claims; to the Committee on Foreign Affairs.

828. Also, petition of Chiyokichi Arakaki, Iheya-son, Okinawa, relative to an early solution of the problem of pretreaty claims; to the Committee on Foreign Affairs.

829. Also, petition of Junji Nishime, mayor of Naha City, Okinawa, relative to an early solution of the problem of pretreaty claims; to the Committee on Foreign Affairs.

SENATE

THURSDAY, MARCH 26, 1964

(Legislative day of Monday, March 9, 1964)

The Senate met at 9 o'clock a.m., on the expiration of the recess, and was called to order by the Acting President pro tempore [Mr. METCALF].

The Most Reverend Archbishop Vasili, of the Byelorussian Autocephalic Orthodox Church, Brooklyn, N.Y., offered the following prayer:

In the name of the Father, and the Son, and the Holy Ghost.

Almighty God, our Heavenly Father, we lift up our hearts in prayer to Thee, and invoke Thy divine blessings upon our country, the United States of America. Grant Thy guidance and strength; sustain and illuminate with Thy Holy Spirit the hearts of all the Members of the Senate, this temple of peace, freedom, and justice.

Eternal God and Redeemer, we pray today for Thy divine mercy and judgment for the national welfare of the Byelorussian nation, whose Proclamation of Independence, as the Byelorussian National Republic, was observed 46 years ago, and whose people have striven during these years to free themselves from the tyranny of an atheistic oppression, in the hope of enjoying the liberties and freedom, under God, as is the way in the United States. We pray today that the benefits of freedom granted to democracies all over the world may serve as an infallible encouragement to the people of Byelorussia, for the vision of everlasting freedom is not lost among them, but burns like a torch in the depth of their hearts with the desire to be a member in the family of the free and God-fearing nations of the entire world.

We humbly bow our heads before Thee, our God and Saviour, and faithfully implore Thee: Accept this, our prayer; bless the United States of America and Byelorussia; reign and shine in our hearts; and be blessed, now and forever. Amen.

THE JOURNAL

On request by Mr. MANSFIELD, and by unanimous consent, the reading of the Journal of the proceedings of Wednesday, March 25, 1964, was dispensed with.

CIVIL RIGHTS ACT OF 1963

The Senate resumed the consideration of the motion of Mr. MANSFIELD that the Senate proceed to consider the bill (H.R. 7152) to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Mr. MANSFIELD. Mr. President, there will be no morning business this morning.

What is the pending question?

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Montana [Mr. MANSFIELD] that the Senate proceed to the consideration of House bill 7152, the Civil Rights Act of 1963.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

[No. 100 Leg.]

Aiken	Hartke	Morse
Bartlett	Hayden	Morton
Bayh	Hickenlooper	Mundt
Beall	Hill	Muskie
Bible	Holland	Neuberger
Boggs	Hruska	Pastore
Brewster	Humphrey	Pell
Burdick	Inouye	Prouty
Byrd, Va.	Jackson	Proxmire
Byrd, W. Va.	Javits	Ribicoff
Cannon	Johnston	Robertson
Carlson	Jordan, N.C.	Russell
Case	Jordan, Idaho	Saltonstall
Clark	Keating	Scott
Cooper	Kennedy	Smathers
Cotton	Kuchel	Smith
Dirksen	Lausche	Sparkman
Dodd	Long, Mo.	Stennis
Dominick	Long, La.	Symington
Douglas	Magnuson	Talmadge
Eastland	Mansfield	Thurmond
Edmondson	McCarthy	Walters
Ellender	McClellan	Williams, N.J.
Ervin	McGee	Williams, Del.
Fong	McGovern	Yarborough
Fulbright	McIntyre	Young, N. Dak.
Gore	Mechem	Young, Ohio
Gruening	Metcalf	
Hart	Miller	

Mr. HUMPHREY. I announce that the Senator from Idaho [Mr. CHURCH], the Senator from Michigan [Mr. MCNAMARA], the Senator from Oklahoma [Mr. MONRONEY], the Senator from Utah [Mr. MOSS], and the Senator from Wisconsin [Mr. NELSON] are absent on official business.

I also announce that the Senator from New Mexico [Mr. ANDERSON] and the Senator from California [Mr. ENGLE] are necessarily absent.

I further announce that the Senator from West Virginia [Mr. RANDOLPH] is absent because of illness.

Mr. KUCHEL. I announce that the Senator from Colorado [Mr. ALLOTT] and the Senator from Kansas [Mr. PEARSON] are absent on official business.

The Senator from Utah [Mr. BENNETT], the Senator from Nebraska [Mr. CURTIS], the Senator from Wyoming [Mr. SIMPSON], and the Senator from Texas [Mr. TOWER] are necessarily absent.

The Senator from Arizona [Mr. GOLDWATER] is detained on official business.

The ACTING PRESIDENT pro tempore. A quorum is present.

Mr. CASE. Mr. President, during the course of the debate on the motion to take up the civil rights bill, there have been a number of allusions to the Myart against Motorola, Inc., case. The significance of this finding of a hearing examiner of the Illinois Fair Employment Practices Commission has, to say the least, been greatly exaggerated.

In the first place, the decision is merely that of an examiner and, as the chairman of the Illinois Commission made clear in a letter to the New York Times on March 25, the Illinois Commission "has not taken any stand of any kind at any time on the issue of the use of tests in employment."

Even were the Illinois Commission to follow the recommendation of the examiner, an assumption for which there is no basis, the action would have no relevance to the bill now coming before us.

To clear away misconceptions on this whole case, I have had prepared a memorandum which makes clear, I believe, that it would not be possible for a decision such as the finding of the examiner in the Motorola case to be entered by a Federal agency against an employer under title VII.

This is so, first, because the Equal Employment Opportunities Commission established by title VII would have no adjudicative functions and no authority to issue enforcement orders.

Second, title VII clearly would not permit even a Federal court to rule out the use of particular tests by employers because they do not "equate inequalities and environmental factors among the disadvantaged and culturally deprived groups."

Mr. President, I ask that the text of the letter from Charles W. Gray, chairman of the State of Illinois Fair Employment Practices Commission, and of the memorandum to which I have referred be printed in full at this point in the RECORD.

There being no objection, the letter and memorandum were ordered to be printed in the RECORD, as follows:

[From the New York Times, Mar. 25, 1964]

ILLINOIS FEPC—COMMISSIONER DONISS TAKING STAND ON USE OF TESTS IN HIRING

To the EDITOR:

Arthur Krock, writing in the Times of March 13, states that the Illinois Fair Employment Practices Commission has ruled on an issue involving the use of preemployment tests by Motorola.

The facts are these. The law establishing the Illinois Fair Employment Practices Commission provides that in the event a private conciliation conference between a respondent and a complainant fails to produce a mutually acceptable settlement, it shall be set for a public hearing.

The public hearing is conducted by a hearing examiner, who must be a lawyer. The hearing examiner is appointed by the commission, but is in no way an employee of the commission, and, therefore, certainly not a political appointee.

The findings of the hearing examiner are just that—not a ruling of the commission, nor are they necessarily the opinion or judgment of the commission.

NO POSITION ON FINDING

The Illinois Fair Employment Practices Commission has not acted on the Motorola finding, has issued no orders and has taken no position on whether the hearing examiner's finding will be the order of the commission.

The protection of both parties that our law provides is such that it is highly unlikely that this commission, or any other commission so constituted, could seize the kind of autocratic control of which Mr. Krock writes.

The hearing examiner's finding will be carefully considered by the commission. It will then issue an order which may or may not include the recommended conclusion of the hearing examiner. Once the commission rules on the matter, the ruling can be appealed directly to the courts under the Administrative Review Act in the statutes of the State of Illinois.

This commission has not taken any stand of any kind at any time on the issue of the use of tests in employment. Until we do so, it is totally inappropriate for anyone or any publication to make assumptions about the outcome of this matter.

CHARLES W. GRAY,
Chairman, State of Illinois Fair Employment Practices Commission.
CHICAGO, *March 17, 1964.*

MYART *v.* MOTOROLA, INC.

The decision of a hearing examiner in *Myart* v. *Motorola, Inc.*, a case under the Illinois Fair Employment Practices Act (CONGRESSIONAL RECORD, Mar. 19, 1964, pp. 5662–5664), has been the subject of some recent discussion.

In that case, the hearing examiner found that an employment test administered by respondent Motorola to a Negro job applicant was "obsolete" because "its norm was derived from standardization on advantaged groups," apparently meaning that persons coming from underprivileged or less well educated groups were less likely to be able to pass the test. He said that "in the light of current circumstances and the objectives of the spirit as well as the letter of the law, this test does not lend itself to equal opportunity to qualify for the hitherto culturally deprived and the disadvantaged groups." Accordingly, in addition to the relief he directed for the complainant, the hearing examiner ordered that Motorola cease to employ the test in question, and that if it chose to use any test, it should adopt one "which shall reflect and equate inequalities and environmental factors among the disadvantaged and culturally deprived groups." There is no description of the test in the hearing examiner's report, and no further discussion of why the test was considered unfair.

Of course, it should be noted, and indeed emphasized, that the decision in the Motorola case was merely an initial or preliminary decision of a part-time hearing examiner,[1] that this decision is subject to review by the full Illinois Fair Employment Practices Commission, and that any commission decision is subject to review by the Illinois courts. Consequently, no one can say with any degree of certainty at this time that the examiner's decision is a correct interpretation of the Illinois law.

It has been suggested, nevertheless, that the decision by the hearing examiner should be taken as indicative of the kinds of decisions which might be expected to be made by Federal bureaucrats if title VII of the pending civil rights bill were enacted. Of course, this is completely wrong. It would definitely not be possible for a decision like Motorola to be entered by a Federal agency against an employer under title VII. This is so for two very basic reasons.

First, unlike the Illinois commission, the Equal Employment Opportunities Commission established by title VII would have no adjudicative functions and no authority to issue enforcement orders. Its duties would be to receive and investigate complaints, to attempt to resolve disputes and to achieve compliance with the act through voluntary methods, and, where conciliation fails, to bring suit to obtain compliance in Federal court. Only a Federal court would have the authority to determine whether or not a practice is in violation of the act and only the court could enforce compliance. The Commisison not only could issue no enforcement orders, it could make no determination as to whether or not the act has been violated. Thus, enactment of title VII would not allow a Federal administrative agency to issue any compliance orders, much less one paralleling that of the Illinois hearing examiner.

Second, it is perfectly clear that title VII would not permit even a Federal court to rule out the use of particular tests by employers because they do not "equate inequalities and environmental factors among the disadvantaged and culturally deprived groups." Of course, it is not appropriate to comment here on whether the Motorola decision is correct as a matter of Illinois law. This is for the State commission and the State courts to determine. It is enough to note that the result seems questionable. There is no doubt, however, that such a result would be unmistakably improper under the proposed Federal law. The Illinois case is based on the apparent premise that the State law is designed to provide equal opportunity to Negroes, whether or not as well qualified as white job applicants.

The hearing examiner in the Motorola case wrote: "The task (of personnel executives) is one of adapting procedures within a policy framework to fit the requirements of finding and employing workers heretofore deprived because of race, color, religion, national origin, or ancestry. Selection techniques may have to be modified at the outset in the light of experience, education, or attitudes of the group. * * * The employer may have to establish in-plant training programs and employ the heretofore culturally deprived and disadvantaged persons as learners, placing them under such supervision that will enable them to achieve job success."

Whatever its merit as a socially desirable objective, title VII would not require, and no court could read title VII as requiring, an employer to lower or change the occupational qualifications he sets for his employees simply because proportionaly fewer Negroes than whites are able to meet them. Thus, it would be ridiculous, indeed, in addition to being contrary to title VII, for a court to order an employer who wanted to hire electronic engineers with Ph. D.'s to lower his requirements because there were very few Negroes with such degrees or because prior cultural or educational deprivation of Negroes prevented them from qualifying. And unlike the hearing examiner's interpretation of the Illinois law in the Motorola case, title VII most certainly would not authorize any requirement that an employer accept an unqualified applicant or a less qualified applicant and undertake to give him any additional training which might be necessary to enable him to fill the job.

Title VII says merely that a covered employer cannot refuse to hire someone simply because of his color, that is, because he is a Negro. But it expressly protects the employer's right to insist that any prospective applicant, Negro or white, must meet the applicable job qualifications. Indeed, the very purpose of title VII is to promote hiring on the basis of job qualifications, rather than on the basis of race or color. Title VII would in no way interfere with the right of an employer to fix job qualifications and any citation of the Motorola case to the contrary as precedent for title VII is wholly wrong and misleading.

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[1] Hearing examiners are apparently not full-time employees of the commission. A panel of attorneys residing throughout the State, including at least two from each of the five supreme court districts, are designated as hearing examiners. Article VIII, Rules and Regulations of Procedure of the Illinois Fair Employment Practices Commission.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays on my motion.

The yeas and nays were ordered.

Mr. MANSFIELD. I ask the Chair to call the roll.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Montana [Mr. MANSFIELD]. The yeas and nays have been ordered, and the clerk will call the roll.

Mr. DIRKSEN and Mr. RUSSELL addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Illinois.

Mr. DIRKSEN. Will the Chair state the question?

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Montana [Mr. MANSFIELD] that the Senate proceed to the consideration of H.R. 7152, the Civil Rights Act of 1963.

The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FULBRIGHT. Mr. President, on this vote I have a live pair with the Senator from West Virginia [Mr. RANDOLPH]. If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." I withhold my vote.

Mr. HUMPHREY. I announce that the Senator from Idaho [Mr. CHURCH], the Senator from Michigan [Mr. MCNAMARA], the Senator from Oklahoma [Mr. MONRONEY], the Senator from Utah [Mr. Moss], and the Senator from Wisconsin [Mr. NELSON] are absent on official business.

I also announce that the Senator from West Virginia [Mr. RANDOLPH] is absent because of illness.

I further announce that the Senator from New Mexico [Mr. ANDERSON] and the Senator from California [Mr. ENGLE] are necessarily absent.

I further announce that, if present and voting, the Senator from New Mexico [Mr. ANDERSON], the Senator from Idaho [Mr. CHURCH], the Senator from California [Mr. ENGLE], the Senator from Oklahoma [Mr. MONRONEY], the Senator from Utah [Mr. Moss], and the Senator from Wisconsin [Mr. NELSON] would each vote "yea."

Mr. KUCHEL. I announce that the Senator from Colorado [Mr. ALLOTT] and the Senator from Kansas [Mr. PEARSON] are absent on official business.

The Senator from Utah [Mr. BENNETT], the Senator from Nebraska [Mr. CURTIS], the Senator from Wyoming [Mr. SIMPSON], and the Senator from Texas [Mr. TOWER] are necessarily absent.

The Senator from Arizona [Mr. GOLDWATER] is detained on official business.

I further announce that, if present and voting, the Senator from Utah [Mr. BENNETT], the Senator from Nebraska [Mr. CURTIS], the Senator from Arizona [Mr. GOLDWATER], the Senator from Kansas [Mr. PEARSON], and the Senator from Wyoming [Mr. SIMPSON] would each vote "yea."

On this vote, the Senator from Colorado [Mr. ALLOTT] is paired with the Senator from Texas [Mr. TOWER]. If present and voting, the Senator from Colorado would vote "yea," and the Senator from Texas would vote "nay."

The result was announced—yeas 67, nays 17, as follows:

[No. 101 Leg.]

YEAS—67

Aiken	Hart	Miller
Bartlett	Hartke	Morse
Bayh	Hayden	Morton
Beall	Hickenlooper	Mundt
Bible	Hruska	Muskie
Boggs	Humphrey	Neuberger
Brewster	Inouye	Pastore
Burdick	Jackson	Pell
Byrd, W. Va.	Javits	Prouty
Cannon	Jordan, Idaho	Proxmire
Carlson	Keating	Ribicoff
Case	Kennedy	Saltonstall
Clark	Kuchel	Scott
Cooper	Lausche	Smith
Cotton	Long, Mo.	Symington
Dirksen	Magnuson	Walters
Dodd	Mansfield	Williams, N.J.
Dominick	McCarthy	Williams, Del.
Douglas	McGee	Yarborough
Edmondson	McGovern	Young, N. Dak.
Fong	McIntyre	Young, Ohio
Gore	Mechem	
Gruening	Metcalf	

NAYS—17

Byrd, Va.	Johnston	Smathers
Eastland	Jordan, N.C.	Sparkman
Ellender	Long, La.	Stennis
Ervin	McClellan	Talmadge
Hill	Robertson	Thurmond
Holland	Russell	

NOT VOTING—16

Allott	Fulbright	Pearson
Anderson	Goldwater	Randolph
Bennett	McNamara	Simpson
Church	Monroney	Tower
Curtis	Moss	
Engle	Nelson	

So Mr. MANSFIELD'S motion that the Senate proceed to the consideration of H.R. 7152 was agreed to, and the Senate proceeded to consider the bill.

Mr. MORSE. Mr. President, I move that H.R. 7152 be referred to the Committee on the Judiciary, with instructions to report it back to the Senate not later than April 8, 1964. I send the written notice to the desk.

Mr. SCOTT. Mr. President, will the Senator from Oregon yield?

Mr. MORSE. I should like to have the attention of the majority leader.

The ACTING PRESIDENT pro tempore. If the Senator from Oregon will send his notice to the desk, the clerk will read it.

The LEGISLATIVE CLERK. The Senator from Oregon moves that H.R. 7152 be referred to the Committee on the Judiciary, with instructions to report it back to the Senate not later than April 8, 1964.

Mr. MORSE. Mr. President, I should like to have the attention of the majority leader. Several Senators have asked me to yield to them as a matter of courtesy, without my losing my right to the floor. I should like to accommodate them, in order to save time. I would not want to take advantage of my position on the floor and not yield to them. I should like to yield first to the Senator from Pennsylvania [Mr. SCOTT], who I understand wishes to introduce a bill.

Mr. MANSFIELD. I am sure the leadership would not be averse to having the distinguished Senator from Oregon yield; but I would hope that if he does yield, Senators would not take advantage of his generosity and courtesy to make hour-long speeches. I would express the hope that the Senator from Oregon himself would make his main speech in behalf of his motion and that he would be followed by the distinguished minority leader, who I understand will speak in support of the motion, and, as I understand, will make certain explanations as to what he believes should be done about the bill. Then I should like to end the discussion by speaking for about 15 minutes, and moving to table the motion of the Senator from Oregon.

I should like to have this take place in a reasonable time, because immediately upon the conclusion of the action on this motion, one way or the other, it is the intention of the leadership to move that the Senate adjourn, in order to afford Senators an opportunity to return to their home States for a well-deserved holiday. I am sure that accords with the views of the Senator from Oregon.

Mr. ROBERTSON. Mr. President, reserving the right to object——

Mr. MANSFIELD. There is nothing to object to.

The ACTING PRESIDENT pro tempore. The Senator from Oregon has the floor.

Mr. MORSE. First, in a spirit of cooperation, I would be perfectly willing to have the majority leader, after he confers with whomever he wishes to confer, give consideration to a time limitation on this proposal.

Mr. MANSFIELD. How much time would the Senator from Oregon suggest?

Mr. MORSE. I have an idea as to what will happen. Perhaps the best way to proceed is to see if an agreement cannot be reached to vote at a reasonable hour. I am perfectly willing to have that done. However, I am aware of the situation we are likely to face, and I do not propose to put myself in the position of being discourteous to Senators, provided they conform to the rules of the Senate. As I understand, two or three Senators wish to speak for 2 or 3 minutes each on the motion, so as to place themselves on the record. I could force them to ask me questions, which the Senator from Montana knows would accomplish the same end.

Mr. MANSFIELD. No; the Senator from Oregon misinterprets what I said. I said a "reasonable time."

Mr. MORSE. I am not commenting adversely on anything the majority leader said. I am merely trying to explain to him my parliamentary plan. It will be my intention, unless objection is raised, to yield for 2 or 3 minutes to two or three Senators who wish to speak for the RECORD on the motion during the course of my remarks. However, if the Senator from Montana desires to have the rules enforced, I will see to it that the rules are enforced, and will require Senators to ask me questions which will accomplish the same purpose, although it will take about four times longer to proceed in that way.

Mr. MANSFIELD. That is not my intention.

Mr. MORSE. Perhaps the majority leader ought to speak with the Senator from Minnesota [Mr. HUMPHREY] and the minority leader [Mr. DIRKSEN] to see if a suggestion could be made as to a time when the Senate might vote. I do not know what the convenience of all Members of the Senate may be, and what plane schedules will have to be met; the majority leader does. Senators all know how they will vote on this question, although I hope that the unanswerable argument which I am about to make will be persuasive; but I am not sure that it will. I desire to cooperate. I should think a time could be set early this afternoon for the vote, and the intervening time could be divided. Perhaps the time for the vote could be set for 3 o'clock. Perhaps the vote could come sooner.

Mr. MANSFIELD. Mr. President, will the Senator from Oregon yield?

Mr. MORSE. I yield.

Mr. MANSFIELD. After consulting with various Senators, it is believed inadvisable, unfortunately, to ask for a unanimous-consent agreement to vote at a time certain. I am sure the leadership—and I would hope the Senate, as well—would have no objection to the Senator from Oregon, the proposer of the motion now pending, yielding to Senators who desire to make brief comments on the motion.

Mr. MORSE. I assure the majority leader that I will enforce the spirit of that suggestion. If I yield to any Senator, it will be for a brief time only.

Mr. President, several Senators have expressed the desire that the motion be read.

The ACTING PRESIDENT pro tempore. The motion has been read by the clerk. The motion of the Senator from Oregon is now before the Senate.

Mr. MORSE. That is an illustration of the disorder of the Senate, which is certainly not the fault of the Chair, for I did not hear my own motion read.

Mr. HOLLAND. Mr. President, will the Senator yield?

Mr. MORSE. I yield.

Mr. HOLLAND. I should like to address one or two questions on the motion to the Senator from Oregon. Do I correctly understand that if the motion is agreed to, the Committee on the Judiciary will be allowed, in its ordinary fashion, to render a written report on the bill, the report to become a part of the legislative record?

Mr. MORSE. There are two primary reasons why I desire to have the bill referred to committee. One is to afford the Committee on the Judiciary an opportunity to hold such hearings as it wishes to conduct. The second is to carry out what I think is the clear duty of the committee namely, to supply the Senate with a report and minority views, if there are Senators who wish to submit minority views. That is the inescapable duty of the Committee on the Judiciary. I shall deal with that point at some length before I finish my remarks. If ever there was an occasion when a committee owed

a responsibility to the Senate to provide the Senate with a committee report, this is an instance in which the committee owes a clear duty to the American people and the courts, in connection with the litigation that will be instituted for the next 10 years if the bill is passed.

Mr. HOLLAND. I believe the Senator has perhaps answered my next question, but is the purpose of the motion to allow the committee, if it be granted the right to consider the bill, to submit as many reports as necessary, both majority and minority, agreeing and dissenting, to become a part of the legislative record of this important bill?

Mr. MORSE. It is of great importance that that be done.

Mr. President, I understand that the Senator from Missouri [Mr. SYMINGTON] desired to me to yield to him. I apologize for not having previously yielded to him. He has left the Chamber momentarily. If a staff member would ask him to return, I shall be glad to yield to him.

Mr. McCLELLAN. Mr. President, will the Senator from Oregon yield for a parliamentary inquiry?

Mr. MORSE. I yield.

Mr. McCLELLAN. Mr. President, do I correctly understand that the time for the debate on the motion to refer is not controlled?

Mr. MORSE. That is correct.

Mr. McCLELLAN. There has been no agreement in that respect?

Mr. MORSE. That is correct.

Mr. McCLELLAN. There have been comments to the effect that a few Senators would be privileged to speak, while others possibly would have to ask questions. I should like to have the parliamentary situation clarified. I do not understand that any Senator will be precluded from obtaining the floor in his own right and making whatever remarks he may desire to make, after the Senator from Oregon has concluded his remarks.

Mr. MORSE. That is correct. However, I believe the plan is that after two or three Senators speak, the old gag technique, by means of a motion to lay my motion on the table, will be applied.

Mr. McCLELLAN. I realize that; but I did not want it understood—by implication or otherwise—that I would agree to such a procedure.

Mr. MORSE. Neither would I agree to it.

Mr. President, I understand that a coffee hour is about to be held in the Foreign Relations Committee room. Of course, I have no objection to the holding of a social function while the Senate is in session, because no Senate rule prohibits that; but I have previously assured the chairman of the Foreign Relations Committee and other members of the committee that they will not be able to hold an official meeting of the committee while the Senate is in session. I do not know whether a transcript will be made of the meeting; but I assure them that if one is made, objection will be made if an attempt is made to make payment for it from the funds of the Senate.

I understand that during that coffee hour, the Senators present will listen to the Secretary of Defense present his alibis and excuses for the administration's course of action in regard to South Vietnam. I understand that the Secretary of Defense will also address the people of the country tonight. Unfortunately, the Senate will not be in session tomorrow; it will not hold another session until Monday. But I give notice that on Monday, I shall answer the Secretary of Defense, for his remarks will need to be answered. The advance notice of his remarks indicates that he intends to try to justify the unjustified policy of the administration in connection with the use of U.S. troops in South Vietnam.

Not only am I convinced that the course of action of the administration in regard to South Vietnam is entirely wrong, but I predict that the annals of history will show that that course of action will rise to plague our Nation.

Therefore, although I hope members of the Foreign Relations Committee will enjoy their coffee hour—even though most of the coffee served these days is chicory, I also hope they will take notice of the fact that the statements made by the Secretary of Defense in the committee this morning and the statements he plans to make over the television later today will be answered, because this administration has drawn the issue in regard to South Vietnam, and I am accepting invitations across the country to discuss the South Vietnam issue with the American people. Certainly they have a right to know the other side of that issue, and then make their judgment, and hold the administration to an accounting for the course of action it is following in regard to South Vietnam.

In speaking on the floor of the Senate yesterday afternoon, we answered—really—the President, when we expressed our disagreement with the policy of the chairman of the Foreign Relations Committee in regard to South Vietnam and some other policies of his. However, one would not know that on that occasion the President was answered, because the kept press that sits in the gallery over the clock to my left, or at least its editors, do not intend to permit the American people to hear voices of dissent with regard to this unsound American policy. The kept press intends to keep that covered up. However, the American people are beginning to learn the facts; and when they learn them, they will resent that situation, and their action will be just that much more vigorous.

From conversations this morning with other Senators, I understand that the television and radio announcers have not stated that I made my speech yesterday, but, instead, have announced that I would make it at a later time. Of course, that is a typical falsification by the news media, for I made no such statement. To the contrary, yesterday afternoon I spoke for approximately 1 hour and a half, and proceeded to answer both the President and the chairman of the Foreign Relations Committee; and also, by implication, I answered the Secretary of State and the Secretary of Defense.

I wish to make my position on that matter perfectly clear.

Mr. LAUSCHE. Mr. President, will the Senator from Oregon yield?

Mr. MORSE. I yield.

Mr. LAUSCHE. I understand that the Senator from Oregon is willing to yield to other Senators, to permit them to make statements concurring with his views. In that connection, would he prefer first to present his statement, and thereafter to yield to other Senators?

Mr. MORSE. I shall be glad to yield either before or after I make my statement. However, once I begin to make my major remarks, I shall prefer to complete them without yielding.

Therefore, at this time I am glad to yield to the Senator from Ohio.

Mr. LAUSCHE. I thank the Senator from Oregon.

With respect to the issue now before the Senate, I contemplate voting in the affirmative. My decision to do so will be based on my judgment in regard to the procedural matter involved, not in regard to the merits of the bill.

Throughout my entire career as a lawyer and the 10 years during which I served as a judge, I learned clearly that there must be uniformity of treatment of problems; it is clearly wrong to attempt to apply different rules, on the basis of attempting to suit the whims of the one who is making the judgment.

In the Senate there has been rather uniform application of its rule that each bill is to be sent to a Senate committee, for study and report. During the 7 years I have served in the Senate, I have listened to many other Senators endorse that rule; and I subscribe to it.

This bill contains many titles. I state with a great deal of confidence that even when one sits down, applies himself most diligently, and brings to his study of this subject all the knowledge he has, he still will not be able to be certain of the meaning of many of the provisions of the bill.

Clearly it would be wrong to adopt the view that bills shall be referred to Senate committees only when that would suit the fancy or the cause of certain Senators. Clearly it would be fallacious and dangerous to subscribe to the view that bills would be railroaded by being referred to whatever committees would act either favorably or unfavorably, in accordance with the will of the sponsor.

So, Mr. President, I believe the Senator from Oregon is entirely correct in the position he takes in regard to this measure. He and other Senators who join him in that view will be criticized, of course; but if we allow criticism to warp our honest judgment, we shall not be worthy of being Members of the Senate or of the Congress.

A grave mistake was made 3 weeks ago when the bill was not sent to the committee. If it had been sent there at that time, hearings would have been conducted there, judgments would have been formulated, opinions would have been expressed, and today the bill would be before the Senate, ready to be dealt with in the normal procedure. However, that was not done.

I confess that it was easier for me to vote 3 weeks ago in favor of sending the bill to committee than it will be for me to vote today on that question. However, it is still true that a very important principle is involved—a principle which I

have always considered one of the sacred aspects of our democratic system; namely, uniformity of treatment, equal justice to all. Therefore, Mr. President, regardless of the significance of this bill, it clearly does not warrant treatment different from that given to other bills which come before the Senate.

Finally, Mr. President, I submit a bit of documentary support. Our deceased and martyred President in 1957, when a civil rights bill was before this body, voted contrary to the judgment of the majority to send the bill to the committee.

The then majority leader, now President of the United States, Lyndon Johnson, voted against the majority and said that the bill should be sent to committee.

The present majority leader on the Democratic side similarly voted for referral of the bill to committee.

The situation today is no different from what it was then. For our own honor and respect for the orderly procedures of the Senate, it behooves us to refer the bill to the committee with a definite limitation upon the time when it shall be brought back.

Mr. President, if the bill is not reported back to the Senate at the designated time, and arguments are made which would contemplate delay in the reporting of the bill, I shall vote for prompt cloture to bring the bill back to the Senate.

I thank the Senator very much.

Mr. MORSE. Mr. President, I thank the Senator for the support he has given me. I agree with everything that he has said, except that I would make one little modification. He has said he would vote with a little less enthusiasm today to send the bill to committee than he would have voted 3 weeks ago. I shall take out of order now one of the arguments I had planned to make in support of sending the bill to the committee.

I believe there is much stronger reason today to send the bill to committee because of the debate that has occurred on the floor of the Senate during the last 14 days. I have listened to much of that debate. I have listened to the Senators from Alabama [Mr. SPARKMAN and Mr. HILL], the Senators from Georgia [Mr. RUSSELL and Mr. TALMADGE], the Senator from South Carolina [Mr. THURMOND], and the Senator from North Carolina [Mr. ERVIN]. I have listened to all the opponents of the bill.

I have listened to the Senator from Pennsylvania [Mr. CLARK], the Senators from New York [Mr. JAVITS and Mr. KEATING], the Senator from Minnesota [Mr. HUMPHREY], the Senator from Montana [Mr. MANSFIELD], and many other proponents of the bill.

If I ever saw a bill that needed to be clarified for the courts by way of a committee report, the argument which has taken place on the floor of the Senate in the past 14 days has shown that bill to be the one before the Senate.

The Senators to whom I have referred have proved my case. They did not know they were proving it at the time, I am sure, but they have proved my case for sending the bill back to committee in order to obtain a committee report.

Those Senators cannot agree on any part of the bill. They cannot agree on definitions. They cannot agree on meanings. What can we expect the courts to do when they come to consider legislation about which Senators are in such disagreement?

But I will suggest what those Senators can do. They can sit down and write a scholarly majority report that the courts can use in the hotly contested litigation that will take place in innumerable cases in the next decade. If I say nothing else today, I hope Senators will remember that the essence of the position of the Senator from Oregon is that the Senate has a duty—spelled "d-u-t-y"—to the courts of our country to give the courts the benefit of both majority and minority views, and to use those views as the basis for cross-examination in the debate that will follow as to the meaning of the bill.

I desire that committee report on which to buttress the arguments that the Senator in charge of the bill has asked me to make on certain constitutional issues involved in the bill. I have been assigned certain major constitutional issues involved in the bill to present later in the course of the debate. I shall do the best I can, for I am for the strongest possible bill. But I should like to have a committee report to which I can refer in that discussion and make the legislative history in relationship to that committee report for the future reference of the courts of our country. For that reason, I believe it is more important now than 3 weeks ago that the bill be referred to the committee.

Mr. LAUSCHE. Mr. President, will the Senator yield?

Mr. MORSE. I yield to the Senator from Ohio.

Mr. LAUSCHE. Probably the words I used had an improper impact. My hesitation came from my hope that the Senate will dispose of the business before it. But the other aspect of the problem is so grave, and the delay of 10 days so inconsequential, that I cannot abandon my original judgment. Conformity to orderly procedure is more important than rushing the bill through.

In conclusion, let us remember that when we think we are doing the greatest good by setting aside law and rules, we find that eventually a disregard for orderly procedure will come back to haunt us—and it will in the present case because of the many ramifications and the novel provisions contained in the bill.

I thank the Senator very much for yielding to me.

Mr. CLARK. Mr. President, will the Senator yield?

Mr. MORSE. I yield.

Mr. CLARK. I have read the Senator's motion at the desk. I should like to inquire of the Senator whether he thinks the words of the motion are appropriate for the result which he would like to achieve. I make that statement for the following reason:

It is my recollection that on a previous occasion a bill on a subject pertaining to civil rights was referred to the Committee on the Judiciary with instructions to report back on a day certain. The Judiciary Committee did, without recommendation; and that, I believe, was strictly within the language of the terms of reference.

Earlier this year there was a somewhat similar situation in the Committee on Banking and Currency, on which I serve, when there was referred to that committee the Mundt wheat bill, which dealt with the sale of wheat to Russia. But in that instance the committee was directed to report back its judgment as to whether the bill should or should not pass.

By a vote of 8 to 7 we recommended that the bill should not pass. The chairman of the committee, the junior Senator from Virginia [Mr. ROBERTSON] was very insistent—and he had time on his side—that neither a majority report nor minority views should be prepared and filed.

In the light of the language in the Senator's motion I am fearful that the same thing will happen in the Committee on the Judiciary which, as we know, is under the very careful control of the Senator from Mississippi [Mr. EASTLAND]. He will never even poll the committee. There will be no report, so that in the end we shall have some testimony which will merely reiterate much of the testimony already taken in two other committees and in the House, and we shall have wasted 10 days.

If the Senator could assure the Senate that if his motion were agreed to the Senate would get written reports, including majority and minority views, by the time fixed, I would be much more inclined to support the Senator's motion. But, as I read what I take to be the legal meaning of his language, it would be within the power of the chairman of the committee, who I am afraid would prevent a report from being made.

Mr. MORSE. While I am making my legal argument, I wish the Senator from Pennsylvania would confer with the Parliamentarian. The motion was written by the Parliamentarian. I was assured that it would accomplish the purpose that I have in mind. As the Senator from Pennsylvania knows, I first desired to include in the motion a requirement that the bill be made the pending business when it was reported back to the Senate. The Senator will recall the conversation I had with him. But I checked with the Parliamentarian, and he said that such a provision would be out of order and could not be included.

The point I wish to make is that I am assured nothing can stop a majority of the members of the Committee on the Judiciary from writing and signing a majority report and filing it with the Senate as a report of the majority.

No chairman of any committee could stop it if he tried it. It would be presumptuous of me to presume that the chairman of the Judiciary Committee would try it. I shall have something to say later about that, in my prepared statement. I wish to cover this point now.

In my judgment, a clear duty rests on the majority of the Judiciary Committee who favor a civil rights bill to get busy

and start preparing a report on the bill, and sign it, and submit it to the Senate on April 8th. That would be a report of the majority of the Judiciary Committee, no matter how opposed to the report the chairman of the committee might be.

Mr. CLARK. Mr. President, will the Senator yield further?

Mr. MORSE. I yield.

Mr. CLARK. I would hope my friend from Oregon would prove to be correct. He might. I fear—and I am afraid my fears are justified—that the end result of the language used in the motion will not be the result the Senator wishes. I would hope the Senator, who is a skilled parliamentarian and a first-class lawyer, would think long about the wording the Parliamentarian put in the motion, because, as I read it as a lawyer, it is subject to the interpretation that, first, no written report need be filed, and, second, that when the bill comes back it will not be the pending business.

Mr. MORSE. If after consultation with the Parliamentarian the Senator from Pennsylvania still holds that view, I announce that I will be willing to accept any modification of the motion the Senator from Pennsylvania suggests is necessary in order to assure that there can be a majority report and minority views, within the rules of the Senate.

Whatever the Senator from Pennsylvania decides is necessary in the changing of this language—if a language change is needed—is acceptable to me. I would not have offered it in this form if I had not satisfied myself that the motion would accomplish the purpose sought. But if the Senator will tell me what change he wants, I shall be glad to accept the change.

Mr. GRUENING. Mr. President, will the Senator yield?

Mr. MORSE. I yield, without losing my right to the floor.

Mr. GRUENING. As one who will support the motion of the Senator from Oregon and will fight for a strong civil rights bill, which I have been convinced for a long time has been necessary, and indeed long overdue, I ask the Senator if there is any danger, if his motion prevails, that when the bill comes back from the Judiciary Committee it will not be the pending business, and that there is likely to be a further delay of days, such as we have had in the last 2 weeks, before the bill can be taken up.

Mr. MORSE. I wish to make it very clear that it will not be the pending business, but the Senate is going to have to face that question one way or another, anyhow. What difference does it make in the long run? We shall have all summer, if the opposition wants to fight all summer, in order to overcome the parliamentary tactics that the opposition will use to prevent a vote. I am not at all impressed with the argument that we may find it necessary to invoke cloture to get the bill back on the calendar. So what? We may have to invoke cloture a second time. So what?

We must make up our minds whether or not we are going to fight this battle in the alleys and from the housetops and in the corridors and at the crossroads—parliamentarily speaking—for as long as it takes. We may have to vote cloture two or three times with respect to some aspects of the debate. That is a part of the problem. If the Senate has the votes for cloture, it will continue to have the votes for cloture, because the issue will be the same—ending the debate.

Refusing to send the bill to committee cannot be justified on the ground that when the bill comes back to the Senate, it will not be the pending business. We will make it the pending business. Let the opposition talk for a while.

Mr. WILLIAMS of Delaware. Mr. President, will the Senator yield?

Mr. MORSE. I shall yield to the Senator from Delaware, but let me make clear that if there are any procedural questions to be asked, the Senator should ask them now, because once I start my legal argument, I will not yield until I complete it. I want it to appear in continuity in the RECORD. In fairness to the RECORD, I owe it to those who support me to make the speech without interruptions. But I am glad to yield to the Senator for any questions he wants to ask now.

Mr. WILLIAMS of Delaware. I thank the Senator for yielding. I wonder if the Senator from Oregon will amend the motion to provide that when the bill is reported back on April 8, it will automatically be the pending business.

Mr. MORSE. I had proposed that. The Parliamentarian advised me it would be subject to a point of order.

Mr. WILLIAMS of Delaware. I understand from the Parliamentarian that it would be subject to a point of order. I wonder if it would be worth the effort to try it, anyway. Perhaps no point of order would be made.

Mr. MORSE. Does the Senator really think so?

Mr. WILLIAMS of Delaware. We can try it. I am sure many votes would depend on whether or not such a provision were included as a part of the motion. I think it would be well worth the effort. Perhaps by unanimous consent there could be an agreement reached that if the motion carried, the day the bill was reported back it would be made the pending business.

Mr. MORSE. Let us try to obtain such a unanimous-consent agreement before the vote this afternoon. The Senator from Delaware may not appreciate my view, but I find it impossible, as a lawyer, to put something in the motion that I know is subject to a point of order. That is not very artistic work for a lawyer to engage in.

I think the Senator from Delaware knows that a host of objections would be made. The Senator does not think the opposition would agree to that request, does he? I take judicial notice that my wonderful but mistaken friends from the South would almost rise as a body to raise a point of order.

Mr. WILLIAMS of Delaware. Would not that be an indication that the person who objects is more interested in an issue than in an orderly consideration of this subject?

Mr. MORSE. I think we can take judicial notice that they are interested in killing the bill by any exercise of their parliamentary rights.

Mr. WILLIAMS of Delaware. I am not at all sure the objection would come from the quarters the Senator from Oregon thinks it would; so I wonder if he would try it.

Mr. MORSE. I am willing to put the unanimous-consent request, without changing my motion. It would be inartistic for me to do that. As a lawyer, I do not like to propose something that I know is illegal when I propose it. My profession is criticized enough for trying to support illegal proposals. I could not do that. But I would go along, before the motion was put to a vote, with asking unanimous consent that there be an agreement that the bill be made the pending business when returned to the Senate.

Mr. WILLIAMS of Delaware. I appreciate that.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. MORSE. I yield.

Mr. MANSFIELD. I think I should state that if such a motion is made I would like to be notified. I give notice that I would raise a point of order, and I would object to the unanimous consent request.

Mr. MORSE. Therefore, I am not going to make the unanimous-consent request. I would not think of putting the majority leader in that position.

Mr. MANSFIELD. The Senator knows that he would not put me in any position. Many other Senators would offer the objection. I believe he knows that.

Mr. MORSE. I agree. The Senator will agree that my reply to the Senator from Delaware was appropriate, in view of this discussion.

Mr. MANSFIELD. And the point would be raised on both sides.

Mr. MORSE. Yes.

Mr. WILLIAMS of Delaware. I thank the Senator for accepting the suggestion. I respect the majority leader, but I do not understand why he would object to its being made the pending business, immediately upon the bill being reported back to the Senate. It would seem to me that after 3 weeks of delay in trying to make the bill the pending business, that is exactly what he would want when the bill was reported back.

Such an agreement would in no way affect the right of each Senator to vote for or against the motion. It would only insure immediate consideration of the bill on April 8 should the motion carry. But I respect his views and would still hope the Senator will raise that question.

Mr. MORSE. Not now. I have already raised it and received my answer.

Mr. KEATING. Mr. President, will the Senator from Oregon yield?

Mr. MORSE. I yield.

Mr. KEATING. The Senator is sincere in making the motion, as we know, and has stated there were differences of opinion in the debate so far concerning definitions in the bill, and so forth. Certainly, there have been differences. Does the Senator really feel in his heart that any of those differences would be resolved by sending the bill to committee and re-

ceiving a majority report and minority views?

Mr. MORSE. This question will be resolved in the courts of America, not by sending it to committee. The thesis of my remarks is that we are not giving the courts the best evidence as to congressional intent. It is that simple. I believe we have a duty to give the courts the best evidence of congressional intent—or at least to try to do so.

I know some of the views of the Senator from New York—and undoubtedly he will express them again—as to the situation that exists within the committee; but we shall never know until we try. I believe the odds are all in favor of obtaining a good committee report.

I do not flatter the Senator from New York—and in this I am as sincere as I can be—but the fact is that the Senator from New York is a member of the Judiciary Committee. That means a great deal to me. The fact that he is on that committee gives the Senate great assurance that the Senate will get a legal document by way of a committee report for which in the decade ahead the courts will thank the committee. So will the Senate. I wish to have that legal service from the Senator from New York. I do not wish to deprive him of the opportunity to join in the preparation of a majority report which I am sure he would join in preparing, if the bill is referred to committee for 10 days.

Mr. KEATING. I do not wish to delay the Senator starting his speech. He has been kind and generous. I might tell him, however, that yesterday one of my constituents, who heard the Senator's gracious reference to me as being one of his teachers in the field of civil rights, asked me whether the Senator from Oregon flunked the course.

Mr. MORSE. That constituent was not in the class. If he had been in the class, he would not have made that comment.

Mr. KEATING. That is probably true.

I feel that the Senator is unrealistic about what will happen in the Judiciary Committee, unless all history is changed. There will be no amendments voted on. There will be, perhaps, one or two witnesses called. This same question came before the Senate in 1960, and the actual work in the Judiciary Committee was far from fruitful. The committee reported the bill back without any recommendations, which I assume it would be permitted to do under the motion before the Senate at the present time.

Mr. MORSE. I will cover that part in my speech.

Mr. President, I proceed with my argument in support of the motion. As I have announced, I shall not yield until I finish reading the manuscript, a copy of which is on the desk of each Senator.

It will be noted that it involves considerable technical and legal discussion of cases and, therefore, in fairness to myself and to those who support the motion, I shall not yield.

Before I turn to the manuscript, I wish to put to rest a cloakroom rumor about the position taken by civil rights forces in this country, to the effect that they are all against the Morse motion.

I should like to make it clear to the proponents of civil rights legislation, of which I am one, that civil rights proponents, including proponents among the Negroes of America, are far from unanimous in opposition to the motion.

Prominent Negro leaders have come to my office in recent days and expressed their complete approval of my motion, once they came to understand it.

One of the great Negro women of America came to my office believing she was against my motion and she spent an hour with me. Now she is out in the country making it clear to Negro civil rights groups that she believes I am right and some of their leaders wrong in their opposition.

It is true that a large number of Negro leaders are against the bill going to committee, for the major reason that they do not wish any amendments made to the bill. They wish us to rubberstamp the House bill. Their motives are mixed. In part, they wish us to rubberstamp the House bill because they believe that if any amendments are added to the bill in the Senate committee, or on the floor of the Senate, and it has to go to conference, it might encounter difficulties on the House side with the Rules Committee.

I believe we are in rather bad shape if on the House side the proponents do not have sufficient votes for a civil rights bill to discharge the Rules Committee if it should raise any objections against sending a bill that comes out of the Senate to conference. Of course, this is all hypothetical.

If I have listened to an argument without any substance, it is the argument that Senators should be against the Morse motion on the ground that if the motion should be agreed to, the result might be some amendments; and that if amendments were made and the bill went to conference, the result might be a "hassle" on the House side, and there might be difficulty with the Rules Committee in the House.

What an argument. I make my last answer to the argument by saying: Does anyone seriously think the bill will pass the Senate without amendment? Does anyone think we could pass the bill in its present form if we lack cloture?

More than that, since when do we sit in the Senate and act as rubber stamps for the House, yielding to any argument that we must not interpose anything the House presents on a major piece of legislation such as this? If Senators ever owed a solemn trust to their constituents, they owe it to them in connection with this bill, for this is a bill of great importance to the country.

We had better take the bill and analyze it section by section in committee and section by section on the floor of the Senate, so that when Senators answer the final rollcall on the bill they will have kept their trust.

We have no right to pass the buck, so far as our obligations on the bill are concerned, to the House of Representatives, particularly, as I shall point out later, because when we read the report of the committee of the House of Representatives, we find in that report one little paragraph which can be used by a court in the future in passing judgment upon the meaning of the bill as it went to the House. We do not have anything now that can be helpful to a court in determining the meaning of the bill as it came from the House. The discussions on the floor of the Senate between the pros and the cons in the past 14 days would not be of any help to a court, either.

I shall now proceed to my manuscript, to prove it.

Mr. President, throughout the Senate's consideration of civil rights legislation I have consistently urged that the Senate function through its normal procedure of sending the bill to the Senate Judiciary Committee for hearings and a report. I took this position in 1957, in 1960, and I am taking it again in 1964.

My first and foremost interest is in expediting the work of the Senate itself. In the 20 years that I have been in this body, I have never known a debate, or consideration of a measure, that was not expedited in many ways when it came to the floor with a committee report explaining its terms and their meaning. I have seldom known a time when the Senate was not in deep water when it considered a major bill or amendment that did not have hearings and a committee report explaining it.

This does not mean that I have not myself offered and supported far-reaching floor amendments that did not come from a committee. I have done so in the past and shall undoubtedly do so in the future. But I know very well the handicap that is imposed upon every Member of this body when we try to draft legislation on the floor of the Senate.

On some subjects, the background of hearings and a committee report is more vital than on other subjects. But there is no issue that is ever considered by this body that is more legalistic, that is more intricately wrapped up in legal precedents and meanings, than is civil rights legislation. One other class of legislation that is also highly legalistic is labor-management legislation, and before I am through with my speech, I am going to tell the Senate what the U.S. Supreme Court said about one effort of this body to draft labor legislation on the floor of the Chamber.

As a lawyer, and as a teacher of law for many years, I read this civil rights bill, H.R. 7152, with many unresolved questions of what term after term and phrase after phrase of it really mean. One almost has to be a lawyer just to detect the complexities in it.

I am a cosponsor of the companion bill, S. 1731. I am proud to be a cosponsor of that civil rights bill. I know what kind of legislation I think should be enacted on this subject, and I hope S. 1731 accomplishes what I have in mind as a cosponsor.

But I know all too well that there are infinite questions that could be put to me about the exact impact of it that I could not answer. Frankly, I have some doubts that the language of the bill really goes as far and does as firmly and conclusively what I believe it should. I can see that there may well be other laws

and precedents that would vitiate some of the provisions of either H.R. 7152 or S. 1731.

I am primarily anxious that the House-passed bill undergo the committee procedure in the Senate because I want to be sure it is as strong a bill as I think it should be. Moreover, it was amended on the House floor. For the meaning and import of those amendments we have no guidance except what was said about them in the House debate. One can easily see why the courts are reluctant to go to floor debates for the intent of Congress.

One section of the bill in which I am most interested is title VI. It deals with the termination of Federal financial participation in programs or activities of the States that are segregated. I introduced S. 1665 on June 4, 1963, requiring administrators of all Federal participation programs to cut off such aid to any segregated portion of it. I think that should have been done already, because I do not believe Federal money can be disbursed for activities that are unconstitutional. But I also believe that Congress has the duty to establish a policy on this matter if the administration has failed to do it.

Let me stress the fact that, in my judgment, from the President on down in the administration, the constitutional power to do that has always existed. Be that as it may, I believe legislation is needed that would leave no room for doubt as to mandatory compliance on the part of the President and the executive agencies of the Government.

Mr. President, I ask unanimous consent that the text of Senate bill 1665 be printed at this point in my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the policy of the United States that, in all programs administered or executed by or for the benefit of the States or their political subdivisions and supported, in whole or in part, with funds provided by the United States, no individuals participating in or benefiting from such programs shall be segregated or otherwise discriminated against because of race or color.

SEC. 2. No moneys shall be paid by the United States to or for the benefit of any State or political subdivision thereof under any program of Federal assistance—

(1) to plan or provide facilities, services, benefits, or employment in such State or political subdivision,

(2) to defray administrative expenses of a program in such State or political subdivision, or

(3) to defray the cost of carrying out a program in such State or political subdivision,

if the participants in or beneficiaries of such program in such State or political subdivision are segregated, or otherwise discriminated against because of race or color.

SEC. 3. The programs of Federal assistance referred to in this Act include, but are not limited to, programs—

(1) to assist the construction of hospitals, schools, highways, airports, parks and recreational areas, community facilities, and public works generally;

(2) to provide old-age assistance, medical assistance for the aged, assistance to needy families with children, assistance for maternal and child welfare, assistance to the blind, assistance to the disabled, and public health and welfare assistance programs generally;

(3) to provide financial assistance to the unemployed and assistance in the training, retraining, and placement of workers;

(4) to provide assistance to business, including agriculture;

(5) to provide assistance to educational institutions and to individuals for educational purposes; and

(6) to provide assistance to National Guard and civil defense activities.

Mr. MORSE. Mr. President, title VI of the civil rights bill deals with the same problem. The House Judiciary Committee report describes the meaning and intent of title VI as it was reported from the Judiciary Committee. But that title was amended on the House floor. The amendment states that no action shall be taken to cut off the Federal share of these moneys except on the direction of the President. In my opinion, that destroys the entire policy direction of S. 1665, and of the House bill as it came from the committee.

The President already has this authority, in my opinion; it is the lack of action under it that I think Congress should correct, because it is ultimately the responsibility of Congress to establish the policy for the disbursements of Federal funds, be they for hospital construction or foreign aid.

Another section in which I have tremendous interest is title III. This is similar to the old title III of the civil rights bill of 1957. I voted against the 1957 bill when title III was dropped out of it because I thought its removal left nothing but a piece of paper—the wrapper on that old loaf from which the bread had been removed.

This title authorizes the Attorney General to institute proceedings under certain circumstances to protect the rights of citizens. I warn Senators that they are entering one of the most treacherous shoals of legislation when they deal with the litigious powers of Federal authorities. If we do so without benefit of our own hearings and our own committee's report on this title, we may not actually do what we sponsors and backers of civil rights legislation want to do in passing this legislation.

It is not only the language of the bill that will confront us. There will be amendments offered, too. We are going to be on fluid and shifting ground in trying to say what the effect of amendments will be, when we have no firm guide of our own on what the language of the title itself means.

Yes, we have the report of the House Judiciary Committee. But it deals only with the bill which went to the House floor. We have no guide except what we have been able to scrounge as to what the amended bill means. Moreover, it is a very cryptic report. Virtually all of it is a section-by-section analysis, which is only descriptive of the legislation. The section entitled: "Purposes and Content of the Legislation" consists of only one paragraph.

We have the House report. And we have the brief prepared by the Justice Department. These are the most definite guides the Senate has as to the meaning of H.R. 5172. But the House report describes it not as it came from the House floor—only as it went to the House floor.

Why, moreover, should not the Senate function as the separate body it is? We are not the retainers of the Justice Department. In the legislative process, it is the agencies that are supposed to be on tap, not on top. But if we proceed with the bill without benefit of our independent legal study of it, we will be almost entirely dependent upon the Justice Department for guidance.

COMMITTEE REPORT NEEDED TO HELP SENATE

Our operations on the Senate floor will be characterized by guesses and by curbstone judgments throughout the consideration of the bill. If one does not think so, he should read the CONGRESSIONAL RECORD for the past 14 days, or he should have listened to as much debate as I have heard for the past 14 days. As I said earlier, if ever a case was made for a bill to be referred to the Judiciary Committee, it has been made in the debate during the past 14 days. No court could bring any rhyme or reason out of the RECORD if it sought to use it in trying to determine the legislative intent of the Senate.

As one who is profoundly anxious to enact, at long last and 100 years late, a meaningful enforcement of the 13th, 14th, and 15th amendments, I do not want our forces to go into this fray with such a handicap.

There is no quality that works so much against our side as the quality of doubt. Senators who are doubtful of the meaning of words are the least likely to vote to put those words on the statute books. How often have we said to each other: "Well, I don't think I want to vote for that because I don't know just what its effect will be"? In the end, such doubts lead to no legislation at all.

This is why I believe those of us who strongly favor and support this bill will be in a better and a stronger position to get it adopted intact if we have a committee report behind us. A committee report will strengthen our hand. A committee report will make much easier the task of those of us assigned to act as floor managers for various titles of the bill. Some of the titles have been reported as separate bills, including the public accommodations title and the fair employment title. But we are on our own when it comes to the important matters of title I on voting rights, title III on the authority of the Attorney General to institute desegregation proceedings, title IV on desegregation of schools, title V on the Civil Rights Commission, and title VI on federally assisted programs.

We have a duty to see to it that we have a committee report which will give meaning to our action by way of legislative intent, to which the courts can later resort.

RELIANCE OF COURTS UPON COMMITTEE REPORTS

Beyond our obligation to ourselves to legislate with the best means we have of informing and educating ourselves, we also have an obligation to leave to those who will litigate under a civil rights statute a sound record of our intent. This is important to the litigants them-

selves, and to the courts who one day will be called upon to apply our handiwork to specific cases.

As I have in years past, I wish to make available for Senators what the Supreme Court has said and done over the years about finding and evaluating the intent of Congress.

In one of its earliest cases which touched on this point, Chief Justice Taney made these comments in 1845 in *Aldridge* v. *Williams* (3 How. 9). He was discussing the construction of a tariff act:

> In expounding this law, the judgment of the Court cannot in any degree be influenced by the construction placed upon it by individual Members of Congress in the debate which took place on its passage, nor by the motives or reasons assigned by them for supporting or opposing amendments that were offered. The law as it passed is the will of the majority of both Houses, and the only mode in which that will is spoken is in the act itself; and we must gather their intention from the language there used, comparing it when any ambiguity exists with the laws upon the same subject, and looking, if necessary, to the public history of the times in which it was passed.

In 1897 a court again commented, in a much quoted decision:

> Looking simply at the history of the bill from the time it was introduced in the Senate until it was finally passed, it would be impossible to say what were the views of a majority of the Members of each House in relation to the meaning of the act. It cannot be said that a majority of both Houses did not agree with Senator Hoar in his views as to the construction to be given to the act as it passed the Senate. All that can be determined from the debates and reports is that various Members had various views, and we are left to determine the meaning of this act, as we determine the meaning of other acts, from the language used therein.
>
> There is, too, a general acquiescence in the doctrine that debates in Congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body. *U.S.* v. *Union Pacific Railway Co.* (91 U.S. 72, 79); *Aldridge et al.* v. *Williams* (3 How. 9); *Mitchell* v. *Great Works Milling and Manufacturing Co.* (2 Story 648, 653); *Queen* v. *Hertford College* (3Q.B.D. 693, 707).
>
> The reason is that it is impossible to determine with certainty what construction was put upon an act by the Members of a legislative body that passed it by resorting to the speeches of individual Members thereof. Those who did not speak may not have agreed with those who did; and those who spoke might differ from each other; the result being that the only proper way to construe a legislative act is from the language used in the act, and upon occasion, by a resort to the history of the times when it was passed.

In this case, *U.S.* v. *Trans-Missouri Freight Association* (166 U.S. 290, 318), the Court was construing the Sherman Antitrust Act.

In 1914, the Court brought in committee reports as a guide to congressional intent *Lapina* v. *Williams*, 232 U.S. 78, 1914. In construing an immigration act, the Court said:

> Counsel for petitioner finds the debates in Congress as indicating that the act was not understood to refer to any others than immigrants. But the unreliability of such debates as a source from which to discover the meaning of the language employed in an act of Congress has been frequently pointed out, and we are not disposed to go beyond the reports of the committees.

In this decision the Court quoted the reports of both the House and Senate committees.

In *U.S.* v. *St. Paul M. & M. Railway Co.* (247 U.S. 310, at 318(1918), the Supreme Court enlarged its reliance upon committee reports to include the floor statements of the committee chairman managing the bill. It said:

> It is not our purpose to relax the rule that debates in Congress are not appropriate or even reliable guides to the meaning of the language of an enactment. But the reports of a committee, including the bill as introduced, changes made in the bill in the course of its passage, and statements made by the committee chairman in charge of it, stand upon a different footing, and may be resorted to under proper qualifications * * *. The remarks of Mr. Lacey (chairman of the committee and in charge of the bill) and the amendment offered by him * * * were in the nature of a supplementary report of the committee * * * they may very properly be taken into consideration as throwing light upon the meaning of the proviso * * * to remove any ambiguity.

I invite the attention of Senators to the strong influence of the case of United States against St. Paul M. & M. Railway Company in 1918. There is not a Senator who has not witnessed the influence of the St. Paul case on Senate proceedings many times during his tenure. I have witnessed it time and time again during my 20 years in the Senate.

What is the procedure? We get into a forensic argument as to the meaning of something in a bill. We ask the chairman of the committee, if he is with the majority, or we ask a member of the majority of the committee if the chairman is not with the majority, or is not available, to answer questions.

We say we are making legislative history. How do we do that? We write out questions and we talk with the chairman or another Senator whom we intend to cross-examine before we ever come to the Chamber. Usually the Senator writes out his answers to our questions.

We stand in the Chamber and formally say: "I would like to ask some questions of the Senator in charge of the bill, or of the chairman of the committee."

The Senator reads the first question, and the chairman answers the question from another copy. The Senator reading the questions has the answers before him. He knows what the answers will be. We follow that procedure, which is quite proper, because we want to make the history. We want to help the Court, because we are following the decision of the Court in the famous St. Paul M. & M. Railway Company case in 1918, from which I have just quoted.

And in *Imhoff-Berg Silk Dyeing Company* v. *U.S.* (43 Fed. 836, at 837–838 (D.C. N.J., 1930)):

> While legislative debate, partaking of necessity very largely of impromptu statements and opinions, cannot be resorted to with any confidence as showing the true intent of Congress in the enactment of statutes, a somewhat different standard obtains with reference to the pronouncements of committees having in charge the preparation of such proposed laws. These committee announcements do not, of course, carry the weight of a judicial opinion, but are rightly regarded as possessing very considerable value of an explanatory nature regarding legislative intent where the meaning of a statute is obscure.

In the famous case of *Duplex Company* v. *Deering* (254 U.S. 443 at 474–575, 1921), the Court said:

> By repeated decisions of this Court it has come to be well established that the debates in Congress expressive of the views and motives of individual Members are not a safe guide, and hence may not be resorted to, in ascertaining the meaning and purpose of the lawmaking body (citations). But reports of committees of House or Senate stand upon a more solid footing, and may be regarded as an exposition of the legislative intent in a case where otherwise the meaning of a statute is obscure (citation). And this has been extended to include explanatory statements in the nature of a supplemental report made by the committee member in charge of a bill in course of passage

That was a reiteration by the Supreme Court of its decision in the old St. Paul M. & M. case, which, as I have stated, is faithfully followed time and time again on the floor of the Senate, during each session of the Senate, as Senators try to build up legislative histories of bills.

Lest it be thought that these cases are those of ancient history and no longer applicable, let me bring to Senator's attention a 1942 case. In *U.S.* v. *Wrightwood* (315 U.S. 110, 1942), the Court had to construe the Agricultural Marketing Agreement Act of 1937. In construing that act, and after citing the House and Senate committee reports, the Court said:

> The opinions of some Members of the Senate conflicting with the explicit statements of the meaning of the statutory language made by the committee reports and members of the committees on the floor of the Senate and the House are not to be taken as persuasive of the congressional purpose.

On the contrary, the Court relied on the committee report.

But a 1947 case has the greatest relevancy to our present situation. This case was the upshot of the strike of the United Mine Workers after the Government had taken over the mines under the War Labor Disputes Act and had obtained a temporary restraining order to keep the miners on the job. In *U.S.* v. *United Mine Workers* (330 U.S. 258, 1947), the Court had to construe the War Labor Disputes Act and the Norris-LaGuardia Act of 1932, since there was a question whether the Federal injunction could lie against workers in light of the Norris-LaGuardia Act. So the question arose whether the Norris-LaGuardia Act included the U.S. Government in the term "employer," and hence forbade the use of injunctions in industries seized by the Government. The question also arose whether Congress had meant to amend the Norris-LaGuardia Act when it passed the War Labor Disputes Act.

What became the War Labor Disputes Act over Franklin Roosevelt's veto was popularly known as the Smith-Connally bill. It was introduced first as S. 796 by Senator Connally. No hearings were

held on S. 796 itself, although hearings on similar bills had been held by the Senate Judiciary Committee in the preceding Congress. S. 796 was reported from the Senate Judiciary Committee; but no hearings were held by the committee on it.

That situation bears some similarity to the present situation, for it will be recalled that several weeks ago the Senator from Minnesota [Mr. HUMPHREY], who is in charge of the bill on the floor of the Senate, and who is doing, and will continue to do, a magnificent job, discussed the situation to which I have referred in connection with this case; namely, a situation in which the Court pointed out that no hearings had been held on the Smith-Connally bill, although hearings had been held in previous Congresses on similar bills. Several weeks ago the Senator from Minnesota piled up on his desk a number of committee reports and a number of committee hearings of previous years on other civil rights bills, and used them in support of his fallacious contention that there were already plenty of hearings and plenty of committee reports on civil rights bills, and that there was no need to have more committee hearings and committee reports on that subject. However, I say good naturedly that my friend, the Senator from Minnesota, is a pharmacist, not a lawyer; so I am not surprised that he missed this basic point of parliamentary law. We lawyers are inclined to say that arguments such as the one he made then are immaterial, inconsequential, and irrelevant; and that argument of the Senator from Minnesota was such.

The only position taken by the Supreme Court on this point—as made clear by the position it took on the Smith-Connally bill—is that it will consider only reports and hearings on the bill under consideration, not on other bills.

Therefore, I point out that the only report or hearings the Court will consider when this bill finally is brought before it is whatever committee hearings and committee report there may be on this bill, not on any other bill.

In 1943, after some debate and action on some amendments, Senator Connally offered a substitute for his whole bill. That amendment was really an entirely different bill, and there were no committee hearings on it. Likewise, today we have before us a House bill, and there has been no Senate committee hearing or Senate committee report on it. That was the situation which Senator Connally created when he offered that amendment in the nature of a new bill. The majority leader at the time was the incomparable, great Alben Barkley, of Kentucky. Senator Connally's proposal—his amendment in the nature of a complete substitute for the Smith-Connally bill—caused Senator Barkley, the majority leader of the Senate, to make the following comment:

> Before I do that, I wish to predicate by question upon the following observation:
>
> I think it is unfortunate that we are compelled under the circumstances to try to write a labor legislative policy on the floor of the Senate of the United States. However, that is what we are compelled to do under the circumstances. Evidently the Committee on the Judiciary—and I do not say this in criticism but merely as an observation of the fact—did not give thorough consideration to the bill; otherwise it would have changed it from its original terms which were drawn before we got into the war, before the War Labor Board was set up, and before any formula was adopted by the Government for the settlement of wage disputes. The bill was presented in its original form after the War Labor Board had been in existence for a year and after the Government had done all that it had done by the various Executive orders and by the interpretations of those Executive orders in the attempt to adjust labor disputes. The accuracy of the observation I have just made is confirmed by the fact that the Senator from Texas, the author of the bill, has undertaken to correct that situation by offering his substitute.
>
> All I have said emphasizes the unfortunate fact that we are trying to write a bill on the floor of the Senate.

The situation led some Senators to request that the bill be recommitted to the Judiciary Committee—an interesting bit of history. A motion was made on May 5, 1943, by Senator Wheeler to send the bill back to the Judiciary Committee with instructions to report it back to the Senate by May 20. This motion was defeated by 27 yeas to 52 nays.

If any Senators wish to take any consolation from the fact that the Senate would make a grievous mistake, as has been proposed by those who do not wish to send the bill back to the Judiciary Committee, I wish to point out that the same error was committed at the time of the Smith-Connally bill.

When the Supreme Court came to consider the application of the Norris-LaGuardia Act to disputes involving the Government, it relied in part on the House debates of 1932 wherein the Court thought Congressman LaGuardia, who was in charge of the bill, had indicated that the bill did not contemplate the Federal Government as being included in the term "employer." Interestingly enough, Justice Frankfurter in his own opinion, used the same statements of Congressman LaGuardia to come to the opposite conclusion.

That shows how unreliable are statements made on the floor of the Senate when it comes to subsequent interpretation by the courts, in the absence of a committee report on which to bottom any statements that Senators in charge of bills may wish to make during the course of the debate concerning intent.

But the majority opinion also said:

> But regardless of the determinative guidance so offered, defendants rely upon the opinions of several Senators uttered in May 1943, while debating the Senate version of the War Labor Disputes Act. * * * We have considered these opinions but cannot accept them as authoritative guidance to the construction of the Norris-LaGuardia Act. They were expressed by Senators, some of whom were not Members of the Senate in 1932 and none of whom was on the Senate Judiciary Committee which reported the bill. They were expressed 11 years after the act was passed and cannot be accorded even the same weight as if made by the same individuals in the course of the Norris-LaGuardia debates.

I have underlined the following sentence in my manuscript for emphasis:

> Moreover, these opinions were given by individuals striving to write legislation from the floor of the Senate and working without the benefit of hearings and committee reports on the issues crucial to us here. We fail to see how the remarks of these Senators in 1943 can serve to change the legislative intent of Congress expressed in 1932.

In other words, in the absence of hearings and a committee report, the Court would not accept the opinions of Senators as to whether and how the Norris-LaGuardia Act would be affected by the pending Connally bill.

In the end, the Court relied upon factors other than the unsupported opinions of Senators to find that the Norris-LaGuardia Act did not prevent an injunction from lying against a union when the United States was in command of the industry, and that the War Labor Disputes Act, which authorized seizure, had not changed the previously existing situation with respect to use of the injunction.

I call attention again to the words of the Court:

> Working without the benefit of hearings and committee reports on the issues crucial to us here.

Can Senators say with certainty how legislation already on the books is affected by the bill now under consideration? Can either the backers or opponents of title I, the voting section, say with certainty how the title affects or changes the statutes of 1957 and 1960? Is any section of those earlier laws repealed? How are they superseded by the present title I? Or is all the language of title I merely an addition to existing law?

One may look at the House report for the incorporation of the bill reported by the committee into existing law. But there is no such guide for the bill as it came to us from the House. And there is no commentary even in the House report on the ways in which the 1957 and 1960 statutes have been found wanting and in need of expansion. We may know for a fact that they are; but we also need to know in what particulars they need expansion.

Or one may look at the various titles that authorize the Attorney General to initiate suits. Titles II, III, and IV have such provisions. But only title II specifically mentions "preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order." Does the omission of these words from titles III and IV mean that the Attorney General may not seek preventive relief under them?

In its most recent cases, the Supreme Court has continued to rely primarily upon the committee reports and the supplementary statements of floor managers speaking for their committees.

In the case of *Schwegmann Bros.* v. *Calvert Corp.* (341 U.S. 284, 1951), the Court used both the committee report and the floor statements of the Senate sponsor of the measure, Senator Tydings, to determine the intent of the Miller-

Tydings Act. This legislation came to the floor in the form of a rider to a District of Columbia revenue bill. It was added by the Senate District Committee. Senator Tydings was committee spokesman on behalf of this particular amendment, as well as sponsor of the bill from which it was taken.

But in this particular case, Justice Frankfurter also quoted from both committee reports and the floor statements of Senator Tydings, and arrived at exactly the opposite conclusion as to intent.

Perhaps the most meaningful comment from the Court, insofar as Congress is concerned, was contained in a concurring opinion of Justice Jackson, joined in by Justice Minton. It is a rebuke to the Court for undertaking what these judges considered a fruitless inquiry into legislative history; but it was also a rebuke to Congress for what Justice Jackson called the "unedifying and unilluminating" legislative history of the Miller-Tydings Act.

In this case, too, the Senate was acting not as a result of a report and recommendation from the committee to which the original Tydings bill had been referred; it was working on a rider reported out of another committee. Since the Jackson opinion is a short one, I would like to read it in full:

I agree with the Court's judgment and with its opinion insofar as it rests upon the language of the Miller-Tydings Act. But it does not appear that there is either necessity or propriety in going back of it into legislative history.

Resort to legislative history is only justified where the face of the act is inescapably ambiguous, and then I think we should not go beyond committee reports, which presumably are well considered and carefully prepared. I cannot deny that I have sometimes offended against that rule. But to select casual statements from floor debates, not always distinguished for candor or accuracy, as a basis for making up our minds what law Congress intended to enact is to substitute ourselves for the Congress in one of its important functions. The rules of the House and Senate, with the sanction of the Constitution, require three readings of an act in each House before final enactment. That is intended, I take it, to make sure that each House knows what it is passing and passes what it wants, and that what is enacted was formally reduced to writing. It is the business of Congress to sum up its own debates in its legislation. Moreover, it is only the words of the bill that have Presidential approval, where that approval is given. It is not to be supposed that, in signing a bill, the President endorses the whole CONGRESSIONAL RECORD. For us to undertake to reconstruct an enactment from legislative history is merely to involve the Court in political controversies which are quite proper in the enactment of a bill but should have no place in its interpretation.

Moreover, there are practical reasons why we should accept whenever possible the meaning which an enactment reveals on its face. Laws are intended for all of our people to live by; and the people go to law offices to learn what their rights under those laws are. Here is a controversy which affects every little merchant in many States. Aside from a few offices in the larger cities, the materials of legislative history are not available to the lawyer who can afford neither the cost of acquisition, the cost of housing, or the cost of repeatedly examining the whole congressional history. Moreover, if he could, he would not know any way of anticipating what would impress enough members of the Court to be controlling. To accept legislative debates to modify statutory provisions is to make the law inaccessible to a large part of the country.

By and large, I think our function was well stated by Mr. Justice Holmes: "We do not inquire what the legislature meant; we ask only what the statute means." (Holmes, "Collected Legal Papers," 207. See also *Soon Hing* v. *Crowley* (113 U.S. 703, 710–711)). And I can think of no better example of legislative history that is unedifying and unilluminating than that of the act before us.

Another case when a floor manager for a bill on behalf of a committee was quoted was in *Mastro Plastics Corporation* v. *National Labor Relations Board* (350 U.S. 260, 1956). The Court said of the 1947 amendments to the National Labor Relations Act:

There is sufficient ambiguity here to permit consideration of relevant legislative history. While such history provides no conclusive action, it is consistent with the view taken by the Board and by the Courts of Appeals for the Second and Seventh Circuits.

Senator Ball, who was a manager for the 1947 amendments in the Senate and one of the conferees on the bill, stated that section 8(d) made mandatory what was already good practice and also aimed at preventing such interruptions of production as the "quickie strikes" occasionally used to gain economic advantage. * * * One minority report suggested a fear that section 8(d) would be applicable to unfair practice strikes. The suggestion, however, was not even made the subject of comment by the majority reports or in the debates. An unsuccessful minority cannot put words into the mouths of the majority and thus indirectly amend a bill.

As late as 1957, the Supreme Court again stressed its heavy reliance upon committee reports as the best source of congressional intent. When called upon to construe a certain portion of the Taft-Hartley Act in *United States* v. *United Auto Workers* (352 U.S. 567, 1957), the Court said, after citing the committee reports:

Although not entitled to the same weight as these carefully considered committee reports, the Senate debate preceding the passage of the Taft-Hartley Act confirms what these reports demonstrate.

In *Cole* v. *Young* (351 U.S. 536, 1956) the Court was concerned with legislation relating to the loyalty of Federal employees. In construing the history of the act of 1950, it relied entirely upon the reports of the House and Senate, plus one quotation of a Government witness taken from the hearings.

This is by no means an exhaustive recital of Supreme Court comments on this subject of legislative history and how it may be determined by the courts. But since the Supreme Court first undertook to examine legislative history to determine the intent of Congress, it has consistently looked first and foremost to the reports of the House and Senate committees as the one authoritative source of that intent.

I do not suggest that either the Senate or the courts will be helpless if we proceed to deal with H.R. 7152 on the Senate floor without benefit of hearings and report. But I do say we will be severely handicapped, and so will the courts.

In my judgment, there is no sound reason whatever for us to proceed under that handicap. If there were no way whatever to obtain hearings and a report on H.R. 7152 from the Judiciary Committee, we would have no alternative but to bypass the committee. But there is an alternative.

It was used only a few weeks ago, when the amendment offered by Senator MUNDT to the foreign aid bill, and which dealt with the wheat sale to Russia, was sent to the Banking and Currency Committee. It was withdrawn as an amendment, introduced as a separate bill, and referred to the Banking Committee. In the referral process, the majority leader obtained a unanimous-consent agreement that the committee be instructed to report the bill back to the Senate by November 25. That was done on November 15; as the majority leader put it:

A bill has been introduced and referred to the Committee on Banking and Currency. By direction of the Senate, it will be reported no later than a week from Monday, November 25.

Of course, that was done by unanimous consent. But it could be done by motion, too, as I am proposing to do today with respect to the pending bill.

If those of us who are backing this civil rights bill have the votes to bypass the Judiciary Committee, we also have the votes to instruct the Judiciary Committee.

We had no problem with the wheat deal measure. It was back on the floor on the appointed day. In all the history of the Senate, so the Parliamentarian informs me, no committee has ever violated or failed to obey the instructions given it by the whole Senate.

I see no reason at all why we should vary from that wise and sound procedure. Senators may say: "But civil rights are a lot more important than the wheat deal." My answer is: "All the more reason why we should avail ourselves of the best we have in providing guidelines to Members who must pass upon this highly important matter, and to the courts who must apply it."

Do not forget, either, the importance of following a fair procedure insofar as attitudes toward the bill itself are concerned. When the time comes to try to close this debate under rule 22, we will need two-thirds of the Senators to close it. So long as Senators have any reason to feel that a fair procedure was not followed, there will be those who will vote against cloture on that ground alone, or on that excuse alone.

Why give them that alibi? Why give them the chance to say that this bill was brought up under steamroller tactics and did not receive a fair hearing before it was brought to the floor? Why give them a chance to vote against cloture on the ground that the only chance opponents had to make their case and bring out what facts they had to bring out was on the floor of the Senate itself? Any time this body ignores a normal and traditional procedure in favor of one that bypasses a major part of the Senate's

regular means of considering legislation, a presumption is at once created in favor of extended floor debate in compensation for the lack of committee consideration.

I think it is most regrettable that the Senate did not uphold the Russell point of order of February 26, and then send this bill to committee with instructions. The unanimous-consent agreement requested by the majority leader the next day would have brought a report back by March 4. Objection was lodged to that request by supporters of the bill. Yet it was long after March 4 had come and gone before we disposed of other legislation and got back to H.R. 7152. It took until March 9 to come back to H.R. 7152. We could have had a report before us right now. So the facts do not bear out that referral to committee then would have delayed consideration of the bill. And before we are through, we are going to find that referral now will expedite it.

In 1957 we bypassed the Judiciary Committee. The debate droned on for weeks. It became evident that there was not a two-thirds majority in the Senate to impose cloture.

The result was that the major sections of the bill had to be dropped as the price for allowing it to go to a vote. We never did get cloture. The bill only came to a vote when it had been rendered innocuous.

It was rendered so innocuous, in my opinion, that I voted against the bill.

A vote against the bill was misunderstood by many throughout the country, as my mail has shown, because most people thought it was a civil rights bill before the Senate and that a pro-civil-righter would vote for any civil rights bill. I never vote for what I consider to be a deception. I considered the 1957 bill a gross deception. It misled pro-civil-righters in the country to believe we would help along the cause of civil rights by passing the bill. I held to the point of view that we set it back. We did not help it. So I voted against the bill.

In 1960, we started out the same way. We dealt only with amendments to a private bill. My effort to discharge the committees of civil rights legislation failed.

That debate staggered along from February 15 to March 24. A lot of amendments were offered and some were voted on. An effort to invoke cloture did not even get a majority vote. We did not get down to business until a voting rights bill came over from the House. When it did, the majority leader moved to send it to the Judiciary Committee for 5 calendar days.

The motion was overwhelmingly agreed to; the committee did report the bill back as directed. It will be recalled that by that time the heat had largely gone out of the struggle. It was evident that sufficient support was lacking for cloture on the Dirksen floor amendment. Thereafter, the principal objective was one of accepting the House bill without substantial change; that is, with only those amendments likely to be accepted by the House.

The House bill was a weak bill when it came to the Senate. It was a weak bill when it left the Senate. The most that can be said for it, is that it was passed with reasonable expedition once it came out of committee. The weeks of floundering on the floor with the Dirksen amendment may well have set the stage for the consensus that resulted in the modest and weak measure that finally passed both the House and the Senate.

If this motion is passed, part of the time between now and April 8 will be accounted for by the Easter recess. We are not going to be in session Friday or Saturday, in any event, so the practical effect of the resolution will be to put the bill over for a little more than a week.

In other words, the 10 days I have referred to would begin to run after the Easter recess. I do not expect, if my motion is agreed to, that the Judiciary Committee will meet on Friday and Saturday. They are entitled to the Easter recess. The Easter recess, which carries great import to many Senators from a religious standpoint, should not be interrupted.

I wish to make clear to the Senate that it is not intended by the mover of this motion that the Judiciary Committee should go into session Friday and Saturday; but it should go into session early Monday morning, and it should stay in session until it can have a fair and reasonable hearing of a selected cross section of witnesses. By that I mean witnesses who represent a fair cross section of all points of view. The majority of the committee, as I shall point out in a moment, should start its work on drafting a committee report, so that it can be ready on April 8.

I ask the supporters of this bill whether they think the result looks any different this time from the time it took in the past when successful attempts were made to bypass the Judiciary Committee.

If we do not have enough support for cloture, this bill will not come to a vote until its most important and effective sections have been dropped.

It is time we devised a civil rights strategy that will gain us the two-thirds needed for cloture. If we do not, we will only be going through the 1957 and 1960 experience again.

We all know that cloture is not so difficult to obtain on other issues. It need not be impossible to obtain it on civil rights. We never have really taken the pains to plan our strategy with a view to obtaining cloture. It has only been our plan to get a civil rights bill to the floor in any way possible, and then take our chances.

That makeshift did not serve us well in 1957 or 1960. Why hasten to use it again? It is time for a meaningful civil rights bill, not just another oratorical exercise. But we will not get a meaningful bill until we can get cloture, and I am doubtful that we can get it so long as we follow the procedure of bypassing the Judiciary Committee. I have no way of knowing whether going through the normal procedure would prove more fruitful in obtaining cloture. But we have not come close to obtaining it in any other way. We shall never find out until we try.

Mr. President, there has been some suggestion that sending the bill to committee would be a waste of time, because the committee will not conduct good faith hearings, that a witness will be put on the stand and will be examined by a member of the committee at great length, hour in and hour out, and there will be a hassle in the committee in regard to the committee report.

MAJORITY CAN DETERMINE COMMITTEE POLICY

Mr. President, I speak respectfully, and I speak out of great esteem for each member of the Judiciary Committee. It is composed of great Senators. Listen to the roster:

The Democrats are Senators EASTLAND, JOHNSTON, MCCLELLAN, ERVIN, DODD, HART, LONG of Missouri, KENNEDY, BAYH, and BURDICK.

The Republicans are Senators DIRKSEN, HRUSKA, KEATING, FONG, and SCOTT.

That is a powerhouse committee. If we wish to evaluate it from the standpoint of ability and great prestige in the Senate and from the standpoint of learning—I do not care what criteria are used—that is a great committee.

It might be asked if there is any basis—which I refuse to accept—for the talk in the cloakroom that it is a helpless committee. It is said "You do not understand that committee. You do not understand the inner workings of that committee. You do not understand what we are up against. You have no conception of how hopeless it is."

I say good naturedly that they are not mice; they are Senators.

The time has come for the Senate to call upon them to function as Senators.

It is unthinkable that such a powerhouse would be stopped or incapacitated, legislatively speaking.

I will not accept the tommyrot that a minority or any individual on the committee could prevent it from functioning as a committee.

I will not accept such an argument. If that be true, the greatest revolution that is needed in the Senate is needed in the Judiciary Committee. The members ought to stand up and declare their independent. There is nothing in the world can stop a majority of those great Senators. They know their procedural rights. They are learned in the law. They are learned in procedure. They know that it is tommyrot to think that a chairman of a committee could prevent the committee from functioning. I mean no offense by intention or in fact when I say that. It is said that the Senator from Mississippi [Mr. EASTLAND], the chairman of the committee, will not let certain things happen. Mr. President, he is not the committee; he is only one member of it. He is not the Senate; he is only one Member of it. He could not possibly produce the results it is said he would produce. The members of that committee would not allow it to happen.

I should like to see the chairman of the Committee on Labor and Public Welfare try to exercise any one-man power. I should like to see the chairman of the Foreign Relations Committee try to exercise any one-man power. I am speaking hypothetically now about the Judiciary

Committee because I do not accept the major premise.

The power rests in each committee to function. A majority of the Judiciary Committee are brilliant lawyers. They ought to control the Judiciary Committee by majority rule, and they ought to give us a report. I plead for a report. I beg for a report. A majority of the committee is on record in support of a strong civil rights bill; at least 9 out of 15. Does anyone mean to tell me that 9 Senators who are assigned to a committee, cannot give the Senate a report by April 8, with all the power legislatively and parliamentarily that attaches to the position of Senator?

Of course they can. I plead for it. I beg for it. I urge support for my motion. That is my case.

I plead with the Senate to handle this bill in a way that will afford the best prospect of enactment of a strong measure. That means having a committee report and hearings for our use and reference.

Mr. JOHNSTON. Mr. President, will the Senator yield?

Mr. MORSE. I am ready to yield the floor, but I am glad to yield to the Senator from South Carolina.

DEATH OF JAMES A. CAMPBELL, FORMER PRESIDENT OF THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

Mr. JOHNSTON. Mr. President, I am deeply saddened by the death of my close friend of many years, Mr. James A. Campbell, former president of the American Federation of Government Employees.

Jim Campbell will be sorely missed by those who knew him personally as a man of warmth, intelligence, and integrity. Further, his loss will be felt by Federal employees everywhere, in whose behalf he labored long and effectively for a great part of his career.

As chairman of the Committee on Post Office and Civil Service and as a member of that committee, I came to know Jim Campbell as one of this Nation's most effective spokesmen for Federal employees' rights. Much of the beneficial civil service legislation now on the statute books was proposed and advocated by this forward-looking union leader. He will be remembered as a man who always advanced his cause with fairness, forcefulness, and a thorough knowledge of the problems of both the employee and Federal management.

Under his leadership, the AFGE grew in prestige, authority, membership, and financial resources. During his career, when forward studies were made by Federal employee groups, we always found Jim Campbell in the forefront. I deeply regret his loss. He will be missed particularly by those of us who shared many of his ideals and his concept that the Federal Government should grow to be an employer second to none.

To Mrs. Campbell and her two sons, I extend my sincerest condolences in their loss.

Mr. MORSE. Mr. President, I owe an apology to the Senator from Missouri [Mr. SYMINGTON]. Earlier I agreed to yield to him. I yielded to several other Senators first, and when I turned to yield to him, he had left the Chamber. I should have yielded to him in preference to other Senators, because he had asked me first.

Mr. SYMINGTON. That is perfectly all right. Secretary McNamara was in the Committee on Foreign Relations, to speak to us on South Vietnam. I left the floor for that reason; otherwise, I would have been present.

Mr. MORSE. I yield to the Senator from Missouri.

GOVERNMENT CREDIT BEING USED TO ADD TO OUR DEFICITS

Mr. SYMINGTON. Mr. President, last week the Inter-American Development Bank floated a $50 million bond issue in this country.

In view of the continued payments deficit, it is paradoxical that the U.S. Government's credit is being used to add to our deficits.

At the time the Inter-American Development Bank's increased capitalization was approved on January 14, there was talk that the Bank might try to sell its bonds in Europe or even in Latin America, but apparently the Bank was already prepared to issue dollar bonds in this country even before they allowed themselves time to explore alternative sources of capital.

I ask unanimous consent that two articles which appeared yesterday morning, "Drain on Dollars Still a Problem," in the New York Times, and "U.S. Payments Deficit Improved Less in 1963 Than Thought; Some Aid Was Temporary," in the Wall Street Journal, be inserted at this point in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the New York (N.Y.) Times, Mar. 25, 1964]

DRAIN ON DOLLARS STILL A PROBLEM—REIERSON FINDS NO REASON TO SAY IT IS DISAPPEARING

Roy L. Reierson, chief economist of the Bankers Trust Co., surveyed the U.S. international payments problem yesterday and found no reason to conclude it is disappearing.

His assessment was decidedly more cautious than other recent comment on the prospects for reducing the country's net outflow of dollars. The volume of the drain has been shrinking steadily since mid-1963, giving rise to renewed optimism about approaching equilibrium and strengthening the dollar's international position.

"The sentiment goes from one extreme to the other," Dr. Reierson commended in a talk to New York University's Men in Finance Club, which met for luncheon at the Lawyers' Club.

"NOT GLOOMY," HE SAYS

Dr. Reierson did not categorize his own sentiment other than to say he was "not gloomy." The tone of his talk was admonitory: Present policies and conditions do not point to early elimination of the payments deficit and it would be premature to believe the problem is about to be solved, he suggested.

Referring to a recommendation last week by the Joint Economic Committee of Congress for repeal of the so-called gold cover, Dr. Reierson asserted that the timing of the proposal was "ill considered and ill advised." He reiterated his own view that the gold cover should be terminated, but not while the United States still has a substantial dollar drain.

The cover is the requirement that the Federal Reserve hold gold equal to at least 25 percent of outstanding Federal Reserve currency and deposits. At present, the cover ties up about $12.5 billion of the Government's $15.5 billion of gold.

Dr. Reierson, a highly regarded economist in financial circles, expressed a view that the tax cut just passed would be "detrimental to the balance of payments." He indicated he thought such an effect could be averted by tighter credit but that he did not expect such a policy to materialize.

DISCOUNT RATE RISE SEEN

In response to a question, Dr. Reierson said he thought an increase in the Federal Reserve rate was likely by the yearend.

An expanding economy, he said, means higher imports. Yet, he said, there is no strong upward trend in exports and hence "no evidence the United States is building up its trade surplus enough to carry capital outflows and military and foreign aid."

Long-term portfolio investment abroad is bound to rise after enactment of the pending interest equalization tax, he said. Efforts to tap Europe's capital markets have had limited success, he added.

If the Government persists in "overemphasis on easy credit," Dr. Reierson continued, a shrinkage in capital outflows would be likely.

He said there was no sign that Europe's inflationary trend was helping exports of American manufactures. These exports may be hurt by anti-inflation measures in Europe, he said.

[From the Wall Street Journal, Mar. 25, 1964]

U.S. PAYMENTS DEFICIT IMPROVED LESS IN 1963 THAN THOUGHT; SOME AID WAS TEMPORARY

WASHINGTON.—The U.S. balance-of-payments deficit didn't improve as much last year as was thought, and some of the improvement was only temporary.

The deficit is currently calculated at $3,301 million for last year, nearly 10 percent larger than the previous estimate of $3,020 million. The 1963 deficit is still narrower than the $3,573 million of 1962 but is newly placed somewhat wider than the $3,043 million deficit of 1961.

A payments deficit results when dollars acquired by foreigners through U.S. spending, lending, and aid exceed the inflow of dollars here from abroad. The administration has been striving to end the persistent U.S. deficit, which gives foreigners mounting claims on the dwindling gold stock.

Not since 1957, when the Suez Canal closing resulted in an export spurt, has the United States shown a surplus ($520 million that year) in its international accounts.

NEW DATA STRETCHED DEFICIT

The revision in the 1963 deficit results from recent information to the Commerce Department showing that foreigners piled up about $100 million more in U.S. bank accounts than had been calculated; also, shipments of military goods to foreigners, which count as exports, were about $150 million less than initially reported.

And the Government agency, in a payments report, noted that part of the improvement recorded last year reflects "developments which have had only temporary significance" as well as some basic economic gains.

Exports of farm products, for instance, were exceptionally high due to such strictly temporary factors as bad weather and poor crops in Europe, the report said; such conditions boosted farm exports by up to