Mr. President, I had intended to speak on the legislative history of Section 1993 of Title 42 of the United States Code during one of the afternoon sessions on H.R. 6127, the so-called Civil Rights Bill. That section authorizes the President of the United States, or someone empowered by him, to use military force to enforce certain designated sections of the United States Code. By a cross-reference device, Part III of H.R. 6127, if enacted into law, would be incorporated into one of the sections of the United States Code which may be enforced by Section 1993. This was not known to the public until it was pointed out by the very able senior Senator from Georgia, Mr. Russell. Mr. Russell also pointed out that a suit to force racial integration of a school could be brought under Part III of H.R. 6127, and charged that, therefore, the military force provision of Section 1993 could be used to force integration of Southern schools.

The proponents of H.R. 6127 attempted to answer the charge by citing precedents for Section 1993. It is interesting to note, however, that the proponents failed to cite the precedent relied upon when Section 1993 was enacted in 1866. In this course the proponents were well advised, because a review of the legislative history of Section 1993 will show that it was not based upon sound precedent when enacted, and that its existence today is attributable solely to the radicals who controlled the 39th Congress.

The legislative history of Section 1993 shows that the language
therein was never directed at internal domestic issues, except during the Reconstruction Period; and that its first usage was in connection with our foreign relations. The statute in which it finds its genesis had as its purpose the protection of the neutrality rights of the United States and the prevention of interference in foreign disputes by citizens of the United States. In short, the language was used to avoid entanglements in foreign hostilities, and had a purpose with which no one could quarrel.

Yet, in a spirit of vengeance and vindictiveness equaled by few despots of history, the radical Republicans of 1866 used the language for a most unsavory and tyrannical purpose in the Reconstruction Statutes designed to bring a great section of our nation to its knees. In doing so they violated the concepts of sound precedent traditional in our legislative system, and the historical review which I have prepared will so demonstrate.

The perverted use of the "military force" language, now found in section 1993, was originally used to enforce the law in regard to rights which exist among nations. Violations of these rights could mean war, because that is the final court of appeal for sovereign nations. Therefore, there is a great need to prevent any violation at all in this area.

Recognizing this in an emergency situation of 1836, Congress enacted the statute which granted President Van Buren the extraordinary power to use military force to prevent violations of the rights of foreign nations. In this context, the justification for such sweeping power is manifest.
Justification was not, however, present in 1866 and is not present today because the statutes involved affect the rights which exist among citizens, not nations. The need to protect these rights stands upon a very different footing from the need to protect the rights of a nation. A citizen may protect his rights by resort to the courts and their normal enforcement procedures. He need not go to war. Indeed, violation of a citizen’s rights does not even disturb the public peace in the vast majority of cases.

Moreover, when such rights are violated, perfect redress may be had by an action at law or by an action in equity. For violations already committed, he may recover monetary damages in a law action. For violations not yet committed, he may obtain an injunction against their commission if the potential damage is irreparable. Thus, complete protection of a citizen’s rights is available without the use of “military force.”

Therefore, the 1838 statute was not a sound precedent for the enactment of Section 1993. The purposes of the two statutes were not at all analogous. “Military force” was not needed to enforce civil rights in 1866 and it is not needed today. Section 1993 was enacted into law in a spirit of vengeance and vindictiveness known only to the Reconstruction Period.

It has lain dormant for many years, but today some of the proponents of H.R. 6127 still seek to breathe new life into it. They would do this by Part III of H.R. 6127, so that troops could be used to integrate Southern schools.
However, it seems that because of recent changes in the parliamentary situation, the issues raised by Section 1993 may soon be behind us. The charge that troops could be used to integrate the schools of the South has been admitted.

The leader of the proponents of H.R. 6127, the senior Senator from California, in effect, made this admission by introducing an amendment which repeals Section 1993. Under these circumstances, to speak upon Section 1993 would be to speak upon a largely conceded point.

Nevertheless, the historical origin of Section 1993 will further illumine the issues raised by H.R. 6127, and I think it would be a worthwhile contribution to the record on that bill.

Mr. President, I ask unanimous consent to have my prepared statement follow my remarks at this point.
Section 1993 of Title 42 of the United States Code is captioned "Aid of Military and Naval Forces" and provides that:

"It shall be lawful for the President of the United States, or such person as he may empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia, as may be necessary to aid in the execution of judicial process issued under sections 1981--1983 or 1985--1992 of this title, or as shall be necessary to prevent the violation and enforce the due execution of the provisions of sections 1981--1983 and 1985--1994 of this title."

The above section stems from the statutes passed by the 39th Congress, which history records as being controlled by the radical Republicans. The section was a part of S. 61, which came before the Senate on January 12, 1866 and later, upon being enacted into law, became the forerunner of our present Civil Rights Act. The part of S. 61 which provided for the use of military force follows:

"Sec. 10. And be it further enacted, That it shall be lawful for the President of the United States, or such person as he may empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia, as shall be necessary to prevent the violation and enforce the due execution of this act."

During the debate on S. 61, an amendment to strike the above section from the bill was proposed by Senator Hendricks of Indiana. His arguments in support of the amendment were in much the same vein as the arguments of the opponents of the present Civil Rights Act. He foresaw the evils which would and did follow the enactment of the section, and cited the very vices that the opponents of H. R. 6127 have cited. (Full text of Senator Hendrick's argument and other comments on his amendment follows this historical review of 42 U.S.C. 1993.)
Senator Trumbull, in opposition to the Hendricks amendment, argued that the language had been adopted verbatim from a statute enacted in 1838 during the Democratic administration of Martin Van Buren. The 1838 statute was cited by Trumbull as a sufficient and sound precedent for carrying the language forward to assure the enforcement of S. 61. (See THE CONGRESSIONAL GLOBE, Part I, First Session, 39th Congress, Page 605.) The validity of the 1838 statute as a precedent was not analyzed during the debate on S. 61, and indeed it could not have been analyzed properly because of the spirit and mood of the day.

S. 61 was, of course, passed by both the House and the Senate and thereafter vetoed by President Andrew Johnson. President Johnson's veto message in regard to the section under discussion follows:

"The ninth section authorizes the President, or such person as he may empower for that purpose, 'to employ such part of the land and naval forces of the United States, or of the militia, as shall be necessary to prevent the violation and enforce the due execution of this act.' This language seems to imply a permanent military force, that is to be always at hand, and whose only business is to be the enforcement of this measure over the vast region where it is intended to operate"

(The Congressional Globe, Part 2, 1st Sess. 39th Congress, P. 1681.)

In response to the Presidential veto, Senator Trumbull again cited the 1838 statute as sound precedent and also as sufficient reason for over-riding the veto. Trumbull summarily dismissed President Johnson's reasoning by the following statement:

"The eighth and ninth sections of the bill which authorize the President to require a court to be held in any portion of the district where a court may be necessary to punish offenses under this act, and to use the Army and Navy to prevent its violation, are
also objected to, but both those sections are copied from an act passed March 10, 1838, which was approved by Mr. Van Buren, and when he did so I presume it never occurred to him that these sections were specially designed for colored persons, or to keep up a permanent military force whose only business it should be to enforce the act." (The Congressional Globe, Part 2, 1st Sess. 39th Congress, p. 1760.)"

History records that the misgivings of President Johnson and Senator Hendricks were well founded, and that Senator Trumbull's desire for vengeance brought no real benefits to the nation. That is a digression, however, because the purpose of this discussion is to show the impropriety of using the language of the 1838 statute as it was used by the 39th Congress, and that the 1838 statute was not the sound precedent which Senator Trumbull conceived it to be.

The fact is that the 1838 statute was enacted to protect the neutrality rights of this nation from being infringed upon by foreign powers, and to prevent American citizens from interfering in foreign hostilities. The 1838 statute resulted from an incident which occurred on December 29, 1837, involving an American steamer, the Caroline. The Caroline had been used to carry reinforcements, provisions, and munitions across the Niagara River to the camp of Canadian insurgents under William Lyon MacKenzie. The Caroline, while on the American side of the river, presumably ready for a similar trip, was boarded by an armed body of Canadians sent over in boats for that purpose. The Canadians hustled the passengers and crew ashore, killing one man on shore in the fray, towed the vessel out into the stream, set it on fire and sent it over the Niagara Falls. A great uproar ensued. President Van Buren issued a proclamation ordering the neutrality laws to be respected, called out the militia under Winfield Scott and demanded reparation from the British
Government. President Van Buren also requested Congress to strengthen the laws so that American citizens could be prevented from aiding rebel forces in a nation with which we were at peace. President Van Buren's message to Congress follows:

"To the Senate and House of Representatives of the United States:

"Recent experience on the southern boundary of the United States, and the events now daily occurring on our northern frontier, have abundantly shown that the existing laws are insufficient to guard against hostile invasion, from the United States, of the territory of friendly and neighboring nations.

"The laws in force provide sufficient penalties for the punishment of such offences, after they have been committed, and provided the parties can be found; but the Executive is powerless in many cases to prevent the commission of them, even when in possession of ample evidence of an intention on the part of evil-disposed persons to violate our laws.

"Your attention is called to this defect in our legislation. It is apparent that the Executive ought to be clothed with adequate power effectually to restrain all persons within our jurisdiction from the commission of acts of this character. They tend to disturb the peace of the country, and inevitably involve the Government in perplexing controversies with foreign powers. I recommend a careful revision of all the laws now in force, and such additional enactments as may be necessary to vest in the Executive full power to prevent injuries being inflicted upon neighboring nations by the unauthorized and unlawful acts of citizens of the United States, or of other persons who may be within our jurisdiction, and subject to our control.

"In illustration of these views, and to show the necessity of an early action on the part of Congress, I submit herewith a copy of a letter received from the Marshal of the northern district of New York, who had been directed to repair to the frontier, and take all authorized measures to secure the faithful execution of existing laws.

"M. Van Buren

"January 8, 1838"
(For comments and action on the message, see pages 79, 87, and 114 of Volume 6 of the Congressional Globe.)

Congress responded to the President's request by enacting a statute entitled "An Act supplementary to an act entitled 'An act in addition to the act for the punishment of certain crimes against the United States, and to repeal the acts therein mentioned,' approved twentieth of April, eighteen hundred and eighteen." Vol. 5, U. S. Statutes At Large, p. 212. This statute, which was approved by President Van Buren on March 10, 1838, is the one from which Senator Trumbull copied the "military force" language now contained in Section 1993 of Title 42 of the U. S. Code. The "military force" language of the 1838 statute follows:

"Sec. 8. And be it further enacted, That it shall be lawful for the President of the United States, or such person as he may empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia, as shall be necessary to prevent the violation, and to enforce the due execution, of this act, and the act hereby amended."

The statute also provided that it "...shall continue in force for the period of two years, and no longer..."

Although Senator Trumbull did not refer to it during the debates on the Civil Rights Act of 1866, the Act which was supplemented by the above statute should be noted. The supplemented Act, approved on April 20, 1818, is the true genesis of the "military force" language. It contained the following:

"Sec. 9. And be it further enacted, That it shall be lawful for the President of the United States, or such person as he shall empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, as shall be necessary to compel any foreign ship or vessel to depart the United States in all cases in which, by the laws of nations or the treaties of the United States, they ought not to remain within the United States." Vol. 3, U. S. Statutes at Large, p. 447.
The 1818 Act supplanted an act approved on March 3, 1817, and entitled "An act more effectually to preserve the neutral relations of the United States. Vol. 3, U. S. Statutes At Large, P. 370. This act did not contain the military force language, nor did any of its predecessor statutes.

END Sec. A
Mr. Hendricks: "I do not agree with some Senators that this is a more dangerous bill to the country than the one that was passed last week. If the amendment which I have proposed should be adopted and the last section stricken from the bill, it will be a much less dangerous bill, in my judgment, than the Freedman's Bureau Bill, for the reason that that bill sends an army of irresponsible officers among the people to control their affairs, and from their actions and their decisions there is no appeal to the courts; but this bill sends the people with their causes into the courts of the United States, and if a great wrong be done in any of the inferior courts perhaps an appeal will lie to a court where justice will be done. I am not so much afraid of any law that sends the people to the courts as I am of a law which places them under the control and power of irresponsible officials."
"But the section which I propose to strike out is an unnecessary and very dangerous one, and I submit it to the judgment of the majority of this body whether it ought to be enacted into a law. This bill is a wasp; its sting is in its tail. Sir, what is the bill? It provides, in the first place, that the civil rights of all men, without regard to color, shall be equal; and, in the second place, that if any man shall violate that principle by his conduct, he shall be responsible to the court; that he may be prosecuted criminally and punished for the crime, or he may be sued in a civil action and damages recovered by the party wronged. Is not that broad enough? Do Senators want to go further than this? To recognize the civil rights of the colored people as equal to the civil rights of the white people, I understand to be as far as Senators desire to go; in the language of the Senator from Massachusetts (Mr. Sumner) to place all men upon an equality before the law; and that is proposed in regard to their civil rights.

"Then, sir, we have the framework for the execution of these two sections. I recollect that during the holidays it was heralded to the country that a great achievement was to be expected from the Senator from Illinois; that he was going to introduce a bill as soon as Congress reassembled recognizing the civil rights of the colored people as equal to the civil rights of the white people; that he was going to so frame his bill as that these rights should be positively and certainly secure, and that to accomplish this he had adopted the framework and the fashion of the former fugitive slave law. That was regarded as a great achievement, and much credit was claimed for the Senator because when he came to prosecute and follow white men he had adopted the language and the framework of a law which was intended to recapture runaway slaves--a law which in its framework and details was denounced as most unjust and dangerous. And yet it was regarded as a feat and an accomplishment for the Senator from
Illinois to incorporate into this bill the language of that law.

"Why, sir, this bill provides that there shall be commissioners, not ordinary commissioners that the courts in the exercise of their judgment and discretion shall appoint, but extraordinary commissioners, and from its language it seems to contemplate that there shall be a commissioner in every country of the United States, and these commissioners are authorized to appoint as many agents or deputy marshals as they may see fit to appoint, and these deputy marshals may call upon the body of the people, for what purpose? To pursue a runaway white man. Oh, I recollect how the blood of the people was made to run cold within them when it was said that the white man was required to run after the fugitive slave; that the law of 1850 made you and me, my brother Senators, slave-catchers; that the posse comitatus could be called to execute a writ of the law for the recovery of a runaway slave under the provisions of the Constitution of the United States; and the whole country was agitated because of it. Now slavery is gone; the negro is to be established upon a platform of civil equality with the white man. That is the proposition. But we do not stop there; we are to reenact a law that nearly all of you said was wicked and wrong; and for what purpose? Not to pursue the negro any longer; not for the purpose of catching him; not for the purpose of catching the great criminals of the land; but for the purpose of placing it in the power of any deputy marshal in any county of the country to call upon you and me, and all the body of the people to pursue some white man who is running for his liberty because some negro has charged him with denying to him equal civil rights with the white man. I thought, sir, that that framework was enough; I thought, when you placed under the command of the marshal in every county of the land all the body of the people, and put every one upon the track of the fleeing white man, that that was enough; but it is not. For the purpose of the enforcement of this
law, the President is authorized to appoint somebody who is to have the command of the military and naval forces of the United States—for what purpose? To prevent a violation of this law, and to execute it. Let me read it, as I do not get the words exactly:

Sec. 10. And be it further enacted, That it shall be lawful for the President of the United States, or such person as he may empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia, as shall be necessary to prevent the violation and enforce the due execution of this act.

"What violation, sir? The denial of equality to the colored people. Some man disputes the proposition; some judge proposes in his adjudication not to recognize the civil equality of the colored people. Now the military may be called in to prevent the violation of this law. Before there is a violation, before a crime is committed, the military may be brought to bear upon any person who is charged with a design to violate the law. Then if there shall be a violation, if some judge of a court shall hold that the colored man is not civil entitled to equal rights with the white man, the military force may be called in to execute this law. How and why? Are we not in a time of peace? Where is society now disturbed? Upon our honors we must legislate fairly for the country. We have no right, in the form of legislation, to go to punishing men, and I cannot believe that senators intend any such thing. If you create an army of officers to execute this law, and if you authorize the deputy marshals everywhere to call upon the whole body of the people to execute it, why is it that the military shall be brought in to execute this law of all the laws of the United States, the only law relating to the civil affairs of the people? Is it right? Are you willing to do it in reference to other laws? Are you willing to say in your laws declaring and protecting the civil rights of white men that they shall be enforced at the point of the bayonet? I know you would not.
You would say that the military must not be brought in except where there is an insurrection, or when there is such an interference with the enforcement of the laws as justifies the interposition of the military power of the country.

"In the state of Indiana we do not recognize the civil equality of the races. I refer to Indiana, as the Senator from Maryland (Mr. Johnson) referred to his state the other day, as a mere mode of illustration. The Policy of that State was to prevent the further immigration of colored people into the State after 1852, and as a means of preventing that we denied to the colored people who might come into the State after that date the right to acquire real estate. Suppose that during the past thirteen years some colored man has come into the State of Indiana and has purchased real estate. He brings his action of ejectment after the passage of this law to recover that land. Our supreme court has decided that law of the State to be constitutional. That decision of the supreme court is the rule of decision for all the inferior courts of the State. The trial of the ejectment comes off before the circuit or common pleas court of the State, and the judge instructs the jury that under the law and constitution of the State of Indiana this man could not acquire an interest in real estate and that he cannot recover. Here is a denial of a civil right, it is claimed; but it is a question of law; and you make that judge not only responsible in the civil but in the criminal courts of the United States for his adjudication. You make him a criminal for following the authority of the supreme court of the State. You make him a criminal because he obeys the constitution of the State. You make him a criminal because he enforces the law of the State as it is plainly written before him. You are not content with capturing him, but you call in the military power of the country and you stop his court. You will not allow that case to go to judgment, but when it is
announced to the jury that this is the rule that must govern them, I suppose the military must be brought in to prevent a verdict and a final judgment. That would be preventing a violation of the law. Is this law to make a good title in Indiana? Is this law to have the force of vesting in the colored people who came into that State since 1852 a good and sufficient title to land when the constitution and the law of the State denied that right? You are not content that this judge may be pursued by a host, an army of marshals, and the body of the people, but a military chieftain is to be called in that this may not go into the judgment of the court.

"I am giving an extreme case, but it is a case that all Senators will admit might occur under this law. A court may be stopped midway in the investigation of a cause; and to prevent its judgment, the military are authorized to interfere. Do Senators desire that? I thought the time for military government had passed. It may not have passed here, but this military control, I believe, is about passed. I believe, taking the course pursued by the Administration in disbanding the armies, that it has substantially passed at the other end of the avenue, and a desire for its continuance has passed away from the hearts of the people. Two years ago it was a very easy thing anywhere throughout the North to maintain a military force and to repress a public sentiment that was offensive to the authorities in power. It is not so now, sir; and I am very glad of it. I never want to see a return to the time when a man's house may be surrounded by armed men in the night time, and he may be carried off to a distant portion of the State--
"Mr. JOHNSON: And out of it.

Mr. HENDRICKS: And out of the State and cast into a dungeon, and denied that trial which the Constitution and laws of the country have guaranteed him. I never want to see the time return when a man in the middle of the night shall hear the stealthy tread of the spy at his door, in the forcible language of the Senator from Pennsylvania, (Mr. Cowan) when he shall hear the breathing of the spy at his keyhole; when he shall hear the jingling of false keys at his girdle. If men are guilty of crimes, let them be brought before the courts. Do not you Senators want it to be so? Are there any Senators here that want this to be a country governed by military power? Now, in a time of peace, when the southern armies are abandoned, when the States are rapping at your door for admission, when they wish to be heard when we legislate in regard to them; at this time of profound peace in the country, when there is a more perfect subjugation to law, if I may use that expression, than at any period heretofore, we propose that a law for the benefit of the colored people shall be executed at the point of the bayonet.

It seems to me that I need add nothing further. I repeat that it is enough that you clothe the marshals under this bill with all the powers that were given to the marshals under the fugitive slave law. That was regarded as too rigorous a law, as too arbitrary in its provisions, and you repealed it. You repealed it before the constitutional amendment was adopted. You said it should not stand upon the statute-book any longer, that no man, white or black, should be pursued under the provisions of that law. Now, you reenact it, and you claim it as a merit and as an ornament to the legislation of the country; and you add
an army of officers and clothe them with the power to call upon anybody and everybody to pursue the running white men. That is not enough, but you must have the military to be called in, at the pleasure of whom? Such a person as the President may authorize to call out the military forces. Where it shall be given, we do not know.

Mr. President, I do not intend to discuss the bill. I hope it will not pass, let us not unite the sword with the court."

Mr. LANE: of Indiana. Mr. President, I shall detain the Senate but a very few moments at this stage of the proceedings, for I am as anxious to have a vote as any one; but it is perhaps necessary for me to say a few words in explanation of the reasons for the vote I shall give.

My distinguished colleague, if I understand him aright, places his objection to this bill, first upon the ground that we have pressed into the service the machinery of the fugitive slave law; and secondly, that we authorize this bill to be enforced by the military authority of the United States. It is true that many of the provisions of this bill, changed in their purpose and object, are almost identical with the provisions of the fugitive slave law, and they are denounced by my colleague in their present application; but I have not heard any denunciation from my colleague, or from any of those associated with him of the provisions of that fugitive slave law which was enacted in the interest of slavery, and for purposes of oppression, and which was an unworthy, cowardly, disgraceful concession of southern opinion by northern politicians. I have suffered no suitable opportunity to escape me to denounce the monstrous character of that fugitive slave act of 1850. All these provisions were odious and disgraceful in my opinion, when applied in the interest of slavery, when the object was to strike down the rights of man. But here
the purpose is changed. These provisions are in the interest of freeman and of freedom, and what was odious in the one case becomes highly meritorious in the other. It is an instance of poetic justice and of apt retribution that God has caused the wrath of man to praise Him. I stand by every provision of this bill, drawn as it is from that most iniquitous fountain, the fugitive slave law of 1850...

"Then my colleague asks, why do you invoke the power of the military to enforce these laws? And he says that constables and sheriffs and marshals when they have process to serve have a right to call upon the 'posse comitatus', the body of the whole people, to enforce their writs.

Here is a justice of the people of South Carolina or Georgia, or a county court, or a circuit court, that is called upon to execute this law. They appoint their own marshal, their deputy marshal, or their constable, and he calls upon the 'posse comitatus'. Neither the judge, nor the jury, nor the officer as we believe is willing to execute the law. He may call upon the people, the body of the whole people, a body of rebels steeped in treason and rebellion to their lips, and they are to execute it; and the gentleman seems wonderfully astonished that we should call upon the military power. We should not legislate at all if we believed the State courts could or would honestly carry out the provisions of the constitutional amendment; but because we believe they will not do that, we give the Federal officers jurisdiction. Because we believe they will not do it, because we believe their people will not carry it out, we authorize the President of the United States to do what he would have a perfect right to do without the enactment of such a law under peculiar circumstances. Where organized resistance to the legal authority assumes
that shape that the officers cannot execute a writ, they have a right through the Governor of the State to call upon the President to see that that law, as well as every other law, is faithfully executed. We propose by law to say that the military may be called in for the execution of this law..."

"I think then, that the provisions of this bill are admirably calculated to secure to those colored people their rights under the constitutional amendment, and I think the provision contained in the last section of the bill more important than any other, and that is, that the President shall have a right with the strong arm of military authority to see that this law is carried out; and I say without that provision this act would be a mockery and a farce. It will not be worth the paper upon which it will be engrossed unless you make it a law in deed and in fact, and authorize the judicial officers appointed under it to call upon and to command the military power of the country for the purpose of carrying it out."

(End of section b)