Alfred M. Gray, Jr.
Robert E. Haebel
Elvyn E. Hagedorn
Richard S. Hartman
William H. Heintz
Emil W. Herich
Peter L. Hilgartner
Clarence E. Hogan
Harry H. Holmberg
Eugene R. Howard, Jr.
Robert W. Howland
William E. Hutchison
Gerald H. Hyndman
Raymond B. Ingrando
Richard P. Johnson
Thomas M. Kauffman
Charles J. Keever
Thomas R. Kelly
William R. Kephart
Lavern W. Larson
William A. Lawrence
Charles G. Little
Gordon M. Livingston
John R. Love
Frederick F. Mallard
Richard C. Marsh
Val R. McClure
Max McQuown
John G. Metz
Marc A. Moore
Samuel M. Morrow
Roy E. Moss
Frank J. Murray
Neil A. Nelson
Donald E. Newton
Stephen G. Olmstead
Eric B. Parker
John J. Peeler
Edward F. Penico
Charles R. Poppe, Jr.
Francis X. Quinn
James R. Quisenberry
Stanly H. Rauh
Brooke F. Read, Jr.
John J. Reddy
Lee C. Reece
Robert C. Rice
William H. Rice
William R. Rice
Charles D. Roberts, Jr.
Rodger E. Rourke
Jack D. Rowley
William A. Scott, Jr.
Donald L. Sellers
Dale E. Shatzer
Paul L. Siegmund
Eugene A. Silverthorn
William C. Simanikas
Benjamin B. Skinner
Louis Z. Slawter, Jr.
Richard W. Smith
Michael E. Spiro
Broman C. Stinemetz
Richard C. Stockton
Thomas R. Stuart
Lawrence F. Sullivan
Richard B. Taber
Gerald C. Thomas, Jr.
Ralph Thuesen
Frank D. Topley
Bernard E. Trainor
Richard B. Twohey
John J. Unterkofler
Morgan W. West
Peter A. Wickwire
Bobby R. Wilkinson
Charles T. Williamson
Theodore J. Willis
Leonard E. Wood
Tullis J. Woodham, Jr.
Richard E. Wray, III
Gary L. Yundt

CONFIRMATIONS

Executive nominations confirmed by the Senate September 13, 1971:

IN THE AIR FORCE

The following officer to be placed on the retired list, in the grade of general, under the provisions of section 8962, title 10, of the United States Code:

Gen. Joseph R. Holzapple, 329-05-4196FR (major general, Regular Air Force), U.S. Air Force.

The following officer to be assigned to a position of importance and responsibility designated by the President, in the grade of general, under the provisions of section 8066, title 10, of the United States Code:

Lt. Gen. David C. Jones, 501-10-3608FR (major general, Regular Air Force), U.S. Air Force.

The following officer to be assigned to a position of importance and responsibility designated by the President, in the grade of lieutenant general, under the provisions of section 8066, title 10, of the United States Code:

Maj. Gen. William V. McBride, 185-16-7573FR (major general, Regular Air Force), U.S. Air Force.

Maj. Gen. Gerald W. Johnson, 301-07-2449 FR, Regular Air Force, to be assigned to a position of importance and responsibiltiy designated by the President in the grade of lieutenant general, under the provisions of section 8066, title 10, of the United States Code.

IN THE ARMY

The following-named officer, under the provisions of title 10, United States Code, section 3066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 3066, in grade as follows:

To be general

Lt. Gen. George Vernon Underwood, Jr., 305-42-3706, Army of the United States (major general, U.S. Army).

IN THE NAVY

Vice Adm. John A. Tyree, Jr., U.S. Navy, and Vice Adm. James W. O'Grady, U.S. Navy, for appointment to the grade of vice admiral, when retired, pursuant to the provisions of title 10, United States Code, section 5233.

In the Army

The nominations beginning Howard T. Prince, to be captain, and ending John A. Reid, to be 2d lieutenant, which nominations were received by the Senate and appeared in the Congressional Record on Aug. 5, 1971.

In the Navy

The nominations beginning James A. Kasica, to be ensign, and ending Valentine D. Galasyn, to be permanent lieutenant and a temporary lieutenant commander, which nominations were received by the Senate and appeared in the Congressional Record on Aug. 5, 1971.

HOUSE OF REPRESENTATIVES—*Monday, September 13, 1971*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

Now, O God, strengthen Thou my hands.—Nehemiah 6: 9.

Most merciful and gracious God, help us to begin this new week with a greater devotion to Thee and with a genuine determination to meet the experiences of these days with courage, to manage them with confidence, and to master them with a creative faith which will lead us and our Nation to the heights of truth, righteousness, and good will. So we come to Thee this morning praying that Thy strength may sustain us as we endeavor to walk the true and living way.

"Just as we are, strong and free,
To be the best that we can be
For truth and righteousness and Thee,
Lord of our lives, we come."

Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Arrington, one of its clerks, announced that the Senate had passed a resolution of the following title:

S. RES. 165

Resolved, That the Senate has heard with profound sorrow and deep regret the announcement of the death of the Honorable Winston L. Prouty, late a Senator from the State of Vermont.

Resolved, That a committee of Senators be appointed by the President of the Senate to attend the funeral of the deceased.

Resolved, That the Secretary communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

Resolved, That when the Senate adjourns today, it adjourn as a further mark of respect to the memory of the deceased Senator.

The message also announced that the Senate had passed without amendment a joint resolution of the House of the following title:

H.J. Res. 850. Joint resolution authorizing the Honorable Carl Albert, Speaker of the House of Representatives, to accept and wear The Ancient Order of Sikatuna (Rank of Datu), an award conferred by the President of the Philippines.

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 942. An act to establish a Commission on Security and Safety of Cargo; and

S. 2007. An act to provide for the continuation of programs authorized under the Economic Opportunity Act of 1964, and for other purposes.

THE LATE HONORABLE WINSTON L. PROUTY

Mr. STAFFORD. Mr. Speaker, I regret to have to announce to my colleagues in the House the tragic death of the junior Senator from Vermont, WINSTON L. PROUTY, who was a Member of this body for four terms. Senator PROUTY passed away on Friday, September 10, 1971.

He was a most distinguished American and Vermonter and a personal friend of mine.

Mr. Speaker, after an agreement with you and consistent with similar activities in the other body later today, may I make note of the time for memorial services for Senator PROUTY and invite the Members of the House who knew him to join in those services.

APPOINTMENT OF CONFEREES ON H.R. 10090, PUBLIC WORKS AND ATOMIC ENERGY COMMISSION APPROPRIATIONS, 1972.

Mr. EVINS of Tennessee. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 10090) making appropriations for Public Works for Water and Power Development and the Atomic Energy Commission for the fiscal year ending June 30, 1972, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments and agree to the conference asked by the Senate.

The SPEAKER. Is there objection to the request of the gentleman from Tennessee? The Chair hears none, and appoints the following conferees: Messrs. EVINS of Tennessee, BOLAND, WHITTEN, ANDREWS of Alabama, SLACK, MAHON, RHODES, DAVIS of Wisconsin, ROBISON of New York, and Bow.

PROHIBITING DETENTION CAMPS

Mr. MATSUNAGA. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 483 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 483

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 234) to amend title 18, United States Code, to prohibit the establishment of emergency detention camps and to provide that no citizen of the United States shall be committed for detention or imprisonment in any facility of the United States Government except in conformity with the provisions of title 18. After general debate, which shall be confined to the bill and shall continue not to exceed three hours, one and one-half hours to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary and one and one-half hours to be equally divided and controlled by the chairman and ranking minority member of the Committee on Internal Security, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the text of the bill H.R. 820 as an amendment in the nature of a substitute for the bill. At the conclusion of the consideration of H.R. 234 for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

Mr. EVINS of Tennessee, Mr. Speaker, yield 30 minutes to the gentleman from California (Mr. SMITH), pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 483 provides for consideration of H.R. 234, which, as reported by our Committee on the Judiciary witbout a single dissenting vote, would prohibit the establishment of emergency detention camps and repeal the Emergency Detention Act of 1950, which authorizes the establishment of such camps. The resolution provides an open rule with general debate limited to 3 hours, of which 1½ hours are to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, and the other 1½ hours to be equally divided and controlled by the chairman and ranking minority member of the Committee on Internal Security. After general debate, H.R. 234 will be read for amendment under the 5-minute rule.

Mr. Speaker, the resolution also provides that it shall be in order to consider the text of the bill H.R. 820 as an amendment in the nature of a substitute for H.R. 234. The bill H.R. 820, reported by the Committee on Internal Security on a one-vote majority of 5 to 4, would merely amend and not repeal the Emergency Detention Act.

At the conclusion of the consideration of H.R. 234 for amendment, the rule further provides that the previous question shall be considered as ordered on the bill and amendments thereto to final passage, without intervening motion, except one motion to recommit with or without instructions.

Mr. Speaker, H.R. 234 involves a simple but vital question: Is there a place for concentration camps in America?

The answer obviously is "No." But let us examine both the question and answer in greater depth. As Americans we find, particularly in the present national climate, that the possible use of concentration camps as a tool of government is repugnant. We have come to equate concentration camps with Nazi Germany, Communist Russia, and other totalitarian forms of government. Indeed, we cannot justify the establishment of concentration camps under our own form of government by merely giving them euphemistic labels, such as "relocation camps" or "detention centers." Regardless of the appellation used, they in fact are all concentration camps—places where persons are incarcerated merely on the basis of governmental fiat. A democracy such as ours ought not to countenance any law which authorizes the establishment of concentration camps. H.R. 234, therefore, seeks to strike from our statue books a law which authorizes the establishment of concentration camps in America.

The objectionable law is title II of the Internal Security Act of 1950, the so-called Emergency Detention Act. It has also been referred to frequently as America's concentration camp authorization law.

The Emergency Detention Act ought to be repealed, for the further reason that it violates the constitutional guarantees and judicial traditions that are basic to our American way of life. For example, title II authorizes detention not on the basis of an actual act committed in violation of law, but on the basis of mere suspicion—of a mere probability that, during proclaimed periods of internal security emergencies, the detainee might engage in, or conspire with others to engage in. acts of espionage or sabotage. Moreover, the detainee is not granted a trial by jury, or even before a judge; he is assumed to be guilty, for there is no presumption of innocence; and he is denied the right of confrontation for the attorney general, if he deems it to be in the national interest, need not produce any evidence or witnesses in support of his charges against the detainee.

In addition to the chilling effect that the Emergency Detention Act casts upon the full enjoyment of constitutional rights, there is yet another basis for the disquietute that its presence in our statute books causes in our national life. The genesis of title II, enacted in 1950 over President Truman's veto shortly after U.S. troops had landed in Korea to stem the tide of Communist aggression, can be traced to the tragic experience which most Americans now recall, if at all, as unnecessary and unwarranted.

One of the things which disturbed me most while I was serving at the battlefront in World War II, as an officer of the 100th Infantry Battalion, which subsequently became a part of the Nisei 442d Regimental Combat Team, was the fact that while Americans of Japanese ancestry were fighting and dying in American uniform to preserve the American ideal, 110,000 Japanese-Americans and their parents, some of whom were relatives and friends of mine, were being uprooted from their homes in the Western United States and incarcerated in American concentration camps for no reason other than that they wore Japanese faces. It was unbelievable that the Government of this great democracy would throw innocent Americans, including pregnant women, infants, children, and the aged and infirm into concentration camps, complete with barbed wire fences and armed guards.

Today, all historians, scholars, jurists, lawyers, and plain thinking Americans agree that the evacuation and imprisonment of Japanese-Americans in World War II mark the "most shameful chapter in American history." It would be even more incredible, if, despite this blot in our national history, Americans would sanction any law which provides for the establishment and maintenance of concentration camps in the United States.

Fortunately, such is not the case. The proposal to repeal the Emergency Detention Act has gained national attention and support since 1968, when the Japanese American Citizens League, a national organization of more than 25,000 members constituting 92 chapters in 32 States, decided to spearhead a nationwide drive to repeal the repugnant act. By their efforts, members of that organization hope that the humiliation and suffering of the inmates of America's only concentration camps will not be inflicted upon any other group of Americans.

Today, more than 70 State and local legislative bodies, commissions, and agencies throughout the United States, and more than 500 national, regional, State and chapter organizations, representing various professional, business, labor, veterans, social, religious, and civic groups, have asked that Congress act quickly in repealing the Emergency Detention Act. Leading newspapers across the country have lifted their editorial voices in favor of repeal.

In making this appeal, freedom-loving Americans everywhere have recognized the fact that the Congress of the United States is not only a defender of the Nation's security, but also the first line of defense against any encroachment on individual liberty. In the words of President Truman, when he vetoed the offensive law:

> This is a time when we must marshal all our resources and all the moral strength of our free system in self-defense against the threat of Communist aggression. We will fail in this, and we will destroy all that we seek to preserve, if we sacrifice the liberties of our citizens in a misguided attempt to achieve national security.

The Congress in 1950 disregarded that sage admonition of a great President and overrode his veto to enact the Emergency Detention Act. Fortunately, for ourselves and our country, the full effects of that potentially grave error have not been visited upon any of our citizens. By the grace of God we have been spared a national security emergency during which the act might have been invoked.

We have been granted the time to reflect on our past mistake and the hour has arrived for us to rectify it.

I urge the adoption of House Resolution 483 in order that H.R. 234 may be considered and passed so that we may do this.

Mr. Speaker, I reserve the balance of my time.

Mr. ICHORD. Mr. Speaker, I did not hear the gentleman. Did he ask unanimous consent to revise and extend his remarks?

The SPEAKER. No; he reserved the balance of his time.

Mr. SMITH of California. Mr. Speaker, I yield myself such time as I may use.

Mr. Speaker, House Resolution 483 provides a somewhat different type of rule. It is a little unique, as we occasionally do in the Rules Committee. It provides mainly for the consideration of H.R. 234, reported out of the Judiciary Committee, which repeals title II of the Internal Security Act. It also provides an equal amount of time, 1½ hours of general debate, for the consideration of H.R. 820, which was reported by the Internal Security Committee.

So far as I personally am concerned, I am not upset about title II being repealed, but I am certainly concerned about the additional language in the repealer, which was inserted as an amendment into H.R. 234 by the Judiciary Committee.

Title II has never been used. It was passed in 1950. The people they are complaining about, and lots of them are upset about, were taken into custody as citizens in 1942 by the Army. This act was passed in 1950 over former President Truman's veto. It has never been used. I do not see how it can possibly be used nowadays with the many court decisions and the changes in the law. Recently, in connection with some of the problems in Washington, D.C., we found that a conviction could not even be obtained against somebody for disturbing the peace, even though they had their clothes off out in front of the House of Representatives and were raising lots of trouble.

So now we are talking about something which, in my opinion, is "much ado about nothing."

By the same token I will say that I have no objection to title II being repealed, but the language added by the Judiciary Committee as an amendment, instead of a straight repealer, provides as follows:

(a) No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress.

Why have that language in the bill? That language is not necessary. If title II is bad, let us repeal it.

On December 7, 1941, when Japan attacked Pearl Harbor in the early morning, Congress was not in session. We had a number of problems at that time taking aliens into custody. I happened to have been supervisor of the Los Angeles office of the FBI that had to do with that. About 8:30 that night the President issued orders. There were warrants out. The Attorney General had them. I did not have them in my hands. But in any event, I supervised hundreds of officers, and we took into custody a good many aliens.

That is not comparable to this bill, which has to do with citizens, but by the same token it is comparable from this standpoint: if the President were absolutely handicapped by this language that no citizens shall be imprisoned or otherwise detained by the United States except pursuant to an act of Congress, what could he possibly do if there were an emergency?

Some people have indicated that the President has sovereign powers. I asked the Department of Justice what those sovereign powers were, and I asked them to give me a review of those powers. I have received no information from them. If we place this language in the bill, with the various court decisions that we now have, with individual orders signed by various judges of the various courts, nobody would know what might happen if an emergency did arise.

As I have said, I have no objection to repealing title II. But why make it more difficult by having Congress say that nothing can be done, taking away whatever powers the President or anybody else might have, by saying that it cannot be done except by an act of Congress? We might not be in session. It might be a week or two after an emergency should arise before the Congress could act. If the Congress had adjourned, or was in recess and Members were away on business we might have difficulty getting Congress convened quickly.

The Internal Security Committee is taking a little different approach. They are attempting to take away all the fear. They have reported an amendment to the Internal Security Act which says nobody can be placed into any camp because of race or color or creed. I think a great deal of this fear has been manufactured because some Communists or some marchers feel that possibly they may be picked up and placed into a camp wrongfully, and maybe now some good honest citizens are genuinely concerned about it. If we are going to have the language added to the repealer which the Judiciary Committee suggested, then I intend to support the Internal Security Committee bill, I hope the Judiciary Committee will give consideration to accepting language to strike out the provision which says:

No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress—

And simply proceed to repeal title II of the Internal Security Act, which the newspapers, as the gentleman from Hawaii (Mr. MATSUNAGA) has said, and others seem to think ought to be repealed.

If that is what should be done, fine, then let us do it, but do not let us hamstring the President or anybody else with some language we cannot interpret in the future.

If Members are going to insist upon that language, then I am going to oppose that repealer with that language, and I am going to support the Internal Security Committee, which I think has attempted to do a pretty good job.

I do not believe anybody is going to be locked up and placed in a concentration camp. Those days are gone forever so far as the United States of America is concerned.

At any rate, Mr. Speaker, I do support the rule, and I hope Members will pay attention, when it is presented—as they always do, of course. I believe the gentleman from Missouri (Mr. ICHORD) and the gentleman from Ohio (Mr. ASHBROOK) in their recent two-page letter have set forth the situation very uniquely so far as the difficulty is concerned with the added language, and what might occur.

Mr. MATSUNAGA. Mr. Speaker, will the gentleman yield?

Mr. SMITH of California. I yield to the gentleman from Hawaii.

Mr. MATSUNAGA. Mr. Speaker, initially I believe the fears that the gentleman harbors might be entertained by many Members of Congress, but the committee amendment which is proposed, known as the Railsback amendment, does not in any way detract from the powers which the President already has, and the President may act under existing laws passed by Congress as well as by exercising his constitutional powers.

In reply to a question by the chairman of the Internal Security Committee on September 10, 1970, Mr. Yeagley, who was then Assistant Attorney General in charge of the internal security, had this to say:

There is a considerable amount of statutory authority to protect the Internal Security interests of our country from sabotage and espionage or other similar attacks.

This would seem to indicate, and I hope the gentleman from California will review this matter as we go into further debate in the Committee of the Whole, that by the statement of the Attorney General's office itself, we have no fear expressed relative to any emergency situation wherein the lack of law may hamstring the President.

Mr. SMITH of California. May I say to the distinguished gentleman that the testimony we are talking about occurred on the original bill in 1970. This bill was reported in 1971. There is not any statement or any letter any place on this particular language. I have asked the Department of Justice and the Attorney General, and I have inquired of the White House. They do not want to get into it, and I will put it into the RECORD, because of the political reasons. I believe that they are against that language, but they do not want to say so.

The gentleman from Hawaii talks about the Japanese being taken into camp. He wants to repeal title II of the Internal Security Act. Then why does not the gentleman support what he has in mind and not talk about other language which has nothing to do with title II of the Internal Security Act? That is something I cannot quite get myself to understand.

Mr. MATSUNAGA. Mr. Speaker, will the gentleman yield further?

Mr. SMITH of California. I am happy to yield further.

Mr. MATSUNAGA. Actually the Railsback amendment, merely reiterates what is the law.

In answer to the query raised by the chairman, this year, in testifying before the Subcommittee No. 3 of the House Committee on the Judiciary, on March 18, 1971, Mr. Mardian, who succeeded Mr. Yeagley as Chief of the Internal Security Division of the Department of Justice, had this to say in answer to a question by the gentleman from Wisconsin (Mr. KASTENMEIER):

Mr. KASTENMEIER. Would you tell the committee what statutory means are at the disposal of the Department in dealing with internal security emergencies?

Mr. MARDIAN. Yes; there are numerous statutes on the book that relate to the commission or attempt to commit acts of sabotage. I think the most relevant statute is title 18, 2152, which is the sabotage statute. Title 18, 2388 is relevant. We have the Smith Act. We have title 50, section 21, which provides for the authority of the President in time of declared war or any invasion or predatory incursion by an enemy.

Then he goes on to say:

I could recite numerous other statutes, all of which deal with the commission of crimes against the United States or attempt to commit crimes against the United States that have been on the books for some considerable period of time, that we feel are sufficient to treat the problem.

I repeat, "that we feel are sufficient to treat the problem."

So the amendment itself, as I pointed out to the gentleman earlier, would not in any way diminish the powers of the President, given to him under laws mentioned by Mr. Mardian.

Mr. SMITH of California. I am very familiar with the statutes the gentleman has read. I taught the law on espionage and sabotage and national security all over the United States. I am familiar with it.

We do have those laws the gentleman says we have, adequate laws. He cites the testimony. Fine. Let us rely on the adequate laws the Department of Justice says we have and not clutter them up by adding language which might cause confusion. That is the point I will stick with.

Mr. ICHORD. Mr. Speaker, will the gentleman yield, since my name was mentioned?

Mr. SMITH of California. I yield to the gentleman from Missouri.

Mr. ICHORD. I did not intend to participate in the debate on the rule. As the gentleman knows, I testified before the Committee on Rules and I do intend to vote for the rule.

I cannot help but make a point, since the gentleman from Hawaii mentioned my name, that the two gentlemen to whom he referred, Mr. Yeagley and Mr. Mardian, also expressed at the same time opposition to the Railsback amendment.

I happen to feel very strongly about some of the issues that have been presented in the debate today. I feel that my position is the true libertarian position.

I did want to make it clear at this point in the RECORD that the Department of Justice did not and has not expressed favor for the Railsback amendment.

Mr. RAILSBACK. Mr. Speaker, will the gentleman yield?

Mr. SMITH of California. I yield to the gentleman from Illinois.

Mr. RAILSBACK. I want to begin by thanking the gentleman for yielding.

My friend and colleague from Missouri, I believe, is correct when he says that they do not favor it. What he means is they have not taken a position. There is no doubt about that; they have not taken a position.

I believe it is a little bit—and I know he does not intend it—almost misrepresentive when he says they do not favor it. The point is they have really not taken a position.

I want to address myself to the question of the gentleman from California to the gentleman from Hawaii about, Why support this extra language? I believe the answer is very simple. By repealing title II of the Internal Security Act we knock out a statute that was passed in the year 1950. If we are concerned about what happened in 1942 when there really was not a statute existing upon which the President relied, then we have to do something in addition if we really want to prevent some kind of a recurrence of what happened in 1942.

In other words, the Internal Security Act was not even in existence in 1942.

Mr. SMITH of California. I can understand the gentleman's point. I repeat, and then I will close, that title II of the Internal Security Act has never been used. It was passed in 1950. You are talk-about a World War II problem, where the Army took action pursuant to a Presidential order. There was a lot of concern at that time about various situations. You will recall back before World War I we had the Black Tom explosion which blew up an ammunition dump in New Jersey, and costs ran into millions of dollars of damages. We had all kinds of sabotage that occurred. Now, neither the gentleman from Illinois nor the gentleman from Ohio nor the gentleman from California can anticipate what may happen in the future. We do not have a crystal ball. I say that if title II is the problem, then let us repeal it. It has never been used or will be used, so why go ahead and put more language in on it? Why create an additional problem here that we do not now have?

Mr. RAILSBACK. Let me say I understand your position, but frankly simply repealing title II does not, in my opinion, have a chance. I think the gentleman from Missouri, who is on the opposite side, would agree. I think what that does simply is it leaves it in limbo. If you want to follow what he has proposed, that is one thing. If you want to prevent what happened in 1942, then that is something else.

I want to make one additional point here. Even under the amendment that will be offered by the gentleman, I believe there are three events which trigger or can trigger a Presidential proclamation. Two of them would now require in his amendment some kind of congressional action in the near future. The other thing is that under martial law, if there were an invasion of this country and the courts were not able to operate, there is no question but what the President would retain his powers in that event.

Mr. SMITH of California. I will say to the gentleman from Illinois those are some of the things that bother me. In other words, this amendment has been added by the Committee on the Judiciary. Why does not the Committee on the Judiciary repeal title II and then start hearings and find out what laws we have now? You say you think the President could do this or could do that. It seems that we have different thoughts on these matters. Why do we not get a staff study out to the Department of Justice and let them look at this language and say that they are either for this language or they are not? Do not let them play politics with it. You could do a good job on it, but I just do not think you have had the necessary hearings with regard to that language yet. This is my personal opinion. You can do a good job on it and review it and come in with legislation if it is needed.

Mr. ICHORD. Mr. Speaker, will the gentleman yield since my name was mentioned again?

Mr. SMITH of California. I yield to the gentleman from Missouri.

Mr. ICHORD. The gentleman from Illinois may have inferred that I perhaps intentionally misled the House when I said that Mr. Mardian and also Mr. Veagley had expressed opposition to the Railsback amendment. I hold in my hand a letter dated May 14, 1971, and I read from that letter from Mr. Mardian which says that at the March 3 hearings before the House Committee on the Judiciary, Subcommittee No. 3, "I objected to this provision."

Now, it is true that the amendment at that time only applied to title 18. It applies now and it has been revised.

This is my position. I think that the House Committee on the Judiciary has not done its work well. I think it has jumped from the frying pan into the fire. I hope during the course of this debate to hold your feet to the fire. I think that we can discuss these very difficult, profound constitutional issues without being disagreeable. If we do disagree, I think we can disagree without being disagreeable. I do not wish to say any more at this time and I appreciate the gentleman from California yielding.

Mr. SMITH of California. I was happy to yield to the gentleman from Missouri.

Mr. MIKVA. Mr. Speaker, will the gentleman yield?

Mr. SMITH of California. I yield to the gentleman from Illinois.

Mr. MIKVA. Mr. Speaker, I appreciate the efforts of the gentleman from Missouri in trying to clear up the record, and I know that no one feels that the gentleman from Missouri has tried to mislead the House. However, if I could clear it up a little bit more I would like to be able to do so, because I am sure that the gentleman from Missouri had no intention to misinform the House.

Mr. Speaker, I think we can agree on the fact that Mr. Mardian appeared before our subcommittee. He appeared and stated—and I can quote his testimony, if necessary—his opposition to a provision that was in the bill that the gentleman from Hawaii (Mr. MATSUNAGA) and I had introduced, along with other proposals which stated that no one should be detained or imprisoned except under the

provisions of title 18. He pointed out, very wisely, that many of the provisions that do allow detention and imprisonment appear in other sections than title 18. He made reference to them including 26 and 49, and in response to the Department of Justice opposition to that over extension, the Railsback amendment came into being, which made it very clear that we are not talking about title 18 but any detention authorized by an act of Congress.

So, I am sure that the gentleman from Missouri would agree that Mr. Mardian's statements all refer to the earlier bill which would have said that imprisonment could only be pursuant to title 18 but he correctly added that there were many other titles which allow for imprisonment.

Mr. SMITH of California. Mr. Speaker, I will say to the gentleman that I assume this question can be resolved during the 3 hours of general debate, but the gentleman's statement is another reason why I think I am correct in that there is a difference here about what the testimony of Mr. Mardian was—whether he was for it or against it or whether there are already existing adequate laws. Why does not the Committee on the Judiciary find out and spell them out and see if we need this language? If they need this language, I shall support a rule providing for it, but I do not think we ought to legislate without full knowledge, and so many Members of the House who are on the floor have differing opinions as to the testimony of Mr. Mardian.

Mr. Speaker, let us find out what it was. Let us find out what we are talking about. In other words, are you for it or against it and leave politics out of it.

Mr. ICHORD. Mr. Speaker, since my name has again been mentioned, will the gentleman yield?

Mr. SMITH of California. I yield further to the gentleman from Missouri.

Mr. ICHORD. I appreciate the kind remarks of the distinguished gentleman from Illinois, but I thought I made myself clear. I do not know whether I said what I meant, but I think I meant, and I am quite sure I meant what I said, and I quote again from the letter dated May 14, 1971, by Mr. Mardian in order to make my position clear. Of course, I am not here to defend Mr. Mardian's position. I am here to defend my position and the position of my committee. Mr. Mardian stated:

> Of course, the Department of Justice has maintained, and continues to maintain, the opinion that title II of the Internal Security Act of 1950 should be repealed outright without any provisos attached thereto.

The amendment which the gentleman from Illinois (Mr. RAILSBACK) proposes to offer is a proviso, and I hope to be able to show the gentleman from Illinois they jump from the frying pan into the fire, and I say again I intend to hold your feet to the fire.

Mr. SMITH of California. Mr. Speaker, I urge the adoption of House Resolution 483 and reserve the balance of my time.

Mr. MATSUNAGA. Mr. Speaker, I have no further requests for time on this side.

Mr. SMITH of California. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. ANDERSON).

Mr. ANDERSON of Illinois. Mr. Speaker, I ask unanimous consent to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

Mr. ICHORD. Mr. Speaker, reserving the right to object—and I will object, Mr. Speaker, if the request for a revision and extension of the remarks includes extraneous material.

Mr. ANDERSON of Illinois. Mr. Speaker, I am sorry that the gentleman from Missouri (Mr. ICHORD) feels obliged to invoke a rule of that kind in connection with what is a normal and routine request. Actually, I had not intended to include any extraneous material——

Mr. ICHORD. With that understanding, that the gentleman does not include extraneous material—and I will make my point very clear later on in the debate.

Mr. ANDERSON of Illinois. Mr. Speaker, I do not yield further.

Mr. ICHORD. If the gentleman will permit me to continue, I will not object as long as the request does not include extraneous material.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. ANDERSON of Illinois. Mr. Speaker, before I begin, I think it is appropriate to note with great pleasure the return to the floor of the House of Representatives this afternoon of the distinguished ranking member of the House Committee on the Judiciary, my friend and colleague, the gentleman from Ohio (Mr. MCCULLOCH).

Mr. Speaker, I think that the rising and spontaneous ovation that my friend, the gentleman from Ohio (Mr. MCCULLOCH), has just received, speaks volumes, and far more eloquently than any words that I could summon, of the deep feeling of affection that we hold for the gentleman, and the fact that during these many weeks of his enforced absence because of illness, that we have missed him, that we have missed his wise counsel, and that we have missed his support on those great issues because I think there is no man with a reputation for being a greater civil libertarian and a greater supporter of the cause of civil rights than the gentleman from Ohio (Mr. MCCULLOCH). We are indeed happy that he has come back to us today.

Mr. Speaker, I do not intend to speak at length on this bill. I merely wanted to express my pleasure that, after these many, many weeks, if not months of preparation that we have come to the moment of decision on what I think is a highly important piece of legislation.

I sense from the attitude of my friend, the gentleman from Missouri (Mr. ICHORD)—and he is my friend—that there is a little testiness in the air on this matter, and maybe it is because it stems from the fact that I believe the committee which that gentleman chairs so ably, feels some preemptive or some proprietary rights on the subject matter of the Internal Security Act of 1950, and there is maybe just a bit of feeling over the fact that we are considering it today——

The SPEAKER. The time of the gentleman from Illinois has expired.

Mr. SMITH of California. Mr. Speaker, I yield 2 additional minutes to the gentleman from Illinois (Mr. ANDERSON).

Mr. ANDERSON of Illinois. Mr. Speaker, by the fact that we are considering it today, but not from his committee, but from the House Committee on the Judiciary.

I believe I would agree with my friend, the ranking member of the Committee on Rules, the gentleman from California (Mr. SMITH), that we have attempted to deal with this matter fairly and equitably by providing a rule that will allow each of these committees an equal amount of time to discuss their respective approaches to this matter.

Mr. ICHORD. Mr. Speaker, will the gentleman yield?

Mr. ANDERSON of Illinois. In just one moment.

I further join the gentleman from Hawaii in the effort that he has made to secure the total and outright repeal of title II.

When I testified many weeks ago before the House Committee on the Judiciary I referred at that time to some testimony by the Deputy Attorney General, Richard Kleindienst, when in 1969 he testified in behalf of the Department of Justice in support of the repeal of title II, and what he said at that time I thing bears repeating: that this statute has aroused among many of the citizens of the United States the belief that it may one day be used to accomplish the apprehension and detention of citizens who hold unpopular beliefs and views.

And it is because of that fear, even though it may be unjustified, and even though it may be indeed even fanciful to believe that such things could happen in this Republic, I believe it is important that we recognize that the fear does exist, and that fear can be corrosive, it can be destructive so far as our democracy is concerned, so that, therefore, we ought to completely allay and bring to rest those fears once and for all by wiping from the statute books title II of the Internal Security Act of 1950.

Mr. Speaker, I support the rule, and I support the legislation that would make that come to pass.

Now I am pleased to yield to my friend, the gentleman from Missouri, the chairman of the Committee on Internal Security (Mr. ICHORD).

Mr. ICHORD. I want to say, insofar as the rhetoric of the gentleman from Illinois is concerned, I agree with him wholeheartedly. I do not, however, agree with his emotion and with his logic.

I want to assure the gentleman from Illinois that I am not piqued that the House Committee on the Judiciary might have infringed upon the jurisdiction of the House Committee on Internal Security. But my objection goes to the substantive issue and I will insist, and I want to watch it very closely, that no extraneous material goes into the RECORD, in order to observe the issues, unless it is moved and ordered by the House.

Mr. ANDERSON of Illinois. I had not intended to discuss the substitute. I felt there would be adequate time during the 3 hours of general debate for that to take place.

But, the gentleman has raised the point—and let me say why I am opposed to the substitute that he would offer. It is simply for the reason that it would, to be sure, for the first time, provide that no one could be detained or imprisoned for reasons of race and ancestry. But that does not include language to the effect that it would bar the imprisonment of someone holding unpopular beliefs. It does not go to the very important matter, I think, of possible thought control. So I would salute the gentleman for going as far as he has gone in suggesting we would never want to return to the days of 1941 and 1942, imprisoning people on the basis of ancestry. But I think we ought to go the whole way—we ought to go the whole route and repeal the title and thereby achieve the objective of making sure that we do not detain people for holding unpopular beliefs as well.

Mr. KASTENMEIER. Mr. Speaker, will the gentleman yield again since he has mentioned my name?

The SPEAKER. The time of the gentleman from Illinois (Mr. ANDERSON) has expired.

Mr. MATSUNAGA. Mr. Speaker, does the gentleman from Missouri wish time?

Mr. ICHORD. I do not wish to participate in this debate, but as I stated previously, if the gentleman is going to——

Mr. MATSUNAGA. Mr. Speaker, does the gentleman from Missouri wish time?

Mr. ICHORD. I do not desire any time, but I will object to the inclusion of extraneous material in the unanimous-consent request of the gentleman.

Mr. MATSUNAGA. Mr. Speaker, there being no further requests for time, I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER. The question is on the resolution.

The question was taken, and the Speaker announced that the ayes appeared to have it.

Mr. DICKINSON. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

The question was taken; and there were—yeas 345, nays 1, not voting 87, as follows:

[Roll No. 252]

YEAS—345

Abernethy	Arends	Bevill
Abourezk	Ashbrook	Biester
Abzug	Ashley	Bingham
Adams	Aspin	Blackburn
Alexander	Aspinall	Blanton
Anderson, Calif.	Baring	Boggs
	Barrett	Boland
Anderson, Ill.	Begich	Bolling
Andrews, Ala.	Belcher	Bow
Andrews, N. Dak.	Bell	Brademas
	Bennett	Brinkley
Annunzio	Bergland	Broomfield
Archer	Betts	Brotzman
Brown, Mich.	Hathaway	Pike
Broyhill, N.C.	Hawkins	Pirnie
Broyhill, Va.	Hays	Poage
Buchanan	Hébert	Poff
Burke, Mass.	Hechler, W. Va.	Price, Ill.
Burleson, Tex.	Heckler, Mass.	Pryor, Ark.
Burlison, Mo.	Helstoski	Purcell
Burton	Henderson	Quie
Byrne, Pa.	Hicks, Mass.	Quillen
Byrnes, Wis.	Hicks, Wash.	Railsback
Byron	Hillis	Randall
Cabell	Hogan	Rangel
Caffery	Holifield	Rarick
Camp	Horton	Reuss
Carey, N.Y.	Hosmer	Rhodes
Carney	Hull	Riegle
Carter	Hungate	Roberts
Casey, Tex.	Hunt	Robinson, Va.
Cederberg	Hutchinson	Robison, N.Y.
Celler	Ichord	Rodino
Chamberlain	Jacobs	Rogers
Chappell	Johnson, Calif.	Roncalio
Chisholm	Johnson, Pa.	Rooney, N.Y.
Clausen, Don H.	Jonas	Rooney, Pa.
	Jones, Ala.	Rosenthal
Clawson, Del	Jones, N.C.	Rostenkowski
Clay	Jones, Tenn.	Roush
Collier	Karth	Rousselot
Collins, Ill.	Kastenmeier	Roybal
Collins, Tex.	Kazen	Runnels
Colmer	Kemp	Ruppe
Conable	King	Ruth
Conte	Kluczynski	Ryan
Conyers	Koch	Sandman
Coughlin	Kuykendall	Sarbanes
Crane	Kyl	Satterfield
Culver	Kyros	Saylor
Daniel, Va.	Landgrebe	Scherle
Daniels, N.J.	Latta	Scheuer
Danielson	Leggett	Schmitz
Davis, Ga.	Lennon	Schneebeli
Davis, S.C.	Link	Schwengel
Davis, Wis.	Lloyd	Scott
de la Garza	Long, Md.	Sebelius
Dellenback	Lujan	Selberling
Dellums	McClory	Shipley
Denholm	McClure	Shoup
Dennis	McCollister	Shriver
Dent	McCormack	Sikes
Devine	McCulloch	Skubitz
Dickinson	McDonald, Mich.	Smith, Calif.
Dingell		Snyder
Dorn	McFall	Spence
Dow	McKay	Springer
Dowdy	McKinney	Stafford
Downing	McMillan	Staggers
Drinan	Mahon	Stanton, J. William
Duncan	Mailliard	
Dwyer	Martin	Stanton, James V.
Eckhardt	Mathias, Calif.	
Edmondson	Mathis, Ga.	Steed
Edwards, Ala.	Matsunaga	Steele
Edwards, Calif.	Mayne	Steiger, Ariz.
Erlenborn	Mazzoli	Stokes
Evans, Colo.	Meeds	Stratton
Evins, Tenn.	Melcher	Stubblefield
Fascell	Metcalfe	Symington
Findley	Michel	Taylor
Fisher	Mikva	Teague, Calif.
Flood	Miller, Calif.	Teague, Tex.
Flowers	Miller, Ohio	Thompson, Ga.
Forsythe	Mills, Ark.	Thompson, N.J.
Fountain	Minish	Thone
Fraser	Mink	Tiernan
Frelinghuysen	Minshall	Udall
Frenzel	Mitchell	Ullman
Frey	Mizell	Van Deerlin
Fulton, Pa.	Mollohan	Vanik
Fuqua	Monagan	Veysey
Galifianakis	Montgomery	Vigorito
Garmatz	Moorhead	Waggonner
Gaydos	Morgan	Waldie
Gettys	Morse	Wampler
Giaimo	Mosher	Ware
Gibbons	Moss	Watts
Gonzalez	Murphy, Ill.	Whalen
Goodling	Myers	White
Grasso	Natcher	Whitehurst
Gray	Nedzi	Whitten
Green, Oreg.	Nelsen	Wiggins
Green, Pa.	Nichols	Williams
Griffiths	Nix	Wilson, Charles H.
Gross	Obey	
Grover	O'Hara	Winn
Gude	O'Konski	Wright
Hall	O'Neill	Wyatt
Hamilton	Passman	Wydler
Hammer-schmidt	Patman	Wylie
	Patten	Yates
Hanley	Pelly	Yatron
Hanna	Pepper	Young, Tex.
Hansen, Idaho	Perkins	Zablocki
Hansen, Wash.	Pettis	Zion
Harvey	Peyser	Zwach
Hastings	Pickle	

NAYS—1

Reid, N.Y.

NOT VOTING—87

Abbitt	Foley	Mills, Md.
Addabbo	Ford, Gerald R.	Murphy, N.Y.
Anderson, Tenn.	Ford, William D.	Podell
		Powell
Badillo	Fulton, Tenn.	Preyer, N.C.
Baker	Gallagher	Price, Tex.
Blaggi	Goldwater	Pucinski
Blatnik	Griffin	Rees
Brasco	Gubser	Reid, Ill.
Bray	Hagan	Roe
Brooks	Haley	Roy
Brown, Ohio	Halpern	St Germain
Burke, Fla.	Harrington	Sisk
Clancy	Harsha	Slack
Clark	Howard	Smith, Iowa
Cleveland	Jarman	Smith, N.Y.
Corman	Keating	Steiger, Wis.
Cotter	Kee	Stephens
Delaney	Keith	Stuckey
Derwinski	Landrum	Sullivan
Diggs	Lent	Talcott
Donohue	Long, La.	Terry
Dulski	McCloskey	Thomson, Wis.
du Pont	McDade	Vander Jagt
Edwards, La.	McEwen	Whalley
Eilberg	McKevitt	Widnall
Esch	Macdonald, Mass.	Wilson, Bob
Eshleman		Wolff
Fish	Madden	Wyman
Flynt	Mann	Young, Fla.

So the resolution was agreed to.

The Clerk announced the following pairs:

Mrs. Sullivan with Mr. Baker.
Mr. Addabbo with Mr. Mills of Maryland.
Mr. Blatnik with Mr. Price of Texas.
Mr. Brasco with Mr. Bray.
Mr. Macdonald of Massachusetts with Mr. Clancy.
Mr. Fulton of Tennessee with Mr. Cleveland.
Mr. Murphy of New York with Mr. Smith of New York.
Mr. Cotter with Mr. Talcott.
Mr. Clark with Mr. Esch.
Mr. Brooks with Mr. Eshleman.
Mr. Delaney with Mr. Goldwater.
Mr. Howard with Mr. Harsha.
Mr. Sisk with Mr. Gubser.
Mr. Slack with Mr. Brown of Ohio.
Mr. St Germain with Mr. Burke of Florida.
Mr. Roe with Mr. Reid of Illinois.
Mr. Gallagher with Mr. Powell.
Mr. Foley with Mr. Keating.
Mr. Donohue with Mr. Whalley.
Mr. Diggs with Mr. Podell.
Mr. Dulski with Mr. Terry.
Mr. Eilberg with Mr. Badillo.
Mr. Mann with Mr. Keith.
Mr. Blaggi with Mr. Halpern.
Mr. Anderson of Tennessee with Mr. Derwinski.
Mr. Madden with Mr. du Pont.
Mr. Pucinski with Mr. Widnall.
Mr. Preyer of North Carolina with Mr. Bob Wilson.
Mr. Flynt with Mr. Young.
Mr. Wolff with Mr. Wyman.
Mr. Stuckey with Mr. Fish.
Mr. Smith of Iowa with Mr. Gerald R. Ford.
Mr. Jarman with Mr. Thompson of Wisconsin.
Mr. Kee with Mr. Thone.
Mr. Landrum with Mr. Lent.
Mr. Abbitt with Mr. McCloskey.
Mr. Edwards of Louisiana with Mr. McEwen.
Mr. Long of Louisiana with Mr. Martin.
Mr. William D. Ford with Mr. McDade.
Mr. Griffin with Mr. Steiger of Wisconsin.
Mr. Stephens with Mr. McKevitt.
Mr. Harrington with Mr. Rees.
Mr. Hogan with Mr. Haley.
Mr. Corman with Mr. Roy.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. KASTENMEIER. Mr. Speaker, I

move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 234) to amend title 18, United States Code, to prohibit the establishment of emergency detention camps and to provide that no citizen of the United States shall be committed for detention or imprisonment in any facility of the U.S. Government except in conformity with the provisions of title 18.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 234, with Mrs. GRIFFITHS in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Pursuant to the rule, general debate will continue for not to exceed 3 hours, 1½ hours to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary and 1½ hours to be equally divided and controlled by the chairman and ranking minority member of the Committee on Internal Security.

Under the rule, the gentleman from Wisconsin (Mr. KASTENMEIER) will be recognized for 45 minutes; the gentleman from Virginia (Mr. POFF) will be recognized for 45 minutes; the gentleman from Missouri (Mr. ICHORD) will be recognized for 45 minutes; and the gentleman from Iowa (Mr. ASHBROOK) will be recognized for 45 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. KASTENMEIER).

Mr. KASTENMEIER. Madam Chairman, I yield myself 10 minutes.

Madam Chairman, I rise in support of H.R. 234, to amend title 18, United States Code, to prohibit the establishment of emergency detention camps and to provide that no citizen of the United States shall be committed for detention or imprisonment in any facility of the U.S. Government except in conformity with the provisions of title 18, and I yield myself such time as I may consume.

WHAT THE BILL DOES

As amended by the Committee on the Judiciary, this bill does two things: First, it prohibits the imprisonment or other detention of citizens by the United States except in situations in which some congressional statutory authority for their incarceration exists; and, second, it repeals the Emergency Detention Act—title II of the Internal Security Act of 1950—which provides general authorization for the establishment of detention camps and imposes certain conditions on their use.

I hasten to add that no President has ever used or tried to use the provisions of the Detention Act. Nevertheless, repeal of these provisions is of vital symbolic significance. The issue is whether or not a free people will knowingly tolerate intimidation of fellow citizens by the maintenance of repressive legislation. The enactment of this repeal measure is needed if we wish effectively to answer the question: Do we, in America, need detention camps?

BACKGROUND

H.R. 234 is one of 17 identical bills sponsored or cosponsored by 159 Members of the House. Its salient purpose is to prohibit the establishment of detention camps and to repeal the existing Emergency Detention Act of 1950 which grants authority for the establishment of such camps.

The Emergency Detention Act was enacted as title II of the Internal Security Act of 1950, the year in which the Korean war began. It established procedures for the detention of individuals—not who are charged with or arrested for committing crime, but individuals who are "deemed likely" to engage in espionage or sabotage during a period of "internal security emergency."

Although no President has invoked these provisions, their mere existence has aroused much concern among American citizens, including especially minority groups, lest the Detention Act become an instrument for detaining American citizens who hold unpopular beliefs and views. Groups of Japanese-American citizens regard the act as potentially permitting a recurrence of the roundups which resulted in detention of Americans of Japanese ancestry in 1941 and subsequently during World War II. I join the 159 sponsors of the legislation in urging that the Emergency Detention Act should be repealed.

LEGISLATIVE HISTORY

In the 91st Congress, H.R. 11373 and a number of identical measures that would have prohibited detention camps and would have repealed the Emergency Detention Act, were referred to the Committee on the Judiciary. On the other hand, H.R. 1157 and a number of House bills which would have had a comparable effect, were referred to the Committee on Internal Security. In addition, S. 1872, which provided for the repeal of the Detention Act, was passed by the Senate and thereupon was also referred to the Committee on Internal Security.

In the interest of expeditious and conclusive action—the Senate bill, S. 1872, having been referred to the Committee on Internal Security—Chairman Celler indicated to the chairman of the Internal Security Committee that if that committee was planning early action on S. 1872 the Committee on the Judiciary would defer consideration of the legislation before it. Subsequently, hearings were held by the Internal Security Committee. Ultimately, on September 14, 1970, that committee reported a clean bill, H.R. 19163, introduced by Chairman ICHORD and the gentleman from Ohio (Mr. ASHBROOK).

By that date, the Internal Security Committee had completed its 11 days of hearings. It had heard testimony from 28 Members of the House, all of whom advocated—and none of whom opposed—repeal.

Notwithstanding the action of the Senate and notwithstanding the views and testimony of Members of the House in favor of repeal, the bill reported by the Internal Security Committee, instead of repealing the Emergency Detention Act, would retain and amend that act by adding a number of new provisions to it. The 91st Congress adjourned before a rule was granted, so that flo consideration of the Ichord-Ashbrook b was not accomplished. In the prese Congress, the Committee on Intern Security favorably reported witho amendment H.R. 820, a measure ident cal with H.R. 19163 which it had reporte in the 91st Congress.

As I have indicated, 159 Members the House have, in the present 92d Cor gress, reiterated their support for mea ures repealing the Emergency Detentio Act. They have done this by sponsorin identical measures which would be, an have in fact been, referred to the Jud ciary Committee.

In view of this large number of Mem bers who, with full knowledge of th fact that in the 91st Congress the Inte nal Security Committee rejected the ide of repeal and substituted a bill merel amendatory of the Emergency Detentio Act, have nevertheless introduced repe bills that would be and were referred t our committee, we concluded that respe for the wishes of these many Membe called for action on the bills pendin before us.

JUSTICE DEPARTMENT VIEWS

At the hearing before the Judiciar Subcommittee, the Justice Departmer witness testified that—

The Department of Justice is unequiv cally in favor of repealing Title II of th Internal Security Act.

He added that—

In the judgment of this Department, th repeal of this legislation will allay the fea and suspicions—unfounded as they may be of many of our citizens. *This benefit ou weighs any potential advantage which th Act may provide in a time of internal s curity emergency.* (Emphasis supplied)

More recently, in a communication ad dressed to the chairman of the Commit tee on Internal Security in response t his request for the views of the Depart ment of Justice on H.R. 820, the Deput Attorney General declared:

The amendments to this Act, contained i H.R. 820 do not alter the Department opinion that the Emergency Detention Ac should be repealed. (Emphasis supplied)

The Department of Justice has thus made clear that it believes that the effective discharge of the Attorney General's responsibility for coping with subversion does not require the continued existence of title II. In these circumstances, the continued existence of title II can serv no purpose other than the intimidatio of minorities.

THE COMMITTEE AMENDMENT

At the hearing the Department of Jus tice witness criticized sections 1 and of the bill as introduced. The purpose o these sections was to prohibit detentio camps. He said that these sections, whic provided that no citizen might be de tained in any facility except in conform ity with title 18, United States Code, mis takenly assumed that all provisions fo the detention of convicted persons ar contained in title 18. He pointed to number of criminal provisions that ap pear in other titles; for example, title 21—narcotics; 50—selective service; 26— internal revenue; and 49—airplane hi jacking.

To alleviate these problems raised b

the Department of Justice, the committee recommends an amendment that would take the place of sections 1 and 2. The amendment provides that no citizen shall be imprisoned or otherwise detained by the United States except pursuant to an act of Congress.

In this way, the legislation also avoids the pitfalls that might be created by repealing the Detention Act by leaving open the possibility that people might nevertheless be detained without the benefit of due process, merely by executive fiat.

In other words, the requirement of legislative authorization would close off the possibility that the repeal of the Detention Act could be viewed as simply leaving the field unoccupied. It provides that there must be statutory authority for the detention of a citizen by the United States. Existing detention practices are left unaffected. Incarceration for civil and criminal contempt, and detention of mental defectives, for example, are already covered by statutes.

COMMITTEE CONCLUSIONS

The committee without dissenting vote agrees with the Department of Justice and the sponsors of repeal legislation that the Emergency Detention Act serves no useful purpose, but, on the contrary, only engenders fears and resentment on the part of many of our fellow citizens.

What is more, the constitutional validity of the statute is subject to grave challenge. The act permits detention of "each person as to whom there is reasonable ground to believe that such person probably will engage in, or probably will conspire with others to engage in, acts of espionage or of sabotage."

This criterion would seem to violate the fifth amendment by providing imprisonment not as a penalty for the commission of an offense or as part of an arrest in the presence of probable cause, but on "mere suspicion that an offense may occur in the future." The act permits detention without bail even though no offense has been committed or is charged. In a number of ways the act violates the first amendment. In a number of ways, also, the provisions of the act for judicial review are inadequate in that they permit the Government to refuse to divulge information essential to a defense.

The concentration camp implications of the legislation render it abhorrent and there is no compensating advantage to be derived from permitting this law to remain on the books. In the committee's opinion the Emergency Detention Act is beyond salvaging, cannot be adequately amended, and should be repealed in toto.

But the committee believes that it is not enough merely to repeal the Detention Act. The act, concededly, can be viewed as not merely as an authorization for, but also in some respects as a restriction on, detention. Repeal alone might leave citizens subject to arbitrary executive action, with no clear demarcation of the limits of executive authority. It has been suggested that repeal alone would leave us where we were prior to 1950. The committee believes that imprisonment or other detention of citizens should be limited to situations in which a statutory authorization, an act of Congress, exists. This will assure that no detention camps can be established without at least the acquiescence of the Congress.

The CHAIRMAN. The gentleman from Wisconsin consumed 12 minutes.

The Chair recognizes the gentleman from Virginia (Mr. POFF).

Mr. POFF. Madam Chairman, I yield myself such time as I may consume. Madam Chairman, I rise in support of H.R. 234.

The central purpose of the bill is to repeal title II of the Internal Security Act of 1950, the Emergency Detention Act of 1950. Since the Emergency Detention Act has never been implemented, since its constitutionality is under challenge, and since it is a source of genuine apprehension for many Americans, I support its repeal.

However, the bill, as introduced and as reported by the committee, does more than repeal; it also prohibits. By amending section 1 of the bill to provide that "no citizen shall be imprisoned or otherwise detained by the United States except pursuant to an act of Congress," the committee sought to assure that no detention camps will be established without the acquiescence of the Congress. My purpose is to explain the committee's intent in reporting H.R. 234 with the section 1 amendments.

The bill's sponsors and the committee did not content themselves with a simple repeal of the Emergency Detention Act, because it is far from certain what effect a simple repealer would have on the President's powers to detain persons during an internal security emergency. By viewing the Emergency Detention Act, with its limited procedural safeguards, as a limitation on rather than authorization for the establishment of detention camps, one can argue that, by removing an existing restraint on the President's power, a simple repealer operates to expand rather than contract the Executive's emergency detention powers.

Indeed, House Report No. 92–94, the Internal Security Committee's report on H.R. 820, a bill to amend, and not repeal the act, noted at page 12:

> Surely a consideration of the fact that a repeal of the act removes all restraints upon the Executive and would return us to the status existing in World War II should give us pause.

Although the question of the President's exclusive power to establish internment camps was raised in *Hirabayashi* v. *United States*, 320 U.S. 81 (1943), and in *Korematsu* v. *United States*, 320 U.S. 214 (1944), the question was never decided because the Court found that Congress did, in fact, approve the Executive orders which restrained American citizens by curfew in the former and excluded citizens from a defined area in the latter.

Rather than relying on the uncertainty of a simple repealer, the committee elected to take the more prudent course of insuring that the bill contained an affirmative prohibition against the establishment of detention camps without the consent of the Congress.

As introduced, H.R. 234 contained such a prohibition. The thrust of the first two sections of the original bill was to prohibit the detention of any person except in conformity with title 18 of the United States Code. However, as Assistant Attorney General Robert Mardian accurately observed at the subcommittee hearings on H.R. 234, there are crimes in titles other than title 18 for which a person may rightfully be detained.

Instead of enumerating all of the titles of the United States Code which authorize imprisonment, the committee decided to replace the original sections 1 and 2 with a single provision:

> No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an act of Congress.

The sole purpose of this amendment is to assure that no detention camps can be established without the consent of the Congress. It is not the committee's intent to eliminate any detention practices presently authorized by statute or judicial practice and procedure.

"Stop and frisk" powers by law enforcement personnel; searches by border patrolmen and customs officials; detentions of suspects for identification—all would remain unaffected by the committee's amendment. Detentions incident to judicial administration such as those authorized by the judicial authority to maintain order in a courtroom, judicial contempt powers, and the judicial authority to revoke bail or parole, are not within the intendment of the committee's amendment. Certainly, the committee does not propose that detentions presently permitted in the normal course of law enforcement and judicial administration be influenced in any way.

A substitute bill will be offered, I profoundly respect those who will offer it. They are one and all patriotic, highly motivated Americans, I find it painful to oppose them. I must do so.

I must do so because the Judiciary Committee bill affects a complete repeal. The substitute bill is less than that. Less than that is less than enough. Only repeal is adequate.

It is altogether immaterial that the Emergency Detention Act of 1950 has never been used. It is irrelevant that it is unlikely ever to be used. Its simple existence is the predicate for the fear that it might be used. The fear will continue to have some credibility so long as its predicate remains alive.

A wise man once said that if it is unnecessary to have a law, it is necessary not to have it. That is why I prefer the Judiciary Committee bill to the substitute bill.

The CHAIRMAN. The Chair recognizes the gentleman from Missouri (Mr. ICHORD).

Mr. HALL. Madam Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count.

Ninety-four Members are present, not a quorum. The Clerk will call the roll.

The Clerk called the roll, and the following Members failed to answer to their names:

[Roll No. 253]

Abbitt	Ford, Gerald R.	Murphy, N.Y.
Abourezk	Fraser	O'Hara
Addabbo	Frelinghuysen	Pepper
Anderson, Tenn.	Fulton, Tenn.	Pike
Badillo	Gallagher	Podell
Baker	Goldwater	Powell
Biaggi	Griffin	Preyer, N.C.
Blatnik	Gubser	Roe
Brasco	Hagan	Rooney, Pa.
Bray	Haley	Roy
Brooks	Halpern	St Germain
Brown, Ohio	Hanna	Sandman
Burke, Fla.	Hansen, Idaho	Sisk
Carey, N.Y.	Hansen, Wash.	Slack
Chamberlain	Harrington	Smith, Calif.
Chisholm	Harsha	Smith, Iowa
Clancy	Hastings	Smith, N.Y.
Clark	Horton	Springer
Clay	Howard	Stafford
Cleveland	Jarman	Steiger, Ariz.
Corman	Keating	Steiger, Wis.
Cotter	Kee	Stuckey
Delaney	Keith	Sullivan
Derwinski	Landrum	Talcott
Diggs	Lent	Terry
Dingell	Long, La.	Thomson, Wis.
Donohue	McCloskey	Tiernan
Downing	McDade	Vander Jagt
Dulski	McEwen	Whalley
du Pont	McFall	Widnall
Edwards, La.	McKevitt	Wilson, Bob
Eilberg	Macdonald, Mass.	Wilson, Charles H.
Esch	Madden	Wolff
Eshleman	Mann	Wyman
Evins, Tenn.	Mills, Md.	Young, Fla.
Fish	Mitchell	Young, Tex.
Flynt	Morse	
Foley		

Accordingly the Committee rose; and the Speaker having resumed the chair Mrs. GRIFFITHS, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill H.R. 234, and finding itself without a quorum, she had directed the roll to be called, when 322 Members responded to their names, a quorum, and she submitted herewith the names of the absentees to be spread upon the Journal.

The Committee resumed its sitting.

The CHAIRMAN. The Chair recognizes the gentleman from Missouri (Mr. ICHORD).

Mr. ICHORD. Madam Chairman, I yield myself 15 minutes.

Madam Chairman, at the outset I believe I should make it clear why I objected to the inclusion of extraneous matter in this debate. I shall continue to object to extraneous matter being included in any revision and extension of remarks. I want to make my reasons perfectly clear.

It is not for the purpose of obstructing this House, but for the purpose of making a substantive point. I happen to feel very strongly on some of the issues presented in this measure. I also happen to feel that my position and the position of a majority of my committee is the true libertarian position.

I am making this point for the purpose of getting the Members of the House to look at the real issues involved in this measure, because, Madam Chairman, as I have said, we are all so busy legislating on everything from the regulation of switchblade knives, which is a city council matter—and I saw that bill come over my desk the other day—to the building of missiles, going to the defense of this Nation, that 90 percent of us do not know what we are voting on 90 percent of the time—and that includes yours truly.

Madam Chairman, we meet today to consider bills which would either repeal or amend the Emergency Detention Act of 1950. As agreed, the bill, H.R. 234, a bill reported from the Judiciary Committee which would repeal the Emergency Detention Act, will be called for consideration. It shall, however, be in order to consider the text of the bill H.R. 820, a bill to amend the act, reported from the Committee on Internal Security, as a substitute for H.R. 234. Other amendments will be in order under the 5-minute rule. I rise in opposition to the enactment of the bill H.R. 234 either as introduced or as amended by the Judiciary Committee.

Based upon intensive investigation of this problem by the Committee on Internal Security, which has primary jurisdiction over the act, I would urge that the text of the bill H.R. 820 be enacted as a substitute for the provisions of H.R. 234. Such an amendment will retain the Emergency Detention Act and at the same time strengthen its liberal aspects. However, should this amendment fail, and it be the will of the House that the act should be repealed, I would then urge a necessary and vital amendment to the bill H.R. 234 in lieu of the Judiciary Committee amendment, the terms of which I have previously advised the Members in a circular letter.

As introduced, the bill H.R. 234 would essentially do two things: It would, first, prohibit the imprisonment or detention of any person, except in accordance with the provisions of title 18, United States Code. Second, it would repeal the Emergency Detention Act of 1950 in toto. The bill in this form was opposed by the Department of Justice. The Department objected to those sections of the bill which would prohibit the detention of persons other than by the provisions of title 18. Title 18, commonly known as the penal code, does not embrace all penal sanctions, many of which are scattered in various other titles of the United States Code. Hence this section of the bill was obviously objectionable. It was accordingly stricken by the Committee on the Judiciary which reported in lieu thereof an amendment providing that—

No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress.

With this amendment the committee jumped from the proverbial frying pan into the fire. The bill as reported would now do two things:

First, it would repeal the Emergency Detention Act of 1950; and, second, it would also by this most dangerous committee amendment deprive the President of his emergency powers and his most effective means of coping with sabotage and espionage agents in war-related crises. Hence the amendment also has the consequence of doing patent violence to the constitutional principle of separation of powers. While favoring the repeal of the Emergency Detention Act, the Department of Justice likewise opposes the committee amendment, although it takes the position that any such unconstitutional provision could be ignored by the President.

Quite obviously, in light of what this bill H.R. 234 would do as reported, I cannot believe that the Members of this House would agree to its enactment in its reported form. Although many Members of this House are committed to the repeal of the Emergency Detention Act of 1950, they have no purpose, I am sure, to confound the President in the exercise of his constitutional duties to defend this Nation, nor would they wish to render this country helpless in the face of its enemies.

In order to assess the alternatives with which we are faced in our deliberations today, I believe it would be helpful to review briefly the rather complex circumstances leading to the introduction of bills on this subject. It is interesting to note that in the 20 years following the adoption of the Emergency Detention Act of 1950, there was a notable lack of general public interest on this subject until within the past few years. The Communist Party, through the activities of one of its hitherto obscure front organizations, known as the Citizens Committee for Constitutional Liberties, succeeded in focusing national attention upon the act. It was able to do so by playing upon the sensitivities of various minority groups in the context of the riots and developing crises within our cities during the late 1960's.

By means of the widespread dissemination of alarming misinformation concerning the terms and effect of the act, the Communist Party created, first, a widespread concern among black militants that they might be interned under the provisions of the statute which authorizes its application in the event of an insurrection in aid of a foreign enemy. At the same time, they were able to involve Japanese-Americans by making it appear that this act was in some way related to the unfortunate experience of Americans of Japanese ancestry who were detained in World War II. We will recall that during World War II about 112,000 persons of Japanese ancestry, residing in Western States, approximately two-third's of whom were natural-born citizens of the United States, were removed from their homes and placed first in temporary camps and later in 10 "relocation centers" situated in several Western States. At its national convention in 1968 the Japanese-American Citizens League embarked upon a well-organized campaign to seek enactment of legislation to repeal the Emergency Detention Act of 1950. However, the Emergency Detention Act can only be a symbol of what happened to the Japanese. It must also be a false symbol because title II was not enacted until 1950.

The simple fact is that the Emergency Detention Act of 1950 stands as the only legislative barrier to the detention of persons on the basis of race, color, or ancestry. Indeed, if it had been in force in World War II, it would have prevented such indiscriminate detention as then occurred. The act is, in fact, a civil libertarian measure designed to preclude such action as was taken against the Japanese-Americans. It was introduced in the 81st Congress by Senators Kilgore, Douglas, HUMPHREY, Lehman, Graham, Kefauver, and Benton. Who would question their libertarian credentials? It was offered by them as a substitute for title I

of the Internal Security Act of 1950. It was subsequently enacted as title II of the act, and thus established a controlled system of preventive detention with due process safeguards as an effective and reasonable means of coping with sabotage and espionage agents in war-related crises.

To deal with this realistic prospect, the statute enacted a system of preventive detention of hard-core revolutionaries during the period of any proclaimed emergency, with detailed procedures for its administration and the specification of rigorous due-process safeguards.

The Emergency Detention Act may be applied only in the event of, first, an invasion of the territory of the United States or its possessions; second, a declaration of war by Congress; or, third, an insurrection within the United States in aid of a foreign enemy. In any one of such events, and upon the further finding by the President that a declaration of "internal security emergency" is essential to the defense and safety of the territory and people of the United States, the President is authorized, during the period of the proclaimed emergency—which may be terminated by proclamation of the President or by concurrent resolution of the Congress—to apprehend and by order detain "each person as to whom there is reasonable ground to believe that such person probably will engage in, or probably will conspire with others to engage in, acts of espionage or of sabotage."

Persons can be apprehended or detained only upon probable cause and in making the determination of the existence of such cause the apprehending and detaining agencies are authorized to consider evidence of first, whether such person has knowledge of, or has received or given instruction or assignment in, the espionage or sabotage service or procedures of a government or political party of a foreign country, the Communist Party, or any other organization or political party which seeks to overthrow or destroy by force and violence the Government of the United States; two, any past act or acts of espionage or sabotage committed by such person; and, three, activity in the espionage or sabotage operations of, or membership in, the Communist Party or any other organization seeking to overthrow or destroy by force and violence the Government of the United States.

Persons can be apprehended on warrant of the Attorney General who then applies to a "preliminary hearing officer" for an order authorizing the detention of the person in question. On the basis of criteria I previously mentioned, it is the function of the preliminary hearing officer to determine initially whether there is probable cause to detain such person. For this purpose the individual is given a full due-process hearing before the preliminary hearing officer, with right to retain counsel, notice of grounds upon which application for his detention was made, the right to introduce evidence on his own behalf, and to cross-examine witnesses who appear against him, but the Attorney General shall not be required to furnish information the revelation of which would disclose the identity or evidence of Government agents or officers which he believes it would be dangerous to the national safety and security to divulge.

And finding of probable cause by the preliminary hearing officer is subject to review by a Detention Review Board to which the detainee may apply, consisting of nine members, appointed by the President, by and with the advice and consent of the Senate. He is entitled to a full hearing before the Board with all the rights as hereinbefore set forth with respect to his appearance before the preliminary hearing officer. Any person aggrieved by an order of the Board is entitled to judicial review and judicial enforcement in the U.S. court of appeals, with the further right to petition the Supreme Court for review of the action of the court of appeals. Moreover, it is provided that nothing contained in the act shall be construed to suspend or authorize the suspension of the privilege of the writ of habeas corpus.

The rights of the individual do not stop here. If any person suffers a loss of income because he has been compelled to undergo detention without reasonable cause, the board may issue an order for his indemnification. In addition, the Attorney General is authorized at any time to modify the order under which any detainee is detained and to apply lesser restrictions on his movement and activity. It is also provided that no person detained under the title shall be required to perform forced labor any tasks not reasonably associated with his own comfort and well-being, or to confine him in company with persons who are confined pursuant to the criminal laws of the United States or any State.

In short, Madam Chairman, what we have in the act is a practical, necessary, and reasonable program providing detailed safeguards and protection for the rights of individuals thoroughly consistent with the libertarian record and reputation of the sponsors of the act. It was stances which gave rise to the passage of also a far-sighted program. The circumthe act remain very much in existence today. Present events suggest an even more compelling need for such legislation.

Nevertheless, the atmosphere has been polluted by rumors that the Emergency Detention Act would authorize the establishment of "concentration camps" for the incarceration of racial groups and that such camps are presently in existence. We have been advised by the Department of Justice that such disquieting rumors were stimulated and started spreading in 1966, probably as a result of allegations contained in a pamphlet captioned "Concentration Camps, U.S.A." prepared at the request of, and disseminated by, the Citizens Committee for Constitutional Liberties, a front of the Communist Party to which I have already referred. This pamphlet, reviewed by the Internal Security Division of the Department of Justice, was found to be "replete with inaccuracies." It is understandable that many of our loyal citizens might be disquieted by rumors of the existence of concentration camps.

Indeed, the subject thus became a matter of national controversy. In an appearance on NBC's Meet the Press in April 1968, the former Attorney General, Ramsey Clark, had to address himself to the question. He denied without equivocation that concentration camps exist in this country, although he recognized the threat posed by fears that they existed. He is quoted as saying:

> Fear itself is a great threat, and people who spread false rumors about concentration camps are either ignorant of the facts or have a motive about dividing this country.

Nevertheless, however, contrived or maliciously stimulated, it is no wonder that such fears have impelled some of our loyal citizens to seek the outright repeal of an act which they have been led to assume authorizes the establishing of "concentration camps" for the internment of racial groups.

In order to assess this perhaps overly simplistic solution—the repeal of the act—it may be helpful to reflect upon the circumstances surrounding the World War II detention of Japanese Americans.

You will recall that the attack on Pearl Harbor resulted in the destruction of a substantial portion of the U.S. Navy and opened the gates wide to a possibility of an invasion of the United States itself, which we were then ill-prepared to meet. On the west coast, which was the likely path of any invasion, there was a vast concentration of installations and facilities for the production of military equipment, especially ships and airplanes. Of the 126,000 persons of Japanese descent in the United States, citizens and noncitizens alike, about 112,000 resided in California, Oregon, and Washington, and were concentrated in and near the cities of Seattle, Portland, and Los Angeles.

Reacting to the apparent urgencies of the situation, and reflecting the general state of hysteria, every Member of both Houses of Congress from the three west coast States joined in the demand that all persons of Japanese ancestry should be immediately removed regardless of citizenship or of loyalty. Joining in this demand were many distinguished leaders in government and of public opinion, including the Attorney General of California, Earl Warren, lately Chief Justice of the United States, and the influential commentator, Walter Lippmann.

In these circumstances, the President, on February 19, 1942, promulgated Executive Order 9066 in which he recited that the successful prosecution of the war required every possible protection against espionage and sabotage and that by virtue of authority vested in him as President and as Commander in Chief of the Army and Navy, he thereby authorized and directed the Secretary of War, and the military commanders whom he may designate, to prescribe military areas from which all persons may be excluded and with respect to which the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate military commander may impose in his discretion. On February 20, General DeWitt was designated as the military commander of the

Western Defense Command. Then on March 18, 1942, the President by Executive Order 9102 established the War Relocation Authority headed by a Director, the first of which was Milton Eisenhower, charged with the responsibility of formulating and effectuating a program for the removal, relocation, and supervision of persons designated under Executive Order 9066.

Philip M. Glick, a witness before the House Committee on Internal Security who had served as the solicitor for the War Relocation Authority, advised us that the President and Attorney General Biddle, together with Commanding General DeWitt, were of the opinion that while all, or even a substantial majority, of the evacuees were not probably dangerous, that minority which did present a potential danger of espionage and sabotage would be difficult to sift and sort in a short time, and "to play it safe" in the face of a known danger all persons of Japanese ancestry should be evacuated on a group basis. However it is important to recall, said Mr. Glick, that J. Edgar Hoover and the Federal Bureau of Investigation did not concur in this judgment and recommended against the evacuation. It was Mr. Hoover's view that, on the basis of the Bureau's investigation, he could probably within a reasonable period of time identify the relative small number of persons of Japanese ancestry who were potentially seriously dangerous, and that they might be rounded-up by special procedures.

Nevertheless, in the United States, and in Canada likewise, a decision was reached to evacuate all persons of Japanese ancestry from the Pacific coast. A series of civilian exclusion orders followed by which all persons of Japanese ancestry, both alien and nonalien, were excluded from portions of the designated military area, and required to report to a designated civilian control station for orderly evacuation and settlement.

This program in its essential features was supported by a unanimous court consisting of Chief Justice Stone, and Associate Justices, Roberts, Black, Reed, Frankfurter, Douglas, Murphy, Jackson, and Rutledge. The President was upheld in the first test of the program in *Hirabayashi* v. *United States*, 320 U.S. 81 (1943), and subsequently in *Korematsu* v. *United States*, 323 U.S. 214 (1944). In the former, it was held that an American citizen could be restrained by a curfew; in the latter, that he could be excluded from a defined area. However, in *Ex parte Endo*, 323 U.S. 283 (1944) it was held that a citizen of Japanese ancestry, whose loyalty was conceded by the Government, could not be detained against her will in a relocation camp.

Now, Mr. Chairman, there are important lessons to be derived from this experience. It was a simple, direct response to fear, unfounded in fact, which lead to the detention of a racial minority during World War II. I have branded this act as a black page in American History. It was not necessary but it was done. It is a curious fact that an equally unfounded fear now impels that same racial minority to seek the repeal of the one law—the Emergency Detention Act of 1950—which remains as the only existing barrier against the future exercise of executive power which resulted in their prior detention.

It is certainly clear from the plain terms of the act that had it been in existence during World War II, it would have precluded a summary detention, evacuation, or relocation of persons on a racial basis. Nor would it authorize or countenance detention or apprehension of persons for the prevention of sabotage and espionage on any basis without regard to loyalty or probable cause. On principles reiterated in the steel seizure case, *Youngstown Company* v. *Sawyer*, 343 U.S. 579 (1952), undoubtedly if this act were in force during World War II, the group evacuation of American citizens of Japanese ancestry would not have occurred, nor would any such action have been upheld by the court.

That case teaches that where the Congress has acted on a subject within its jurisdiction, sets forth its policy, and asserts its authority, the President might not thereafter act in a contrary manner. Thus the continuing seizure by President Truman of the steel mills, as an exercise of his executive powers during the Korean war, was enjoined because he had not proceeded in accordance with the policies laid down by Congress in the Defense Production Act of 1950 and earlier in the Labor Management Relations Act of 1947. The Court held that he was bound to proceed in accordance with the pronounced policy of the Congress.

The question then is whether the Congress shall express its policy as to the means by which the President, in a war-related emergency, shall be authorized to apply the detention remedy for the protection of the Nation against the ravages of spies or saboteurs, or whether we should wipe the slate clean of such restraints as are now imposed on the executive power by the Emergency Detention Act of 1950. In deciding this important issue, we must clearly divorce ourselves from certain emotional considerations which, if allowed to dictate our course of action, can have only the most unfortunate consequences for the very rights of individuals we seek to protect, including the rights even of those revolutionaries, principally Communist, who do indeed have something to fear from Emergency Detention Act, and would involve others in doing their dirty work to effect its repeal.

We must thus ask ourselves in whose interest would repeal operate? Would it help the present plight or advance the future welfare of the uninformed and the innocent? Or would it redound to the benefit of potential enemies that would seek to destroy the United States of America? Once these questions are squarely faced, and once these implications are dispassionately examined, I believe that the true answer will be plain.

Of course the Emergency Detention Act can be improved and perfected. So can any other measure which has slumbered for 20 years. We can also clarify its provisions. This is precisely what we have sought to do in the terms of the bill H.R. 820.

This bill should serve to relieve the act of those fears expressed by racial minorities by making explicit what is already implied in the act—that no person shall be apprehended or detained pursuant to its provisions on account of race, color, or ancestry. The bill further places in Congress the sole authority for making the determination of fact with respect to insurrections in aid of a foreign enemy, so as to relieve the act of any fears that it will be applied ill advisedly by the President acting alone. In addition, the bill expands the rights of counsel and assures to each individual adequate representation, not only by counsel, but investigative, expert or other services necessary to his representation in all stages of the proceedings, including judicial review, if financially unable to obtain such assistance. It also clarifies criteria which may be applied to individuals for the purpose of determining probable cause for apprehension or detention. I submit that the enactment of the text of the bill H.R. 820 as a substitute for the text of H.R. 234 is the reasonable and libertarian course that should be adopted under the circumstances.

That the act should be retained is the position taken by a majority of the members of the Committee on Internal Security who have lived with this problem and explored its issues in two Congresses. This is indeed the view of a number of constitutional lawyers and scholars whose exceptional expertise on this particular subject is unquestioned. This is indeed a position which finds support in the views of a majority of the Attorneys General of the States of the Union who took occasion to express themselves, at my request, on this issue. All of this appears in the very extensive record of the committee's hearings, a record numbering close to 1,000 pages.

Nevertheless, I am fully aware that reasonable men may differ with respect to the question whether or not we should simply repeal the act and keep the slate clean in nonwar periods with a view toward enacting legislation of this type, or on this subject, only in the period of the emergency it is intended to serve. It is my opinion that a straightforward and outright repeal of the act on that basis would not impair the security interests of this Nation. These interests, however, would be grievously impaired by attaching any condition to that repeal, or to qualify it with any proviso, such as the amendment proposed by the Judiciary Committee which provides that—

> No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress.

Such provisos are also opposed by the Department of Justice, and with good reason. They would deny to the President the means of executing his constitutional duties, and could have the effect of rendering him helpless to cope with the depredations of those hard-core revolutionaries in our midst who, in the event of war, may be reasonably expected to attempt a widespread campaign of sabotage and bloodletting, including the assassination of public officials, in aid of the enemy.

Moreover, I would suggest that because of the very nature of technological progress, it is no longer feasible to deny authority to the President to cope with these

problems until that day of crisis. The amendment would neither permit the President to act, nor does the Congress act. On the contrary, the Judiciary amendment insists that the Congress should not act and that it should postpone all action until that day of crisis. But this is the nuclear age. We cannot expect an enemy to hold to the ancient etiquette of war by making formal declarations before undertaking their attack. In this nuclear age we should not expect to be forewarned. Nor is it likely that Congress will be able to sit. If it cannot sit, it cannot legislate. Under no circumstances, therefore, can we afford the luxury of an amendment which is so clearly unwise, unnecessary, and dangerous.

I know it is frightening to some to talk about even the possibility of a nuclear war. But it might happen and I want this Nation prepared if it does happen. We could possibly encounter a situation where the enemy has a Harry Truman, a man who will use the atomic bomb. I fervently hope not, but it could happen.

Hence, if it appears to be the will of the House that the Emergency Detention Act be repealed, I urge that the Judiciary Committee amendment be rejected and the following amendment in the nature of a substitute for it be adopted as follows:

That the prior enactment and repeal herein of provisions of Title II of the Internal Security Act of 1950 (50 U.S.C. 811–826) shall not be construed to preempt, disparage, or affect the powers accorded to or the duties imposed upon the President under the Constitution and other laws of the United States: provided, however, that no citizen of the United States shall be apprehended or detained for the prevention of espionage or sabotage solely on account of race, color, or ancestry.

This amendment would not disturb the President's constitutional powers, while at the same time it would allay the fears of racial groups against such action as was suffered by the Japanese Americans in World War II. This will enable the sponsors of the bills to effect that purpose for which such bills had been introduced by them. Certainly this must be regarded as a satisfactory alternative in the balancing of the vital interests of national security with rights of individuals. It is a solution that should commend itself to the House. It is a result that will be accepted by the vast majority of the people of this Nation.

I feel very strongly that if I can get the attention of the Members of this House, my views will ultimately prevail. I say that because I have a great deal of confidence in the commonsense and in the good judgment of the majority of the Members of this House.

Most people think that when you are talking about title II you are talking about a bill that was drafted by McCarran, that was drafted by MUNDT, and that was drafted by Nixon, who is now the President of the United States. But, my friends, if you think that, I am sorry to advise you that the language you are considering repealing today was not drafted by those three gentlemen; it was drafted by former Senator Douglas from the State of Illinois. He was one of the sponsors. He had his name on the language of the bill. It was drafted by Senator HUMPHREY, it was drafted by Senator Lehman. I do not think there is a man in this body who would question the libertarian credentials of any of those three gentlemen I have mentioned.

There has been, I say, Madam Chairman, more misrepresentation and more false stories printed in the newspapers of this Nation about the real issues involved in this bill, so that I must be constrained to object to any editorial and I must be constrained to object to any radio or television editorial. Since we are living in a day when the editorial page is so often moved up to the front page with the idea of new journalism or advocacy journalism, I will also object to any news articles that might be included.

Mr. CONYERS. Madam Chairman, will the gentleman yield?

Mr. ICHORD. I do not yield to the gentleman at this time. I will be very happy to yield later on, because I think that the reasons of the gentleman who has just arisen are based on rhetoric, they are based on emotion, and they are not based upon logic and commonsense. If you will let me get to my point, I will yield later on, but I do not yield at this time.

On July 26, 1971, I made a speech on the floor of this House about a certain editorial which appeared in the Washington Post. Let me say I am quite blunt sometimes. I happen to be a great defender of the freedom of the press, but I also say quite bluntly that the fourth estate is not living up to its responsibilities in a free society. Let me give you the reason why. I refer you to the RECORD of July 1971, page 27192 where I referred to an editorial of the Washington Post attacking me for doing mischief. I sent a copy of my remarks to the Washington Post, and they have not said "Boo" about it. Here is what the Washington Post said back in 1950 when the language of title II was proposed:

We think the proposed bill aims at intelligently selective internment in the real interests of security and not the indiscriminate punishment of persons for the mere holding of disloyal or odious opinion.

But on July 20, 1971, they took after me for doing mischief, as they put it, for trying to retain this bill on the statute books.

Madam Chairman, I was rather amused when the phone calls went out of the whip's office saying this—and I do not question the sincerity of TIP O'NEILL; I do not question his integrity—but the question went out of the whip's office something like this: "Are you for H.R. 234 which would prevent concentration camps, or are you for H.R. 820 which would provide for concentration camps"?

If I had been the whip, I would have asked the question the other way. If you want to deal in emotions, in rhetoric, I would have asked the question: "Are you for H.R. 234 which would prevent apprehension of espionage agents or sabotage agents in time of war, or are you for H.R. 820 which would permit the apprehension of espionage agents or saboteurs in time of war"?

Madam Chairman, I have brought many measures since I have been chairman of the House Committee on Internal Security to this floor. There has never been a close vote on any of the questions presented. I hope, Madam Chairman, that I have always prevailed upon those questions because of reason and logic and not upon the ground of emotion or rhetoric. And I do believe if I can get the attention of the House in these busy days my views will prevail on this matter.

I do not disagree with many of the speeches made on the floor of the House today or with the rhetoric, but I do disagree very vehemently with the logic and let me say to the gentleman from Illinois (Mr. RAILSBACK)—and I shall yield to the gentleman since I mentioned his name, if he so desires, at a later time—that the House Committee on the Judiciary has not done its work well. You have jumped from the frying pan into the fire. I do not think you can sustain your position, if the House will proceed to be governed by logic and commonsense.

Madam Chairman, H.R. 234, the bill reported by the Committee on the Judiciary, and H.R. 820, the bill reported by the House Committee on Internal Security, deal with some very profound, complex, and, I might say, interesting and serious constitutional and philosophical issues. Title II which H.R. 234 repeals and which H.R. 820 amends has a very interesting origin, as I have stated before and I will say it again. Its original authors were not McCarran, Nixon, or MUNDT, but Senators Douglas, Lehman, HUMPHREY, and Kefauver, men whom I doubt anyone in this Committee of the Whole House on the State of the Union would question their libertarian traditions.

It was originally offered by its authors as a substitute to head off title I. In fact, Madam Chairman, the distinguished chairman of the Committee on the Judiciary offered a very similar bill in the House.

So the issues involved here are not easy if one really examines the problem.

For example, the Department of Justice—and I hope that the Members listened to the gentleman from California (Mr. SMITH) in his presentation of the rule—the issues are not simple.

The Justice Department apparently had real difficulty in making up its mind. One of those "leaked" editorials that we see so often around Washington, written by Evans and Novak, said at one time that the Department of Justice had decided to come out against repeal of title II of the Internal Security Act. And I will be quite frank with you, we cannot get a position out of the Department of Justice on this nefarious amendment which the Committee on the Judiciary has attached to the bill.

Let us look at the report of the Department of Justice on H.R. 234, and let me quote to you from it:

In the judgment of this Department, the repeal of this legislation will allay the fears and suspicions—unfounded as they may be—of many of our citizens.

Since when, Madam Chairman, do we ask a legislative body in a free society to legislate on the basis of unfounded fears? If there are unfounded fears, then let us