or production for commerce (including enterprises operating hospitals and similar institutions and schools) was recently upheld in *Maryland* v. *Wirtz*, 390 U.S. 917 (1968). In upholding the "enterprise concept" the Court said:

> "* * * [W]hile Congress has in some instances left to the courts or to administrative agencies the task of determining whether commerce is affected in a particular instance, *Darby* itself recognized the power of Congress instead to declare that an entire class of activities affects commerce. The only question for the courts is then whether the class is 'within the reach of the federal power.' The contention that in Commerce Clause cases the courts have power to excise, as trivial, individual instances falling within a rationally defined class of activities has been put entirely to rest. *Wickard* v. *Filburn*, 317 U.S. 111, 127–128, 63 S. Ct. 82, 90–91, 87 L. Ed. 122; *Polish Nat. Alliance of United States of North America* v. *National Labor Relations Board*, 322 U.S. 643, 648, 64 S. Ct. 1196, 1199, 88 L. Ed. 1509; *Katzenbach* v. *McClung*, supra, 379 U.S., at 301, 85 S. Ct., at 382. * * *."

The National Labor Relations Act (29 U.S.C. secs. 151–167) furnishes another example of the far reaching effect which an exercise of the power conferred by the Commerce Clause may have. That Act empowers the National Labor Relations Board "to prevent any person from engaging in any unfair labor practice [listed in the Act] affecting commerce." The Act was sustained by the Supreme Court in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937), and that Act applies, beyond question to unfair labor practices in activities which might be regarded as intrastate or local when viewed separately.[7] A more recent but equally persuasive exercise of the commerce power was the enactment of Title II of the Civil Rights Act of 1964 (42 U.S.C. secs. 2000a–2000a–6) prohibiting discrimination on the grounds of race, color, religion, or national origin at places of public accommodation the operations of which affect commerce. Title II of the Act was upheld in *Heart of Atlanta Motel, Inc.* v. *United States*, 379 U.S. 241 (1964) and (as to a restaurant) in *Katzenbach* v. *McClung*, 379 U.S. 294.

In the light of this constitutional background, it seems to me that surface mining operations dealt with by the bill are as much within the power of the Congress as are substandard working conditions or labor disputes or discrimination in places of public accommodation. In my opinion, the Commerce Clause clearly permits the Congress to protect Commerce from surface mining operations that burden and adversely affect it—

> "by destroying or diminishing the availability of land for commercial, industrial, recreational, agricultural, and forestry purposes, by causing erosion and landslides, by contributing to floods and the pollution of waters, by destroying fish and wildlife habitat and impairing natural beauty, by counteracting efforts to conserve soil, water, and other natural resources, by destroying or impairing the property of citizens, and by creating hazards dangerous to life and property."

To that end, S. 3132 would provide for Federal regulation in the absence of adequate regulation by the States, and as I have said, its passage would, in my judgment, be a valid exercise of the power conferred by the Commerce Clause.

EDWARD WEINBERG, *Solicitor.*

Senator METCALF. Again I congratulate you, Mr. Secretary, on the presentation of a very important and far-reaching subject and thank you for coming.

Mr. UDALL. Thank you.

(The prepared statement referred to follows:)

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[7] See, e.g., *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co.*, 301 U.S. 58 (1937), manufacturer of men's clothing; *National Labor Relations Board* v. *Fainblatt*, 306 U.S. 601 (1939), processor of women's sportswear; *Howell Chevrolet Co.* v. *National Labor Relations Board*, 346 U.S. 482 (1953), retail automobile dealer; *Plumbers Union* v. *Door County*, 359 U.S. 354 (1959), alteration of a county courthouse; *National Labor Relations Board* v. *Reliance Fuel Oil Corp.*, 371 U.S. 224 (1963), distributor of fuel oil. See also, *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board*, 303 U.S. 453 (1938) in which the Court said at page 465. "With respect to the federal power to protect interstate commerce in the commodities produced, there is obviously no difference between coal mined, or stone quarried, and fruit and vegetables grown. The same principle must apply, and has been applied, to injurious restraints of interstate trade which are caused by the practices of manufacturers and processors."