid the blame for it on Judge Duer and then put the investigation of it into the hands of Judge Duer. Later Attorney General Lane was ordered to investigate and after many delays a company of militia was sent to Salis-

bury and arrested four lynchers. The prisoners were lodged in the Baltimore city jail as the honored guests of the warden, eating at his table and receiving the sympathy of that government official. The next day, on a writ of habeas corpus, Judge Duer, the trusted agent of Governor Ritchie, released the men because the attorney general, Mr. Lane, did not appear with his evidence. Now the whole affair is officially closed and State officials have openly stated that lynching is necessary to protect Maryland women.

It may be that the attorney general is quite correct when he says that an indictment of the lynchers could be obtained in the Eastern Shore counties. But what the attorney general has carefully omitted to say, both here and elsewhere, is that under the constitution of Maryland the house of delegates of the general assembly constitutes the grand inquest for the State of Maryland and when it was recently in session all of our demands that the Governor and the attorney general present their evidence to that body were ignored. Moreover, by the Maryland constitution, the trial of the lynchers need not have been on the Eastern Shore, the State being entitled as a matter of absolute right, to a removal of the case.

Senator VAN NUYS. What has that to do with the merits of this bill?

Mr. ADES. I want to show you that under the Maryland law it is impossible to stop lynching, and it is necessary to enact Federal legislation.

Senator VAN NUYS. Are you in favor of the passage of this bill?

Mr. ADES. I certainly am.

Senator VAN NUYS. Why do you not introduce evidence?

Mr. ADES. Why don't you ask me to say yes or no, and settle it that way? You have consumed 2 days in having persons give reasons why it is necessary.

Senator DIETERICH. Are you in law practice?

Mr. ADES. Yes, sir.

Senator VAN NUYS. How long have you been so engaged?

Mr. ADES. Ten years.

Senator DIETERICH. From where did you come to Baltimore? Where did you originally live?

Mr. ADES. I was born in Baltimore.

Senator DIETERICH. You are in the law practice there?

Mr. ADES. Yes.

Senator DIETERICH. What is the nature of your practice?

Mr. ADES. Law practice.

Senator DIETERICH. What is this International Labor Defense?

Mr. ADES. The International Labor Defense is an organization of some hundreds of thousands of white and Negro people in the United States, whose purpose it is to aid the families of prisoners, as well as the prisoners themselves, and generally the working-class people.

Senator DIETERICH. Has it any relation to communistic organizations?

Mr. ADES. No other relation except that some of the members of the International Labor Defense, as myself, for instance, are Communists.

Senator DIETERICH. You are a Communist?

Mr. ADES. Yes.

Senator DIETERICH. And you have come here to utter a libel against the Governor and the officers of the State of Maryland?

Mr. ADES. I think the evidence shows what I say is true.

Senator DIETERICH. Under the guise that you are trying to support this bill?

Mr. ADES. I am for this bill.

Senator DIETERICH. Mr. Chairman, I object to any further consideration of the testimony of this witness.

Senator VAN NUYS. The objection is sustained.

Senator DIETERICH. It is not relevant.

Mr. ADES. May I file this with the secretary?

Senator VAN NUYS. You may.

Senator DIETERICH. It is an insult to the law-abiding colored citizens of my State to have a Communist inject himself into this, because they are law-abiding and decent. Some of them are representatives in the State legislature, and one of them is in Congress. There are no Communists among them.

Mr. ADES. I would consider that to be rather unfortunate. [Laughter.]

Senator DIETERICH. Is that the feeling of the community here?

Senator VAN NUYS. You represented to me, sir, when I gave you an opportunity to be heard and tried to be fair with you, that you wanted to discuss the merits of this bill, and that you are in favor of it.

Mr. ADES. I wanted to give the reasons.

Senator VAN NUYS. Instead of doing that, you have crashed the gate and endeavored to disseminate communistic propaganda.

Mr. ADES. May I file this for the record?

Senator VAN NUYS. You may.

Senator DIETERICH. Just put in the record what he read, and file the rest with the committee.

(The document, a portion of which was read by Mr. ADES, was filed with the committee.)

STATEMENT OF MRS. MARY H. SHARPE, NASHVILLE, TENN.

Mrs. SHARPE. Honorable Chairman and Honorable Senators of the committee, I am from an old southern family; for five generations we have lived in Tennessee.

My grandfather owned many slaves. Some of the descendents of those slaves were in the family as I grew into womanhood. From babyhood I gave them my love and they would have protected my life by the giving of their own had that been necessary. Can I now let one of their race be murdered and do nothing about it?

Yet that is happening today. As an uncouth man expressed it, "When a Negro looks guilty or we 'spect he committed a crime, tie him up, I'll put the string or fill him with lead."

Nashville, noted for its charms and beauty, is being dragged into the mire, because we, who represent the thoughtful group, the religious group, have allowed the dregs of our South to rule for us.

No longer is that to be true. I consider it a privileged opportunity to come before you, gentlemen, to plead for this bill. So strongly do I feel it, I have traveled many miles through snow and

ice to say to you for the women of the South, we are irked by all this talk of States' rights. What about States' wrongs?

Prejudice is too strong locally to deal with lynching. That is why we need a Federal law. We, as southern women, want the protection of the courts.

We ask for the rights of all citizens regardless of race or color. No longer will we stand for this crime taking the beauty from our social system. We have regard, as did Christ, for the sacredness of personality.

As a southern woman, I plead for the safety of our people. We have large groups in Nashville, both colored and white, as represented in schools and colleges. I urge this blot of lynching be removed from their midst.

Make this Costigan-Wagner bill into a law. We stand unitedly for justice and mercy, but justice as represented by law and order—not the perverted justice of the disorganized emotions of a mob.

Gentlemen, this bill must pass!

STATEMENT OF HARVEY KESTEN, NASHVILLE, TENN.

Mr. KESTEN. Mr. Chairman and gentlemen of the committee: As a southerner, I am particularly and profoundly concerned over the Costigan-Wagner Federal antilynching bill. I favor the passage of this bill, in the first place, because I am convinced that it will have an immense influence in curbing lynching. Such a bill will serve as a restraining influence and act as a deterrent upon those who resort to lynching instead of allowing the law to take its course.

In the second place, I favor this bill, because I am desirous of seeing some authority established which will bring to a speedy end the brutalizing influences and effects of lynching upon our people. Lynching is a brutalizing influence not only upon those who participate in the actual crime but upon the whole people. It brings to the surface and gives vent to all of the savagery of the human; it stultifies and destroys the finer sensibilities and feelings and makes it easier for the participant to yield to his baser impulses. Lynching creates fear, mistrust, and suspicion; it makes for bitterness and contempt; it broadens the chasm separating the Negro from the white man; it creates social forces upon which no government can stand.

In the third place, I favor this bill because it offers protection to the most exploited and oppressed, the least privileged and protected body of our citizenry, the American Negro, who is most frequently subject to lynching. I have the privilege of claiming the friendship of scores of Negroes and through them I have come to know something of the fear and terror through which they live because of the ever-present menace of lynching. No Negro, whether he be illiterate or highly cultured is safe from this menace. While a responsible American citizen he is denied the protection given the main body of our people. It is desirable and necessary that steps be taken to give adequate protection to the Negro.

I am in favor of this bill in the fourth place, because it voices the mind and heart of a new generation of white men and women in the South. We abhor and detest lynching. We believe that the

Negro is not only a citizen who is entitled to full and complete protection of the law and all other rights and privileges open to all citizens but a brother who should share the same benefits and privileges that we share.

Finally, I favor this bill because I am an American concerned about the welfare of our entire people and the attitude of other nations toward them. Some of my fellow citizens will oppose this bill on the ground that it violates State rights. I believe that human rights are above State rights and that every citizen is fully entitled to life, liberty, and the pursuit of happiness.

STATEMENT OF CLARENCE MITCHELL, BALTIMORE, MD., AFRO-AMERICAN NEWSPAPER

Mr. MITCHELL. The mob action on the Eastern Shore of Maryland gave evidence of a breakdown in law and order for many reasons.

On our arrival we found that none of the officers were on the street, although feeling was still running high against colored people in general if tenor of conversation is a just indication.

One of the State policemen actually said, "We weren't going to kill anybody for the carelessness of officials who permitted Armwood to be brought back here." Lt. Ruxton K. Ridgely declared also that he made no attempts to use his pistol and would not permit any of his men to do so.

The common gossip of the town was that Sheriff Daugherty had surrendered the keys to the cell in which Armwood was locked.

Directly after the victim had been lynched John M. Dennis, a local undertaker, was called by a civil officer and asked to remove the body. The officer declared that he would promise the undertaker protection, but the latter refused, and the naked body was tossed into a lumberyard where it remained until near noon the next day.

Evidence of severe and brutal treatment was not wanting. The face had been battered beyond recognition, and severe heat, as is usually associated with the burning of highly volatile substance, had caused the outer layer of his skin to be charred and broken in many places.

No extra precautions were taken to prevent the curious persons from looking at the body and from sunrise until the time of its impromptu burial the corpse of George Armwood was the object of the entire town's attention.

The main street of the town was crowded all day following the lynching, and many versions of it were openly discussed by spectators. Some described how the leaders of the mob helped to drag the body through the streets. Others forcefully insisted that Armwood had gotten what he deserved.

Since that time Sheriff Luther C. Daugherty and John N. Robins, State's attorney, have been heard to admit additional information at the circuit court of Baltimore before Judge Eugene O'Dunne.

John Richardson, white, accused of harboring Armwood and, incarcerated in the Baltimore jail, applied for a writ of habeas corpus. At the hearing Mr. Robins stated that he felt the community was not a safe place to have Richardson return to.

Sheriff Daugherty admitted that he was standing in front of the jail when the mob came for Armwood. He stated that he saw them trying to batter down the door and seized one end of a beam that was no longer than 20 feet but could not recognize any of the men who were holding it at the other end and in the middle.

He also insisted that other members of the mob filed by him as they were going for Armwood and although he counted nearly 75 persons he did not recognize any of these.

He, along with Mr. Robins, insisted that it was unsafe for Richardson to return to the shore and stated that while he would give the man as much protection as he possibly could, he was sure that anyone connected with the crime might be in danger of mob violence because the feeling was still running high (a month later) about the crime.

STATEMENT OF ELMER A. CARTER, REPRESENTING THE NATIONAL URBAN LEAGUE

Mr. CARTER. America is the only civilized Nation which tolerates lynching. It occurs in no other country save as a concomitant of insurrection or civil war.

Its persistence in America can be ascribed in part to the failure of the Federal Government to make it a Federal crime, which in truth it is. For mob law, and that is what lynching is essentially, is an attack on those institutions which have been created for the purpose of guaranteeing the continued development of the citizenry and the communities of which they are a part. It is the usurpation of the prerogatives of the State by irresponsible and destructive elements of the population.

Lynching defended originally as a means of protection to womanhood—a fallacious assumption—has served neither to reduce crimes against women nor to inspire respect for the law. Repudiated by the leading women of the South, denounced by the respectable press, condemned by State officials, it nevertheless continues in defiance of every single force that has thus far been brought to bear upon it. It has become naturally enough the instrument by which the Negro in the South in many instances is exploited as a worker, disfranchised as a citizen, and degraded as a man.

Negroes have been lynched for bringing suit in the courts against white men, for seeking employment in a restaurant, for jumping a labor contract, for trying to act like a white man—whatever that may imply.

So completely has mob law become the law of the land that even in the cases where actual lynching has not been consummated, the courts in many instances have made virtual promises that the prisoner would receive the death penalty. And legal lynching in which State courts and officials have been participants is not uncommon phenomena.

Authentic observers are convinced that the situation is one which calls for a drastic remedy. The economic depression and the industrial collapse have intensified economic competition, and the possibility of latent racial antagonisms becoming open conflict is not as remote as some would have us believe. In the cities there are thous-

ands of unemployed of both races—resentful, brooding, and discontented. On the roads, according to competent observers, are hundreds and thousands of Negro farmers, former share croppers, now dispossessed by the reduction in acreage of cotton, tobacco, peanuts, and so forth, like refugees from a beleaguered city moving from place to place.

Add to this the displacement of Negroes by white in various occupations as a result of the Recovery Act codes and the widespread discrimination in relief administration which has been and still is being practiced in some sections of the country, and one need not be an alarmist to be apprehensive of the future with unchecked mob law, the accepted procedure of justice when Negroes are accused of crime.

Negro leaders, always counsellors of faith in the better class of white citizens, find themselves in a dilemma since the better class of citizens have proven of little avail once the mob law goes into action. Moreover, often by their silence the irresponsibles who compose the mob are accorded sanction.

It has come, then, to the point where if Federal action fails, Negro leaders may be compelled, by the logic of events, to advise the Negro to provide himself with a measure of that protection which the State and the Nation deny him.

Experience, however, has shown that law is not directed alone against the Negroes. Yesterday a Negro was lynched in Indiana, today white youths in California, tomorrow it may be a Yankee recreant to his trust. Who knows?

Nothing has evoked so much contempt of America and the ideals which it is eager to foist on other people as the barbarious spectacles in which it so frequently indulges. To Americans abroad they are a source of humiliation and shame.

Pearl S. Buck, distinguished American novelist, Pulitzer prize winner, author of *The Good Earth*, *Sons and the Mother*, in the course of an article in the March issue of *Opportunity*, journal of Negro life, says:

I shall not be proud again until my countrymen make lynching a major crime. For to break the laws of justice, not only to single being but to all human beings, is infinitely worse than the killing of one man by another because it is the murder of one by many, and we are all implicated inextricably in such a crime. I feel myself shamefully implicated, sitting here at my desk in my quiet home, pausing to look over peaceful Chinese fields and hills. I am degraded.

STATEMENT OF JOHN O. SPENCER, PRESIDENT OF MORGAN COLLEGE, BALTIMORE, MD.

Mr. SPENCER. Mr. Chairman and gentlemen, I represent the Maryland Interracial Commission, composed of white and colored members, appointed by the Governor of Maryland under act of the legislature, so far as I know the only institution of similar kind in the United States. I wish to present a very brief statement of the attitude of this commission.

Senator VAN NUYS. Very well.

Mr. SPENCER. This commission desires to go on record in favor of the Costigan-Wagner bill (S. 1978), and to request that the bill be passed substantially as written.

This commission believes that more crime is no remedy for crime; that more injustice is no remedy for injustice.

This commission is confident that the committee to which this bill is entrusted will recommend its passage and in so doing will deal a death blow to the horrible practice of lynching.

STATEMENT OF REV. SAMUEL McCREA CAVERT, GENERAL SECRETARY FEDERAL COUNCIL OF THE CHURCHES OF CHRIST IN AMERICA

Mr. CAVERT. I represent the Federal Council of the Churches of Christ in America, an interdenominational body made up of 25 national denominations.

For many years the Federal Council of Churches has been carrying on an educational effort directed to bringing the influence of the churches to bear upon the eradication of the lynching evil. This educational effort has been under the direction of the council's department of race relations, but the council as a whole has again and again given voice to its deep conviction that the prevalence of lynching in the United States is a black stain upon a civilization that is called "Christian." At almost every quadrennial meeting of the council, made up of about 400 delegated representatives of the constituent denominations, strong protest has been made against the continuance of the lynching evil, and the churches have been urged both to educate their own members in respect for law and also to interest themselves in securing adequate legislation for the protection of all people from lynching mobs.

For the past 11 years the Federal Council of Churches has published an annual roll of honor of those States which during 12 months were free from the lynching evil. We have been appalled to discover, as a result of watching the record of the various States year by year, how wide-spread the evil is. So far as we can learn, there are only five States which have no lynching record. During the year 1933 the lynching evil spread to the territory of a larger number of States than in any of the 11 years since the honor roll was instituted.

Equally appalling is the fact that in spite of the thousands of people who have participated in lynchings, the number of those who have been convicted for the crime is negligible. Although there have been 1,880 recorded lynchings between 1900 and 1930, there have been only 12 known cases in which convictions have been secured. It seems too self-evident to require argument that local and State authorities in all parts of the country have proven themselves ineffective in handling the lynching problems.

Such conditions as these have gradually come to be recognized by the thoughtful leadership of the churches and have led to outspoken statements by many different church bodies and in many parts of the country. A few of these, gathered from a far greater number that might be cited, are as follows:

The board of bishops of the Methodist Episcopal Church South as long ago as 1922 declared:

We especially urge that everything possible be done to prevent lynchings. * * * This crime of crimes, which is not only a complete subversion

of law but a stroke at the very life of law itself, has discredited our Nation in the eyes of other civilized nations and brought undying obloquy upon many of the States of the Union.

The Washington Conference of the Methodist Episcopal Church declared:

As representatives of the Christian Church, which stands for law and order, we urge those who are intrusted with the administration of civil government to search for and bring to justice those persons who are responsible for this outrageous assault on society and good government.

The North Carolina Baptist convention, 1930, pledged itself to "support vigorous measures to blot out forever the curse of lynching from our midst."

The general convention of the Protestant Episcopal Church has declared that "mob violence in every form is wrong" and that "it is a clearly defined and imperative Christian duty to sustain the civil authorities in the righteous exercise of their powers in seeing that even-handed justice is unfailingly administered according to due and lawful processes."

The Northern Baptist convention in 1922, after deploring the lawlessness of lynching and mob violence, declared that "legislation is needed to remedy these conditions."

The Southern Baptist convention made the following official declaration:

* * * Never should we be content until every vestige of this barbarity (lynching) is eradicated and every individual, black and white alike, has secured to him the right of life, liberty, and the pursuit of happiness, unless and until deprived of it by due process of law administered by public officers, backed by public sentiment and held responsible to public sentiment for the faithful discharge of their duty.

The general staff of the board of Christian education of the Methodist Episcopal Church, South, at a meeting in 1933, after noting the increasing number of lynchings, said:

We urge officials, both Federal, State, and county, to use their utmost power to prevent lynchings throughout the Nation and to mete out prompt and adequate punishment to those who may be convicted of this crime.

The commission on missions of the General Council of the Congregational and Christian Churches at a meeting within the past month adopted a resolution approving the Costigan-Wagner antilynching bill.

One of the most recent and at the same time most significant statements from a ministerial group is that of the Ministerial Alliance of Nashville, Tenn., which on February 1, 1934, gave their endorsement to the Costigan-Wagner bill. This action was taken at a meeting called for the specific purpose of considering the bill and after copies of the measure had been sent to every minister a week in advance.

Jewish as well as Christian groups have gone on record as convinced that further legal measures are necessary. The Central Conference of American Rabbis at three different meetings declared that "Federal legislation against lynching is needed."

In the light of such widespread evidence of the aroused sentiment of the churches against lynching, the executive committee of the Federal Council of Churches made up of the representatives of 25 Protestant denominations, has again and again addressed messages

to its constituency and made public statements concerning the necessity for a more vigorous and effective effort to prevent lynchings and to punish lynchers. The most recent of these actions of the executive committee of this interdenominational body adopted last December, is in part as follows:

We, the executive committee of the Federal Council of Churches of Christ in America, endorse the statement on lynching in the recent address of the President of the United States and again call our people to penitence for this national sin.

* * * We call this situation to the attention of our constituent members and urge upon them (1) that they give renewed emphasis to all work in religious education that builds up those inner moral controls which alone assure liberty under the law; and (2) that careful study and consideration be given by them to the question of legislation by the Federal Government to enforce law and order in the communities where the local authorities cannot or will not uphold the law.

Subsequent to this action by the Federal Council's executive committee, the Costigan-Wagner bill has been introduced into Congress. The executive committee of the council has not officially dealt with this particular proposal, but it is strongly and unequivocally on record as believing that more adequate and effective dealing with the lynching evil is necessary if that which President Roosevelt has described as "that vile form of collective murder" is to be dealt with in a way that can satisfy an aroused Christian conscience.

STATEMENT OF ELIZABETH S. HARRINGTON, NATIONAL STUDENT COUNCIL, NEW YORK CITY, N.Y.

Miss HARRINGTON. It is my privilege as a representative of the executive committee of the National Student Council of the Y.W.C.A. to speak in behalf of the Costigan-Wagner antilynching bill.

Our executive committee is composed of students from all sections of the country—from California, Washington, Colorado, Texas, Wisconsin, West Virginia, Maine, North Carolina, and Georgia. In their annual meeting during the recent Christmas holidays the members of this committee endorsed this bill, because it seemed a concrete way for them to do something about the problem of mob violence which concerns them so deeply. The committee also voted that an educational program be conducted among the membership of our movement in order to stimulate study and discussion of the problem of lynching and particularly the method of attack on this problem as proposed by the Costigan-Wagner bill. Letters have come to us from all parts of the country expressing approval of the action of the executive committee and stating that this bill has been studied and endorsed by large groups of students and in some cases by members of the faculty as well.

It is significant that the chief concern for the enactment of this bill into law has been manifested in student groups in the Far West and in the South. One faculty person from Kentucky, a member of the Southern Regional Council of the Y.W.C.A., says:

I am entirely out of sympathy with the group of southern women who maintain that Federal legislation will lessen the chances for better control State by State.

A student group in a white college in Virginia expressed their conviction as follows:

As lynching is a violation of all the principles of our social and political system, violating all justice and order; as it is contradictory to all humanitarian principles; as it is no longer a sectional problem, but a national one as well; as it is a crime not only of ignorant and irresponsible mobs, but of every citizen who condones it, if only by his silence; as all this is true, we wish to pledge our support to any law or force which will bring this brutal practice to an end.

We believe that a Federal law against lynching is necessary to abolition for these reasons: 1. State and local forces have proved themselves unable to stop mobs bent on lynching, as shown in Maryland recently; (2) State officers, because of a perverted idea of justice, allow lynching without any intervention at all, as shown in the San Jose case in California; (3) during the agitation for anti-lynching legislation in 1922 lynchings decreased from 61 in that year to 28 in 1923, partial evidence of the weight Federal laws carry with the people. Because we believe that a Federal antilynching law is absolutely necessary, we sincerely wish that the antilynching bill about to come before the Senate shall become a Federal law.

From the extreme tip of southern Georgia comes this message from a group of white students:

As members of the Y.W.C.A. we wish to endorse the Costigan-Wagner anti-lynching bill. From our small student body, we have sent 20 letters to President Roosevelt urging his support of this measure.

Another group of Georgia students send this telegram:

Costigan antilynching bill endorsed by white students for handling lynching.

Still another group of white students in the same State say:

As future voters we thoroughly endorse the Costigan antilynching bill.

From California comes this word:

We have already sent some dozen letters to our Senators urging their support of this antilynching bill. At a conference of our 75 southern students on Saturday, February 10, the following resolution was passed:

"We wish to go on record as opposing mob violence and to endorse any measure which will help to blot out this social evil. We pledge ourselves to a serious study of the problem of lynching and particularly of the Costigan-Wagner antilynching bill."

Now, why is it that students in the Far West and in the South are so deeply concerned about this matter? I think I know the answer. I was born, reared, and educated in the State of Mississippi. For 4 years I worked with the students in an educational institution in my native State. Since that time I have worked with students in 10 Southern States, from Virginia through Louisiana.

Lynching is something that southern students know about; something that they have heard discussed since their childhood. There are few students in the South who have not lived in a vicinity where lynching has not been, and perhaps still is, a part of the talk of the town. Some of the members of our student movement have actually seen lynchings. It is from these experiences that they have come to know something of the tragic nature of lynchings. And more and more they are beginning to feel that part of the responsibility lies on them.

I do not contend for one moment that every southern student shares this conviction. But I am representative of a part of the younger South, and members of my generation, and even "the younger generation" are coming to feel that our section of the country as well as the entire Nation must rid itself of this evil. The part of the South which I represent feels very differently about such matters from many of the members of the older generation. Some of us do not share their prejudices or their fears. Rather we look hopefully to that day when our beloved Southland will erase from its life and thought such injustices as have been a part of our past.

And why are we of the student movement of the Y.W.C.A. interested in this bill? Because we know that lynching has now become a national issue. It is no longer peculiar to any one section of our country. Therefore it requires Federal control and responsibility.

It is an addition to, rather than a substitution for, a State law. It provides for cooperation between State and Federal agencies.

It will be an effective stimulus to those educational processes which are already at work among such groups as the students' movement of the Y.W.C.A.

It is one very good method of attack upon the problem of lynching that ought to be used.

The students for whom I speak strongly believe that Federal legislation is necessary in the eradication of mob violence. Southern students join with those of the East, the North, and the West to bring you their endorsement of this measure.

STATEMENT OF MRS. INA CORINNE BROWN, NASHVILLE, TENN.

Mrs. Brown. Lynching and mob violence have grown to such proportions that these evils must become the concern of the entire Nation. Federal legislation is not only desirable but is necessary for the following reasons:

1. Lynching is a national rather than a sectional problem. While the majority of cases occur in the South, few States in the Nation have escaped the evil. There has been an alarming spread to East and West during the past year.

2. Lynching is not only in violation of the rights of the victim involved but, since the majority of the persons lynched are Negroes, mob violence tends to create a sense of insecurity and a distrust of the power of the law on the part of the entire Negro population. It is needless to point out the grave concern a Nation must feel when a large element of her population can find no sense of security or faith in justice through legal means.

3. The inevitable effect of unpunished mob violence is to create a contempt for law and to lessen respect for human life. Mob violence tolerated in any section of the country permeates our national life as a poison and lessens respect for law throughout the Nation.

4. The prestige of the United States in the eyes of the world is seriously affected by our lynching record. Persons in other countries do not use such a nice word as lynching; we are referred to in the foreign press as "the only civilized Nation in the world which still burns persons at the stake." The record is made still blacker

by the fact that the victim is sometimes innocent, and that the brutal killing is done without process of law. Surely it is the concern of the Federal Government to aid in removing this stain from our country's record.

5. Individual States have found themselves unable to cope with the lynching problem. The nature of mob violence makes peculiarly difficult the conviction and punishment of the participants by local courts. Because of the number of persons involved, a lynching sometimes becomes something of a community crime, and the community cannot be expected to punish itself. The emotional element inherent in mob action produces a situation similar to war hysteria. After the crime is committed the community seeks to protect itself from outside criticism and thus tends to become a defensive unit. Even the more thoughtful members of the community who deplore lynchings are tempted to think that since the deed is already done the sooner forgotten the better. Local officers of the law are often in sympathy with the mob or else they do not dare make arrests.

Since there is involved in the lynching question the responsibility of a government for justice for all of its citizens, the danger to the entire Nation when law is flouted, and the honor and prestige of the United States in the eyes of the world, and since the several States have found themselves unable to handle the problem alone, it is my conviction that the Federal Government should enact legislation based on the following principles:

1. That States or counties should be given opportunity to act. The Federal law should operate only when local law enforcement fails.

2. Since lynching is a community crime the burden of prevention or the punishment when the crime has been committed should be shared by the whole community.

3. Local officers of the law should be held accountable for the protection of prisoners and should be penalized for failure to give such protection.

4. Since the result desired from legislation is the prevention of mob violence, the nature of the Federal law should be primarily preventive rather than punitive in its effect; that is the punishment for lynching should be such that it will be to the interest of local officers of the law and of the entire community so to restrain its lawless members as to prevent the occurrence of a lynching.

It is my judgment that the Costigan-Wagner bill embodies these principles.

As a Southern-born woman I feel a peculiar sense of responsibility in urging the passage of this bill. One of the excuses most often made as a defense of lynching is that it is necessary for the protection of the white women of the South. I join with a multitude of other Southern women in stating that in very few cases is a crime against women even suspected; that Southern women look to the law and not to the mob for their protection; and, moreover, that we are concerned with the protection of all womanhood and of all homes, regardless of race. We believe that such protection comes through the upholding of law and that mob violence is its gravest enemy.

Senator VAN NURS. The committee is in possession of a large number of messages and resolutions which may be printed in the

record at this point. The subcommittee will now recess, subject to the call of the Chair.

FRIENDS MEETING, Washington, D.C.

The Friends' Peace Committee, representing the three meetings of the Society of Friends in Washington, D.C., with members residing in Virginia and Maryland and other States, desires to record with this committee its hearty approval of the Costigan-Wagner antilynching bill, S. 1078.

The Society of Friends is traditionally opposed to all forms of violence. It deploras that form of violence so peculiar to our own country—mob lynchings—through which over 4,000 of our fellow citizens have lost their lives. Friends have experienced with grave concern the recent increase in these lynchings. We believe the Federal Government is warranted in combating such mob action with law.

We urge the favorable consideration by your committee of this bill. We earnestly hope that Congress will pass it.

Signed on behalf of the Friends' Peace Committee,

MAYNARD E. JONES, *Secretary.*

[Telegram]

PAST PROVIDENCE, R.I., February 20, 1934.

WALTER WHITE:

The Rhode Island Federation of Colored Women's Clubs endorse and favor the passage of the Costigan-Wagner antilynching bill, S. 1078.

HENRIETTA ARMSTRONG,

Chairman of Legislative Department.

FLORENCE V. LOPEZ,

President of Federation.

STATEMENT BY JOHN NEVIN SAYRE, EXECUTIVE SECRETARY, THE FELLOWSHIP OF RECONCILIATION

The Fellowship of Reconciliation, with more than 8,000 members in Northern and Southern States throughout the Union, is completely opposed to lynching under any circumstances whatever. I believe that our members will generally favor the provisions of the Costigan-Wagner Bill which aims to prevent lynchings by fixing responsibility upon State and local authorities for the diligent protection of all individuals threatened with injury or death by mob or riotous assemblage.

It accords with the spirit of American institutions that appeal can be taken from a local breakdown of justice to higher courts of the Nation. And, also, the good name of America in foreign countries is involved by the shame of a local lynching.

I especially approve of the proposal which obliges a county in which a lynching occurs, to pay \$10,000 to the family of the person lynched.

I urge that the Costigan-Wagner Bill be enacted into law at the present session of Congress.

STATEMENT BY JAMES WELDON JOHNSON, FORMER SECRETARY, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, PROFESSOR, FISK UNIVERSITY, NASHVILLE, TENN.

There can be no question in the minds of all thoughtful citizens that something must be done to curb the crime of lynching, to secure due process of law for all persons accused of crime, and to rid America of its great national shame. This, it is clear, cannot be done except through Federal action. It is a task that the States cannot accomplish alone.

It is true that lynching is murder, but it is also more than murder. In lynching, the mob sets itself up in place of the State and acts in place of due process of law to mete out death as a punishment to a person accused of crime. It is not only against the act of killing that the Federal Government should seek to exercise its powers, but against the act of the mob in arro-

gating to itself the functions of the State and substituting its actions for the due processes of law guaranteed by the Constitution to every person accused of crime.

In murder the laws of the State are violated. In lynching the mob arrogates to itself the powers of the State and the functions of government.

The Costigan-Wagner antilynching bill is aimed against lynching not only as murder but as anarchy, anarchy which the States have proven themselves unable to cope with.

[Telegram]

CHICAGO, ILL., February 20, 1933.

Senator ROBERT F. WAGNER,
United States Senate, Washington, D.C.

At a large overflow mass meeting of citizens tonight in the Church of the Good Shepherd under the auspices of the Men's Club, it was unanimously voted to express appreciation for your efforts to stamp out terrible crime lynching in the United States, which we express the hope that you will continue until the Costigan-Wagner bill is passed.

WILLIAM C. WILSON, Secretary.

NEW JERSEY INTERRACIAL COMMITTEE OF CHURCH WOMEN

New York, N.Y., February 19, 1933.

Hon. FREDERICK VAN NUYS,
Chairman Subcommittee on the Judiciary,
United States Senate, Washington, D.C.

DEAR SIR: Following is a resolution passed by an interracial conference of women held in Newark, N.J., on Thursday, February 15. The group represented church leadership both white and Negro from a large section of northern New Jersey. Many of the women are of wide influence and are prominent in civic as well as church affairs. The resolution was sent in telegraph form to Senators Harboun and Kean of New Jersey, and reads:

"Interracial conference of 200 women from 20 New Jersey communities heartily endorses Costigan-Wagner antilynching bill. Seeks your backing, first, to obtain prompt action by Judiciary Committee; second, support of the bill on the floor, and third, securing other votes in its favor.

(Signed) Mrs. GEORGE T. SCOTT, Chairman,
Upper Montclair, N.J.

Very truly yours,

KATHERINE GARDNER.

We know that the practice of lynching is savage, that it is debauching to ourselves, that it is a byword of reproach to us among nations, and yet it continues and lately has increased. The recent increase is probably due to present unusual, excited conditions, but lynching still continued in spite of efforts of earnest agencies which have been at work to stop the evil.

More than 20 years ago a committee composed of 10 representatives of southern State universities published a strong letter on this subject addressed especially to students but intended for general distribution. Five thousand copies were sent out to school people, judges, and State and county officials. Since then the fight against lynching has been carried on by various efforts. The most notable work in this direction has been accomplished through the energetic activities of the Commission on Interracial Cooperation, which had established branches in many communities. Because of these efforts, and the publicity given to the facts by institutions such as Tuskegee and organizations like the National Association for the Advancement of Colored People, the evil was diminishing and seemed on the way of disappearing.

But in the past 2 years the evil has again increased, so that the situation demands some extraordinary procedure. The proposed bill seems to present a method of assuring legal action against the perpetrators. Certainly the time has come for some more strenuous means of bringing to an end this disgrace to civilization.

JAMES H. DILLARD,
President of the John F. Slater Fund and former resident of the Jeanes
Foundation; member of the General Education Board; native Virginian.

The following resolution was adopted by the council of the city of Cleveland, December 11, 1933.

File No. 100910.

Mr. JACKSON.

Resolution requesting the President of the United States to recommend the enactment of a Federal antilynching law and petitioning Congress to enact an antilynching law.

Whereas more than 27 citizens of the United States in widely scattered sections of the country have been lynched thus far this year, being a great increase over last year, causing public expression of condemnation thereof to be made throughout the land, and

Whereas lynching is an unlawful deprivation of the rights of citizens to the protection of article VI of the amendment to the Constitution of the United States which reads as follows:

"In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the States and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

Article XIV of the amendments to the Constitution of the United States of America which reads in part as follows:

"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", and

Whereas lynching and mob violence tend to promote a general disregard for law and order and to undermine the very purpose and stability of government, and has a deteriorative effect both upon the people participating therein and the community wherein same occurs, and

Whereas this resolution constitutes an emergency in that the same provides for the usual daily operation of a municipal department, now, therefore be it

Resolved, By the council of the city of Cleveland, Ohio:

That the President of the United States be and is hereby requested to include a plea and recommendation for enactment of a Federal antilynching law in his first message to the next session of Congress, and be it further

Resolved, That the Congress of the United States be and is hereby petitioned to enact an antilynching law at its next session, and be it further

Resolved, That copies of this resolution be sent to the President of the United States, the Congress of the United States, and the Senators and Congressmen from the State of Ohio, who are hereby respectfully requested to aid in carrying out the purposes of this resolution.

That this resolution is hereby declared to be an emergency measure and, provided it receives the affirmative vote of two thirds of all the members elected to council, it shall take effect and be in force immediately upon its passage and its approval by the mayor; otherwise it shall take effect and be in force at the earliest time allowed by law.

Adopted December 11, 1933.

HERMAN H. FINKLE,
President of council pro tempore.

F. W. THOMAS,
Clerk of Council.

Effective December 10, 1933.

Approved by the mayor, December 10, 1933.

SAN JOSE, CALIF., February 10, 1934.

We, the undersigned representatives of 250 citizens, taxpayers, and voters, desire to express our sincere approval of the Costigan-Wagner anti-lynching bill now being considered by the Federal Government at Washington. We are pleased at the favorable comment it has provoked, the many and strong friends it has made, and the probability of its enactment. It is a heroic effort of the typical representative American citizen; a long, safe step in the right direction and justly deserves a place among the laws of our land. Lynching, the giant

wrong at which it strikes, is the scourge of our civilization and the deadly enemy of the human race. If enacted it will banish a legion of entrenched evils, improve our criminal jurisprudence, hearten our peace officers, and remove a self-imposed disgrace from the Nation. We thank you for your service in this matter and pledge our support.

Rev. J. L. JACKSON.
CHAS. H. OVERTON.
THEO. MOSS.
H. R. GWYNN.

[Telegram]

BRIDGEPORT, CONN., February 19, 1934.

Senator VAN NUYS,
Chairman Senate Judiciary Committee,
United States Senate, Washington, D.C.:

Our association unanimously voted approval on the Costigan-Wagner anti-lynching bill and hope your committee will report favorably on same.

CHARLES W. SIMPSON,
Secretary, Bridgeport Pastors' Association.

[Telegram]

WASHINGTON, D.C., February 17, 1934.

I could not testify in hearings upon anti-lynching bill without preparing to discuss legal phases of particular measure and being overwhelmed with official work am absolutely unable to give outside service even to worthy causes. I am glad, as an individual, to express my abhorrence of lynching and my desire to see anything done which will discourage such mob law. You are at liberty to use this telegram as the expression of my personal views.

DONALD R. RICIBERO.

SAN DIEGO, CALIF., February 18, 1934.

Senator FREDERICK VAN NUYS,
Senate Building, Washington, D.C.

The legislative committee of the San Diego branch of the Women's International League for Peace and Freedom wishes to express strong approval of the Costigan-Wagner anti-lynching bill and we beg the Senate Judiciary Subcommittee that this expression of our sentiments be read into the records of the hearing.

MARY K. KUTCHIN, Secretary.

NEWARK, N.J., February 12, 1934.

The Holy Name Society of Our Lady Queen of the Angels Church, in its regular meeting held on February 12, 1934, passed the following set of resolutions and ordered copies sent to New Jersey representatives in Congress and the United States Senate:

Whereas it is with marked interest that we note the purport of a bill designated as S. 1978, having for its object the assuring to persons within the jurisdiction of every State the equal protection of the laws, and to punish the crime of lynching; and

Whereas during the past many years that part of our population known and designated as the Negro race has suffered immeasurable hardships and loss of lives and property as victims of this lawless and unjust treatment; therefore be it

Resolved, That we, the members of the Holy Name Society of Our Lady Queen of the Angels Church, in session assembled, do openly condemn the action of lynching as un-American, un-Christian and barbaric, and against the principles of just, decent, and orderly government, and be it further

Resolved, That we urge our Representatives at Washington to assist in stamping out this un-American and barbaric pastime, by using their vote and influence in favor of passage of bill S. 1978, otherwise designated and known

as "antilynching" bill, introduced by the honorable Senators Costigan and Wagner; and be it further

Resolved, That a copy of these resolutions be sent to each of the New Jersey Representatives in Congress and the Senate.

JOHN M. STOUTE, *Secretary*.

103 Warren Street, Newark, N.J.

ATLANTA, GA., February 16, 1934.

Hon. FREDERICK VAN NUYS,
Chairman Subcommittee on the Judiciary, Washington, D.C.

MY DEAR SENATOR VAN NUYS: I had agreed with the sponsors of the Costigan-Wagner bill to be present at the hearing on February 15. When the date of the hearing was changed I found it impossible to appear personally. I am, therefore, filing this statement.

For the past 10 years I have been associated with a group of other southern citizens in an organized effort to rid the South of lynching. The most discouraging experience in connection with this effort has been the failure of the local courts to indict and convict members of mobs. Since 1900 there have been 1,930 persons lynched. In only 14 cases have there been convictions, this in spite of the fact that in a majority of the lynchings the identity of the mob members was known. Court officials and responsible local citizens simply would not take the steps necessary to secure convictions.

A possible remedy for this situation would have been for each of the States involved to enact special legislation to remove automatically such cases from the jurisdiction of local courts and fix responsibility for their disposition on a judicial body not controlled by local sentiment. One or two States have passed remedial legislation of this type, but the majority of State legislatures have failed to do so.

Of course, Negroes have been the greatest sufferers at the hands of mobs. In most of the communities where Negroes have been lynched, Negro citizens are without political power through which they might protect themselves.

In view of this situation the Federal Government has an inescapable responsibility, and must take such steps as will give protection to the life of every citizen, and will give assurance that when life has been taken by a mob, an honest effort will be made to punish those who are guilty. The passage of some such measure as the Costigan-Wagner bill would be a step in meeting this responsibility on the part of the Federal Government.

The position taken in this letter is personal and in no way represents an official statement from any organization with which I am connected.

Very sincerely,

WILL W. ALEXANDER.

NEW YORK, N.Y., February 19, 1934.

Senator FREDERICK VAN NUYS:

Regret heavy cold prevents personal appearance before committee. Personally regard Wagner-Costigan bill urgent necessity in curbing mob violence in this country. Believe Negroes unite in desiring it, and regard significant that enlightened white South as well as North urges passage of bill. Confidently expecting favorable report from your committee and ultimate passage.

C. H. TOBIAS,
National Council Y.M.C.A.

DENVER, COLO., January 21, 1934.

RESOLUTIONS ON THE COSTIGAN-WAGNER FEDERAL ANTILYNCHING BILL BEFORE
THE CONGRESS

Whereas we have noted with alarm the increase in the number and barbarity of the crimes of lynching over a widespread area of the United States in recent months; and

Whereas it seems that the present laws designed to protect the lives of those arrested for criminal offenses and guarantee to them the benefits of the orderly processes of law, seem inadequate for the purpose: Be it

Resolved, That those of us here present at the Grace Community Church, city and county of Denver, State of Colorado, give our endorsement to the Costigan-Wagner Federal antilynching bill now before the Seventy-third Congress of the United States, and that we urge upon the Congress its immediate passage, substantially in the form in which it has been presented: Be it further

Resolved, That we commend the efforts of Hon. Edward P. Costigan, Senator of the State of Colorado, and Hon. Robert F. Wagner, Senator of the State of New York for their efforts to date on behalf of the bill, and pledge to them our sincerest sympathy and our earnest support in the further work necessary to secure its early passage: Be it further

Resolved, That copies of these resolutions be sent to the Senators in charge of the bill, to the newspapers of the city, State, and Nation, and that other organizations concerned with the promotion of social justice and civic righteousness be urged to take similar action in favor of the passage of the Costigan-Wagner bill.

W. R. Duke, Denver Lodge 47, I. A. of M., machinist; Sydney H. Grassman, League Jewish Youth; G. F. Jones, Denver Typographical Union, No. 49; A. W. Rages, chairman Grace Church Official Building; Edgar M. Wahlberg, minister Grace Church; H. Brown, Sr., president Denver Branch, N.A.A.C.P.; L. H. Lightner, supreme commander American Woodmen; F. F. McLimney, supreme physician American Woodmen; the Colored Blind Association, Mrs. W. A. Gatewood, trustee; the Men's Union of Central Baptist Church, Geo. W. Brown, secretary; Secretary-treasurer of the El Paso Democratic Club of Colorado Springs, Chas. Banks; J. S. Shatz; Clarence F. Holmes, Jr., D.D.S., president Cosmopolitan Club; Fritz Cansler, secretary Y.M.C.A., Glenarm branch.

STATEMENT OF SELMA M. BORCHARDT, VICE PRESIDENT OF THE AMERICAN FEDERATION OF TEACHERS

Mr. Chairman, gentlemen of the committee, the American Federation of Teachers is the Nation-wide organization of classroom teachers. It believes that the teacher to be most effective in his classroom work must function as a good citizen in his community; must function very actively. This is one of the major reasons for the organization's affiliation with the American Federation of Labor.

As the representative of the American Federation of Teachers, I come as a teacher and as a trade unionist to testify in support of the Costigan-Wagner antilynching bill.

First. How can we teach our children to respect law when that law does not condemn, and at times actually condones, mass uprisings, brutal murder, and race conflicts?

We all recognize that behavior patterns which determine our every act are likely to be formed early in life. Some may be drawn by classroom experiences; many more by the maze of social experiences of the child in his complex environment. What of the behavior pattern of a child who reads of, who hears of, or who—how terrible it would be—who sees a lynching? The child is emotionally bruised and this experience leaves a permanent effect on him. He may loath the despised victim and his entire race, or he may acquire a lust to be equally as brutal or he may grow resentful of all who helped make possible such an act. That child—those children—into whose life comes a knowledge of lynching are seriously affected by that knowledge. It is for them whether they realize it or not a painful experience, a socially harmful experience.

And then think of the effect on the Negro child. It breeds in him, on the one hand, a sense of fear and on the other a bitter resentment. And neither emotional experience will help make him a better citizen.

Teachers, as citizens recognizing their full professional responsibility, seek to prevent the development of antisocial attitudes in children.

Second. Speaking more broadly along the same lines, I submit, gentlemen, that the use of brutal force is in itself antisocial and its effect on the community is harmful. The accepted use of brutal force in and by a community is morally degrading. History is replete with examples of the devastating effect on a community, of brutal punishments.

Third. Lynchings intensify interracial hatreds and so incite to interracial conflicts. This statement I feel is self-evident, and the responsibility of the professional teacher in helping eradicate such hatreds is equally apparent.

Fourth. We teachers seek to tell our children not what to then think but how to think. Nevertheless, there are certain facts of government which are presented in the classroom and which are distinctly pertinent to this bill. I cite these bare facts:

1. Ours is Federal Government of 48 sovereign States, but to the people of each State the Constitution of the United States guarantees a republican form of government. This means, to all of the people of each of the States, we take it.

2. By that same token a fair trial must be given to every man accused of a crime or else he can be legally punished.

3. The fourteenth amendment was put in the Constitution to protect the Negro, and for that purpose only was it put there, regardless of what interpretations later Supreme Court decisions may have placed on the purpose of the amendment put on to the Constitution as a result of the Civil War.

4. Federal statutes may and must be enacted to give effective expression to our Constitution as it effects the rights of our Negro citizens, and it is the purpose of the bill before us to do just this.

My last and fifth point, as a teacher, is that legislation is a form of education. Now, I realize full well that the attitude to the Negro—the attitude which makes lynchings possible in a so-called “civilized community”—cannot be changed over night by one law. But, I submit, it will carry us a long way. Again let’s analyze this a little. The community which will have to pay thousands of dollars for a lynching will not condone the act loud and long. They’ll let their honor be settled in a courtroom rather than in—well, a bar room. And if the Congress of the United States declares against lynchings, they won’t be held in good repute and citizens will think in forms of how outrageous they are. Law, I feel, is an effective form of education.

For these five reasons, we, as teachers, are in favor of a Federal antilynching bill.

The American Federation of Teachers I have said is affiliated with the American Federation of Labor. Now, as trade unionists, we are in favor of a drastic curb by the Federal Government on such antisocial State conduct for the following reasons.

First. While we are committed to a policy of collectivism, we are equally as strongly cognizant of the—may I say—sanctity of the person of each individual. We submit that no group has greater rights than those which are enjoyed by its weakest, poorest member.

Second. The preamble of the American Federation of Labor declares for the recognition of the rights of all who toil, regardless of color, race, or creed.

Third. We recognize that lynching is, in effect, a form of economic intimidation. There is in most States, where lynchings have occurred, a feeling more or less near the surface that if the Negro is not kept down by threats, and by actual violence that he will not continue to submit to those shockings, degraded and degrading conditions under which all too often he is forced to work. A record of these conditions would not be technically pertinent at these hearings but the facts are available, and the principle I know is all too well known to you gentlemen who are here today giving us this sympathetic hearing. And those facts tell the story of economic intimidation which all too often makes lynching the accepted thing in a community.

Gentlemen of this committee, I am not here to discuss with you the technicalities or the legal aspects of this bill. Able social-minded attorneys have done that. I am here to plead for the principle of this bill as a matter of justice, as a decent humane act, as a piece of good government to which the members of my organization as teachers and as trade unionists are committed.

I thank you.

THE FIRST METHODIST EPISCOPAL CHURCH,
Hartford, Conn., February 17, 1934.

Senator FREDERICK VAN NUYS,
Washington, D. C.

MY DEAR SENATOR VAN NUYS: At a meeting on February 11, 1934, attended by 600 citizens of Hartford, Conn., and sponsored by the race relations committee of the Hartford Federation of Churches, the following resolution was passed unanimously:

"Resolved, That this gathering of 600 citizens of Hartford, Conn., in a race relations meeting sponsored by the Hartford Federation of Churches, approves and supports the Wagner-Costigan antilynching bill, now before the Congress of the United States;

"And that a copy of this resolution be sent to Senator Frederick Van Nuy with the request that it be read into the record of the Senate hearing on this bill."

On behalf of the Hartford Federation of Churches, I am sending this to you, confident that you will take the action requested.

Very truly yours,

CHARLES C. NOBLE,
Secretary Hartford Federation of Churches.

RESOLUTION ADOPTED BY THE ANNUAL MEETING OF THE AMERICAN CIVIL LIBERTIES UNION ON MONDAY, FEBRUARY 19, 1934

Whereas there is pending before Congress a bill to provide for Federal prosecution of State officials who fail to act in lynching cases and to impose an indemnity to victims' families in counties wherein lynchings occur; and

Whereas the experience of the Civil Liberties Union in endeavoring to prosecute lynchings in California, Kentucky, and Maryland shows the ineffectiveness of State laws and State prosecutions against local lynching sentiment: Therefore be it

Resolved by the members of the American Civil Liberties Union at the annual meeting, That we support the Costigan-Wagner antilynching bill and call upon our branches and supporters all over the country to back it.

AMERICAN CIVIL LIBERTIES UNION,
LUCILLE B. MILNER, Secretary.

Statement by Rabbi Edward L. Israel, Has Sinai Congregation, Baltimore, Md., member and former chairman Social Justice Commission, Central Conference of American Rabbis.

There is little, if anything, that I can add to the statements which have already been made before this committee concerning the two lynchings which have recently occurred in Maryland. I think that it has been demonstrated clearly that in one of these cases, despite the fact that the lynching took place in a public square in a small town, it was impossible to get anyone to identify a single member of a mob numbering well over a thousand. The local and State authorities seemed to be either undesirous of prosecuting the crime or incapable of doing anything in the apprehension of the lynchings. No indictment was ever issued in the Salisbury case. As to the Armwood lynching at Princess Anne, the events have clearly demonstrated that even when, after dilatory tactics, the State attempted to act, it was at first frustrated in this attempt by local officials, and later found itself utterly incapable of securing an indictment from the local grand jury, even though the lynchings had been positively identified by the State police who had been overpowered. The State's own efforts to arrest the culprits resulted in another demonstration of mob law, in which the State militia was put to rout by a hostile populace, and threats of lynching were hurled against the attorney general of Maryland. An automobile, which the mob mistakenly thought was his, was overturned and battered.

All this is conclusive evidence that the State authority breaks down completely in the case of a lynching, and that local sentiment is so in the hands

of lawless elements that even the decent element of the population is afraid to act in defiance of this sentiment.

There are constitutional problems involved in this question of an antilynching law upon which I am not competent to give an opinion. I can only lay down a principle with which I am certain you gentlemen will agree, namely, that our Constitution and law must guarantee the fundamental safety of all inhabitants and their right to the due processes of law, regardless of color or creed. Certainly within the spirit of the great document which is the foundation of our American liberties, there is ample scope for some provision by which the Federal Government can assist the States to maintain the supremacy of law and order.

In the Armwood case in particular, it was obvious to many people that a lynching was impending. The Governor of the State of Maryland has himself told me of a telephone call which he received from his own State police the afternoon of the lynching, telling him that a mob was gathering. The Governor telephoned Judge Duer of Princess Anne, and States Attorney Robbins, who disputed the opinion of the captain of the State police. Both Judge Duer and Mr. Robbins were elected officers who comparatively shortly were to run for reelection. Without accusing either of these men of deliberate falsehood, it is in all probability true that their opinions were colored by a desire to act in accordance with the feelings of their aroused constituency rather than the realities of the facts. Subsequent events clearly demonstrate that a mob was already gathering. At a very early hour in the evening a very large mob had gathered, fully armed, according to testimony.

The development of law indicates the effort of civilization to overcome the interference of antisocial passion by the repressive force of legislation. The basic principle of society is to place the enforcement of that law into competent forces of the entire social group. A lynching in Maryland is in reality a menace to the welfare of the entire American body politic. The increasing consciousness of the far-reaching effects of local crimes with which local authorities are unable to cope and the necessity of bringing the Federal Government into the picture by some legislative means is amply exhibited in a whole succession of legislative acts ratified by Congress in recent years.

There are certain types of morality which cannot be achieved by legislative action. On the other hand, there are certain principles that go beyond the field of moral conduct of a purely individual nature and become essential to the safety of society as a whole. Upon some matters of this field there is honest ethical difference of opinion. It is significant, however, that all religious bodies seem to be unqualifiedly unanimous in their endorsement of a Federal antilynching law.

The question has been asked whether such a law is not an aspersion upon law-abiding communities. Certainly no more than laws against murder or theft constitute an aspersion upon decent law-abiding citizens. Our experience in Maryland has clearly indicated that those counties and localities where there is the least danger of lynching are the ones where sentiment in favor of the antilynching bill is strongest. I feel sure that a survey of the entire country would bear out this fact.

The whole issue constitutes a problem which must be faced by our Federal Government at a time when mob hysteria exhibiting itself at the outset against minority groups and later against constituted authority as a whole—witness the exact history of the Armwood case—must be dealt with in a summary manner by our Federal Government.

STATEMENT OF J. O. SPENCER, PRESIDENT OF MORGAN COLLEGE, BALTIMORE, MD.,
REPRESENTING THE MARYLAND INTERRACIAL COMMISSION

This commission desires to go on record in favor of the Costigan-Wagner bill, S. 1978, and to request that the bill be passed substantially as written.

This commission believes that more crime is no remedy for crime; that more injustice is no remedy for injustice.

This commission is confident that the committee to whom this bill is intrusted will recommend its passage and in so doing will deal a death blow to the horrible practice of lynching.

J. O. SPENCER, *President*,
JESSE NICHOLAS, *Secretary*.

[From the Christian Advocate, Jan. 12, 1934]

WHAT WILL BE OUR LYNCHING RECORD FOR 1934?

This question is a summons to every patriotic American, to every lover of righteousness and justice.

I. A PAINFUL COMPARISON

In 1930 there were 21 lynchings, in 1931 13, in 1932 8, and in 1933 20. We have been sowing to the wind by glossing over the vile enormity of lynching, and have reaped the whirlwind.

It is the plea of the lyncher that an assault on white women must be met by a drastic remedy. The fact, however, is that less than one sixth of the 3,773 persons lynched from 1889 to 1933 were accused of rape. Lawlessness spreads to any offense that incites the passion of an unreasoning mob. Lawlessness is never a cure for lawlessness, but increases as a deadly contagion. For example, in 1933 one man was lynched for striking a man, and another for stealing liquor.

II. NAMING CRIMES ACCORDING TO THEIR REAL NATURE

An unvarnished portrayal of a crime is not a final cure, but it goes a long way when we can strip from an offense the covering of lies and expose it in its naked hideousness. To murder is to kill a human being unlawfully and with premeditated malice, or willfully, deliberately, and unlawfully. President Roosevelt expressed it forcefully when he said: "Lynching is a vile form of collective murder." Every member of the mob who lynches is a murderer. He is a cowardly murderer, since he allies himself with other murderous members of a group to commit a crime which he would not dare to do alone. The lyncher not only joins in the murder of a human being and makes impossible a fair trial and the weighing of evidence; he stabs his own moral nature with a wound which never heals. He becomes forever afterward a worse citizen of society. He carries on his brow the mark of Cain and in his depraved heart the guilt of murder. If the conscienceless white hoodlum element are not checked and dominated by the better element of society, it will mean the destruction of our civilization. They are as depraved and conscienceless as the guiltiest victims whom they shoot or burn.

They are as low down in the moral scale, as filthy a portion of the vile dregs of society as any criminal whom they lawlessly lynch. The lynchers not only lynch a human being; they lynch the law itself, which is the safeguard of all human beings. The horror of it is that in the South especially, the whites have control of all the machinery of the courts, and yet it is the native whites of the South who are guilty of lynching. With this mob frenzy, it has been established beyond question that several persons who were entirely innocent have been put to death.

The mob is a monster that throws aside all reason and moral sense and becomes as cruel as a group of devils. Any language which may be used is mild, for it is not possible to exaggerate in an arraignment of lynchers. The false taunt is thrown out that those of us who believe in upholding the law do not think of the crime which occasioned the lynching. On the contrary, we believe that, when proven guilty, the accused should receive the extreme penalty of the law. We are not in favor of a Negro, whether guilty or innocent, being seized and murdered by a gang of bloodthirsty white savages. Furthermore, when lynchers attempt self-justification by pleading the imperfect procedure of courts of justice, they may be reminded that in no case is a bungling procedure of the courts and public officials more abundantly illustrated than in their own escape from justice. If these white hoodlums were found guilty and received a just sentence, it would put the fear of the law in their debased minds and strike terror to their depraved hearts.

III. IMPORTANT FACTORS IN THE FIGHT AGAINST LYNCHING

A well-directed and cooperative effort should be made by various influential agencies.

1. The good citizens feel a sense of shame over the black record of 1933. The good citizen must be positive in his antagonism to lawlessness. He must be creative in molding public sentiment. The citizens who would scold to join a mob, and yet who excuse and extenuate the guilt, are the enemies of law and order. The "good citizens", according to Governor Rolph, of California, consist of the denizens of low dives and speak-easies. If the better element of our population do not arouse themselves aggressively against lynching, they need not complain that their fetish of State rights is taken from them and it is made a Federal offense. Take, by way of contrast, kidnaping and lynching. Kidnaping is mainly an offense against the rich; lynching is an offense against the defenseless. Kidnaping is primarily the effort to obtain money; lynching is the lawless destruction of a human life. Any local community in the South would see that justice is meted out to the kidnaper. It has been impossible to get a local community in the South to see that the lynchers obtained justice.

2. The press may become a far more powerful agency in creating a better condition. The church press is outspoken for the orderly procedure of the courts, but it needs to speak more frequently and more vigorously. The secular press, with few exceptions, is on the side of law and order. It is strong in its editorial condemnation. But the press can do more. The press too often gives to the public mind the partisan statement of the pro-lynchers, and fails to state the features of the case which throw doubt on the guilt of an accused person. The press will give publicity to general resolutions to the effect that we must do better in the future, but do not sufficiently grapple with the issue that is immediately present. The press is prone not to pursue a policy that is too pointed and personal. The press should make a marked man of any public official who connives at lynching, and forever end his political career. I am grateful for the stand which the press has taken, and may be pardoned for intimating that they can do more. The press can also instill into the public mind the murderous guilt of lynching in the absence of any specific case, when the public mind is more receptive and dispassionate.

3. The officers of the law and court officials constitute a powerful factor in our lynching situation. We have had conspicuous examples of courage in the face of bitter prejudice on the part of public officials. There were 37 instances in which officers of the law prevented lynchings—6 of them in Northern and Western States and 31 in Southern States. All decent citizens will give to such courageous officers their utmost encouragement.

It must be said, however, that the humiliating failure to bring mob murderers to trial is traceable in a large measure to the failure of public officials. For political motives some of our officials appeal to the passion and prejudice of a low order of white citizens. In the case of the Maury County lynching, the sheriff, according to newspaper account, said: "No one in Maury County regrets that the Negro was lynched." This statement was made in spite of the fact that the preachers of Columbia, Tenn., passed a resolution of condemnation of the lynching. This sheriff slandered every good citizen of his county, and if he is ever again elected it will be a disgrace second only to the lynching itself. Another official is quoted as having said that these lynchers were good citizens. In the mind of this official, murderers are good citizens. Officers of the law, who have sworn to uphold the law and then proceed to connive at lawlessness, become violators of a solemn oath. They are traitors to their country in time of peace. Worse than all this, they become accomplices in gang murder, since they make it more possible and more probable that other lynchings will follow. Following in the wake of lynching is perjury, and sheriffs and deputies have been known to become so blind that they could not recognize members of an unmasked mob whom they have known for years.

The last lynching of 1933 was the lynching of Cordie Cheek, a Negro boy 17 years old, by a mob from Maury County, Tenn., for an alleged assault on a young white girl. Circumstances surround the case, such as the reported fight between the Negro boy and the brother of the girl, and a reported quarrel between the girl and a married sister, which by all means demanded the calm

investigation of the court. Why did not the officials of Maury County bring an indictment against the Negro if he were guilty? A dark blot rests not only on Maury County, but on Nashville, until this affair is cleared up and the guilty brought to punishment. Was there a collusion between officials of Maury County and the lynchers?

If the situation were reversed, and a white man were lynched by a mob of Negroes for an alleged assault on a Negro girl, and one of the Negroes of the mob should be positively identified and sworn to, and two automobiles should be identified, would we have gone this long without an arrest?

4. Again, the pulpit must speak in no uncertain terms in an arraignment of the growing menace of lynch lawlessness. People should be fortified in the quiet time against the crisis which may arise. There is a marked absence of any feeling of social responsibility in much of our preaching and church teaching of today. The individualistic theology of a large element of the Southern Baptist, Southern Methodist, and Presbyterian Churches should be corrected. A large class of our preachers should be reminded to let the Egyptians and Israelites have a good long rest, and also the sins of the ancient Amalekites, and to deal in a Christian way with our own social and racial problems. It is high time that we were dealing with the murderous crimes of "Americanites."

Preachers who condone or apologize for lynching turn the pulpit into a coward's castle and are unworthy of their calling; they should surrender their credentials and take their place among the renegades of society, where they belong. The church is not to estimate its success by specific ecclesiastical achievements. Unless the church is the saving salt of society, it is failing. Unless the church saves us from our present perils, it avails nothing to recount ancient miracles and the glorious exploits of the past.

5. In brief, various other organizations, such as our schools, civic and business organizations, and women's clubs, may play a large part in creating a strong public sentiment against lynch lawlessness. Good use can be made of the country weeklies. Finally, we would speak an earnest word to the Negro leaders and preachers and ask for their wisest cooperation in making a good record for 1934. We confess an unjust discrimination against members of their race. At the same time these leaders of influence have something else to do besides nursing a sense of injustice. They should exert themselves to the utmost in urging the criminally inclined of their people to refrain from criminal acts, and specifically the horrible crime which gives occasion to the mob spirit.

Altogether we should work and pray that, as dark as is the record of 1933, we may strive with all the higher and holier energies that belong to us to protect 1934 from such a black record. Let us hope and work and pray that this dark night may be followed by the dawn of a brighter and better day.

BOSTON, MASS., February 20, 1934.

Senator VAN NUYS,

Chairman Subcommittee of Joint Judiciary

Committee on Costigan-Wagner Antilynching Bill;

Record National Equal Rights League as favoring Costigan-Wagner anti-lynching bill.

M. W. SPENCER, *President.*

WILLIAM MONROE TROTTER, *Secretary.*

NEW YORK, N.Y., February 19, 1934.

Hon. ROBERT F. WAGNER,

United States Senate, Washington, D.C.:

Republican Club, Twenty-second District, New York, unanimously passed following resolution, which it is requested be read into record of subcommittee on hearing on bill:

"Resolved, That the Costigan-Wagner antilynching bill be, and hereby is, heartily endorsed to the end that a fair trial and constitutional guaranty of safety be assured to every citizen regardless of race or creed."

JOHN A. BOLLES, *President.*

NEW ORLEANS, LA., February 15, 1934.

HON. SENATORS COSTIGAN and WAGNER,
United States Senate, Washington, D.C.

HONORABLE SIRS: Whereas we, the officers and members of Winter Capitol Lodge of Elks of the I.B.P.O.E.W., located in New Orleans, La., deem the passage of the Federal antilynching bill of the utmost importance to the welfare of America in our race; and

Whereas the Costigan and Wagner Federal antilynching bill embraces our ideas of citizens' rights and protection as provided by the Constitution of the United States; be it

Resolved, That we, the officers and members of Winter Capitol Lodge of Elks of I.B.P.O.E.W., endorse the Federal antilynching bill as proposed by Senators Costigan and Wagner and we do urge and implore the august Seventy-third Congress of the United States of America to pass said bill while in session.

Most respectfully yours,

W. T. MEADE GRANT, JR., *Exalted Ruler*.
 J. P. DAVIS, *Secretary*.
 N. A. LEWIS, *Treasurer*.

OMEGA PSI PHI FRATERNITY,
Washington, D.C., January 24, 1934.

HON. EDWARD P. COSTIGAN,
The Senate, Washington, D.C.

SIR: The Omega Psi Phi Fraternity wishes to submit the following resolution on lynching:

"Whereas lynching has become a national menace and blot on American civilization, and further is a violation of all the tenets of Christianity, moral and civil law, and of the Constitution of the United States; and

"Whereas those charged with the enforcement of the laws of the several States have been lax in their duty to protect the lives of their citizens when threatened by mob violence; and

"Whereas the problem has become most grave in all sections of the United States: Therefore be it

Resolved, That the Omega Psi Phi Fraternity, representing a group of over 3,000 college men, does hereby petition the several Senators of the United States at this session of Congress to enact such legislation as will eradicate lynching from every State and city in our Nation and further will adequately protect the lives of its citizens when threatened by mobs, bent on taking the law in their own hands and usurping the functions of the courts, the guardians of our laws, liberties, and lives."

We have the honor to remain, most respectfully yours,

LAWRENCE A. OXLEY,
Basilicus.

J. ARTHUR WEISEGER,
Grand Keeper of Records and Seals.

JAW:W

KANE MANOR,
Kane, Pa., January 26, 1934.

Senator EDWARD D. COSTIGAN,
Washington, D.C.

HONORABLE SIR: We urge swift passage of the Costigan-Wagner antilynching bill.

President Roosevelt has vigorously denounced lynching in his recent message on the "more abundant life." He reemphasized this in his opening message to you. We welcome his aggressive spiritual leadership.

A Federal antilynching law is just as necessary as a Federal law against kidnaping.

We hope that any suggestion of sectionalism will be removed by introduction of the bill into the House by a southern Representative.

Americans should not forget that Thomas Jefferson wrote into the Declaration of Independence that all men are entitled to "life, liberty, and the pursuit of happiness."

We affirm our deep spiritual conviction that all men are children of a common Father; that there therefore can be no distinction between brothers irrespective of race, creed, color, or class.

State law enforcement has broken down under the pressure of lower moral standards resulting from the war. Therefore a Federal law is necessary to protect some of our citizens from violence.

We urge your vigorous support in the light of your highest conviction.

Respectfully submitted.

COMMITTEE FOR THE ABOLITION OF LYNCHING,
ROBERT GRAY TAYLOR,
HAVEN EMERSON, M.D.

Joint Chairmen.

(Whereupon, at 5:30 p.m., the subcommittee recessed, subject to the call of the chairman.)