Mr. MACDONALD. Yes.

Mr. BROWN. I would like to ask the staff for some kind of a rationale on this question of intrastate and interstate that would relate the various kinds of Federal regulation that we have over such things as trucking, oil transmission, manufactured products that are sold in interstate, and the electric companies.

I think a rationale has to relate these various matters of transmission of power or transportation resources or transportation of products for sale or whatever you have. It seems me that in some areas just the fact that you are connected with an interstate operation makes you (QED) interstate. In view of the fact that I have asked the staff for some information or some background that relates all these things, I would like to suggest the same possibility to you as a witness if there is a way you can give me briefly your thinking on this.

Mr. FITE. Right offhand I don't know for sure but we could get together. We will certainly make an effort.

Mr. BROWN. It would not have to be done offhand. I would be happy to have a letter on the subject that would give me this background.

Mr. MACDONALD. When Mr. Brown talks about a letter, I think copies should be supplied to each member of the committee and one for the record.

Mr. FITE. Yes.

(The following was subsequently submitted:)

MEMORANDUM, JANUARY 29, 1968

Re: Dual Regulation of Commerce by Federal and State Governments.

I. THE COMMERCE CLAUSE IS NOT A LIMITLESS GRANT OF POWER TO THE FEDERAL GOVERNMENT

The genesis of the theory of dual sovereignty of central and state governments can be traced to the very beginnings of the Republic. By the time of the Constitutional Convention, the United States had become virtually helpless in dealing with foreign nations because of the dispersion of commercial power among the states under the Articles of Confederation. At the same time there existed a destructive hostility among the states due to restrictive measures directed against one another. These were the considerations that caused the framers to draft the Commerce Clause, and thus an original and primary objective of the Clause was to limit the commerce power of the individual state governments and not to grant power affirmatively to the federal government. Corwin, *Commerce Power v. States Rights*, 24–26 (1936).

This duality, or "double aspect", of sovereignty was recognized at an early stage in Chief Justice Marshall's opinion in *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 204 (1824), and amplified in the subsequent cases of *Wilson v. Blackbird Creek Marsh Co.*, 27 U.S. (2 Pet.) 245 (1829); *City of N.Y. v. Miln*, 36 U.S. (11 Pet.) 102 (1837); and *Cooley v. The Board of Wardens*, 53 U.S. (12 How.) 299 (1852). In capsule, the "double aspect" concept recognizes that the grant to Congress by the Commerce Clause is exclusive and consequently a prohibition to the states to exercise the same power. However, the states are permitted to enact laws which in their *operation* may amount to regulation of interstate commerce but, nevertheless, are to be sustained under the reserved powers provided that they have for their *purpose* the accomplishment of legitimate state objectives such as public health, morals, safety, or general welfare, and where the *local interests* thereby served outweigh the interstate or national interests.

The doctrine has been applied continually to the present day, Smith, *The Commerce Power in Canada and the United States*, 220 (1963). A much later Court than Chief Justice Marshall's in *NLRB v. Jones & Laughlin Steel Co.*, 301 U.S. 1, 30 (1937), through creating revolutionary constitutional doctrine itself, has recognized that: