CIVIL RIGHTS

HEARINGS

BEFORE

SUBCOMMITTEE NO. 5

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH CONGRESS

FIRST SESSION

ON

MISCELLANEOUS PROPOSALS REGARDING THE CIVIL RIGHTS OF PERSONS WITHIN THE JURISDICTION OF THE UNITED STATES

MAY 8, 9, 15, 16, 23, 24, 28; JUNE 13, 26, 27; JULY 10, 11, 12, 17, 18, 19, 24, 25, 26, 31; AUGUST 1, 2, 1963

Serial No. 4

PART III

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House of Representatives, 88th Congress

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CIVIL RIGHTS

WEDNESDAY, JULY 17, 1963

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 5 OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to adjournment, at 10 a.m., in room 346, Cannon Building, Hon. Emanuel Celler (chairman of the subcommittee) presiding.

Present: Representatives Celler, Rogers, Toll, Kastenmeier, McCulloch, Meader, and Cramer.

Also present: Representatives Lindsay and Corman.

Staff members present: William R. Foley, general counsel, and William H. Copenhaver, associate counsel.

Mr. CELLER. First is Mr. George Meany, president of the AFL and the Congress of Industrial Organizations. We look on you as a very dedicated person. Will you identify your associates?

STATEMENT OF GEORGE MEANY, PRESIDENT, AFL–CIO, ACCOMPANIED BY THOMAS E. HARRIS, ANDREW J. BIEMILLER, AND MR. WOLL

Mr. MEANY. Mr. Harris, Mr. Woll and Mr. Biemiller.

Mr. CELLER. I knew your dad. He was a very skillful labor leader. We are glad to have you, Mr. Meany.

Mr. MEANY. Let me say at the outset, speaking on behalf of the AFL–CIO, that we are happy to present our views on civil rights legislation in an atmosphere of what I hope is impending action by the Congress. I am sure as you know we have appeared many times before many congressional committees, under far less promising circumstances.

In the course of preparing this testimony, I looked through our files for a sampling of the civil rights statements we have made over the years—not only the congressional testimony, but convention resolutions and policy declarations by the AFL–CIO, and earlier, by the AFL and CIO as separate federations.

Those statements are remarkably consistent. They are not only consistent in what they propose; they are also consistent in their sense of urgency.

We have been insisting for a long time that establishing and maintaining full and equal rights for Negro Americans is a matter of "here and now." We have done this in the full knowledge that not all individual units of the trade union movement agree with the

policies adopted, without apparent dissent, at trade union conventions.

This has contributed to our sense of urgency. The labor movement has not been the only advocate of civil rights legislation during the last decade; there have been the church groups, and of course the Negro organizations themselves. But I think it is fair to say that we are the only one, among the civil rights forces, which has openly called for legislation for the correction of shortcomings within its own rank.

On this score our credentials cannot be challenged. It can be truly charged that some segments of the labor movement have ignored the established policies of the AFL, the CIO, and later the AFL–CIO.

Mr. CELLER. That is a very candid statement.

Mr. MEANY. Well, it is true. We have said so ourselves, before Congress and elsewhere. We have pleaded for legislative help to translate principle into practice. But until very recently, there has been very little disposition on the part of the Congress, or the country as a whole, to provide that help.

Obviously this is no longer the case. And I think all of us must acknowledge that the change has taken place because the Negroes are no longer willing to wait for the white majority, in its own good time, to do what is right. I do not offer a blanket endorsement of every Negro demonstration, every sit-in or every picket line.

Mr. CELLER. Let me interrupt there, Mr. Meany. I think you are a little unfair to Congress and more particularly this Judiciary Committee as we labored long——

Mr. MEANY. We have been asking for a FEPC law for a long time.

Mr. CELLER. We did adopt the civil rights bill in 1957, in connection with education. We did adopt the the Civil Rights Act in 1960, with reference to voting and this committee has been vigilant, so that I would like the record to make that clear.

Mr. MEANY. Well, I am speaking of the Congress as a whole and I think that the statement that I make can be justified by the record.

Mr. CELLER. But you must remember that FEPC is not within the jurisdiction of this committee. That is another committee.

Mr. MCCULLOCH. I would like to comment at this time and place. I can say this for the chairman. He has been a militant fighter for civil rights for many years, even before I came to Congress and that has been some 15 years ago.

Looking particularly to the timetable this year, the chairman introduced H.R. 1768 in this field on January 14, 1963. I introduced a rather comprehensive civil rights bill on January 31, and was joined by a number of my colleagues and that legislation was supplemented again later.

The chairman started the hearings on civil rights on May 8, this year. We were ready, willing, and anxious to proceed with hearings. There were postponements, not brought by us, and we have been trying to move rapidly in this field. Not only from the times mentioned by the chairman but this year. I regret to say even as late as yesterday when I last checked, the reports from the departments, which we asked for weeks ago—in April I am advised—are not yet before this committee. I am very jealous of the rights of the legislative branch

of Government and for that reason I take this time to say just what I have said.

Mr. MEANY. I, of course, am not criticizing this committee and certainly not criticizing the chairman of the committee, whom I have known for many years. I am in complete agreement. There has never been any question where Mr. Celler has stood on civil rights. However, what I said I think is true. There has been very little disposition on the part of Congress as a whole, and I think the record bears that out. What I am trying to point out is that there has been a change, and I think we must acknowledge that the change has taken place because the Negroes are no longer willing to wait for the white majority, in its own good time, to do what is right. I do not offer a blanket endorsement of every Negro demonstration, every sit-in or every picket line.

Mr. CELLER. Would you approve of a so-called march on Washington at the end of August?

Mr. MEANY. Well, I certainly believe that these people have a right to march on Washington. If you are asking me is it wise from a legislative point of view, I would question it.

Mr. CELLER. I am glad to hear you say that because I don't know what vote will be changed. It certainly won't change the vote from the Members from the South. It won't change my vote. It won't change the vote of the Members from the northern cities, but you may change your votes to the disadvantage of the Negro people with reference to those who come from the midcontinental area, the Western States. They don't want to be pressurized, bludgeoned, and coerced into actions. I do know of a number of cases where Members have stated in both Houses that if there is such a march on Washington, while they now would vote for a civil rights bill that march would cause them to change their minds and vote against it, so I serve warning upon the colored people in particular and their leaders with the hope that their best counsel will prevail and they will not make a march on Washington because that is bound to involve an incident that we certainly will regret.

Mr. MCCULLOCH. Mr. Chairman, I would like to join with you in that statement and add my own statement, that I earnestly call upon leaders in this country in every field of activity and particularly the responsible labor figures to call upon their members to use proper caution in this field. Of course, people have the right to peacefully assemble, but legislation by pressure, in the long run, cannot be good.

Mr. MEANY. Well, I want to make it quite clear that this is a judgment of the leaders of the Negro organizations. I want to make it quite clear that I feel they have a right to march on Washington, if that is what they want to do, but I again repeat that I question whether it will help in the legislative field.

But it is beyond question that the organized militancy of the Negroes has forced their plight to the active attention of the Nation.

Fortunately, there was a quick response. President Kennedy's firm and eloquent address on June 11 stirred the Nation's conscience. It has inspired other men of good will to speak out. The overwhelming national consensus in support of equal rights is now becoming visible and is asserting itself at last.

We have been glad to note that the President has by no means let the matter rest. He has called to the White House the leaders of many groups, including businessmen, union officials, women, lawyers, Negro spokesmen, and the clergy. He has brought together the congressional leaders of both parties. And he has submitted to Congress a program part of which you are now considering.

As a result, the American people have begun to grasp the fact that civil rights is not a matter for abstract debate but an immediate crisis. This realization has come none too soon. For the proposals I am about to discuss are urgent, not because we say so, but because the course of history demands their enactment.

We are not offering a blueprint for the future—a program that can be mulled over and then set aside, or one that can be delayed by endless debate over technicalities. The mulling over has been going on for two decades; indeed, in the broader sense it has been going on for more than a century. What we are discussing here today is a program for the here and now, for this year, for this session of Congress.

In the hope of simplifying the work of the committee, I will offer the AFL–CIO position within the context of the administration bill, title by title. Where other legislative proposals are also involved, I will discuss them in connection with the corresponding section of the basic bill.

TITLE I—VOTING RIGHTS

This ought to be the least controversial issue before the committee, and therefore I will deal with it briefly.

Surely there is no possible argument against the proposition that every American citizen, unless he is demonstrably an incompetent, has the right to vote. This has nothing to do with integration as such. It is simply a recognition of basic democratic principles, the principles that are the very foundation of our country.

A citizen who is denied the right to vote is not a citizen at all. And a nation which extends the franchise to some citizens but denies it to others, solely on artificial grounds such as race, is not truly democratic.

Yet this is what happens in many southern communities. The right to vote is denied to Negroes through the use of transparently fraudulent "qualifications" for those seeking to register. The 85th Congress recognized this fact and enacted legislation intended to meet it. Experience has shown that this legislation must be strengthened.

A major device now employed to bar Negroes from the polls is the so-called literacy test. There is not the slightest doubt that such tests have been the pretext under which highly educated Negroes have been disqualified, while all whites—including the semiliterate—have been duly accepted. This is a matter of record, documented in the Civil Rights Commission Report of 1961 and further elaborated in congressional hearings the following year.

We do not quarrel with the proposition that a voter should be literate. But tests should be reasonable, and above all should be equally applied. We have long agreed with the standard which was earlier proposed by the President, that the completion of the sixth grade in school is in itself an adequate qualification.

In our view, a given period of formal schooling—and we believe sixth grade serves the purpose—should be decisive rather than presumptive proof of literacy. We are frankly dismayed that this year's administration proposal, as well as title IV of the Republican civil rights bill, H.R. 3139, retreats from that position. Both give only a presumption of literacy to those who have completed sixth grade, allowing for rebuttal evidence.

Such a compromise would destroy the purpose of the bill. Interminable challenges would delay indefinitely the registration of qualified Negroes. These challenges would have to be fought out one by one, voter by voter. Because the outcome would be determined by impartial Federal courts, the battles might ultimately be won. But "ultimately" is the wrong way to meet an immediate need.

Throughout this testimony, in the hope of expediting congressional action, we have held to the barest minimum our criticisms of the administration program. But the proposals relating to voting rights are so inadequate, and in some respects so contradictory, that we urge the committee to rewrite them.

Mr. McCULLOCH. I am pleased to say for the record, again, that Ohio, the State from which I come, has no literacy test whatsoever. In the hearings before this committee last year when the Attorney General and others were testifying, I made that statement for the record. I stated that I thought no harm had been done in Ohio without literacy tests. As a matter of fact, we are of the opinion that people who are the proper age and are not under restraint should have the right to vote. I was dissuaded from putting it into the bill which I introduced on January 31 by reason of the fact that I came to the conclusion that I had better direct my energies to the possible, and I hope probable, rather than to the impossible. It seems to me that there are great numbers of Members of Congress who felt the same way. I would be glad to repair to that fine legislation in this field which my native State has.

Mr. MEANY. Thank you.

Aside from voter qualifications, we commend to your favorable attention a provision in title I of H.R. 3139. It directs the Bureau of the Census to compile nationwide registrations and voting statistics, from January 1, 1960, to date, which would show what proportion of the potential voters in each State actually registered and went to the polls, according to race, color, and national origin.

Mr. CELLER. The Congressional Quarterly has made a study of all the U.S. counties in which fewer than 15 percent of the Negro areas are registered to vote. They come up with these striking figures. The States with the highest ratio, with fewer than 15 percent voting age Negroes registered are: Mississippi, where they have 76 of their 82 counties where 15 percent or less of the Negroes are on the committee to register; South Carolina, 26 out of 46 counties; Alabama, 33 of the 67 counties; Louisiana, 23 of the 64; Georgia, 36 of the 159; Virginia, with 13 of the 97; Texas, 22 of the 254. Scattered counties with similarly low Negro registration are located in Arkansas, Florida, Tennessee, and North Carolina.

That indicates how widespread is the denial of those qualified Negroes in those States.

I would like to ask a question again. The bill—administration bill which I offered—speaks of completion of the sixth grade in public school or a private school accredited by any State or territory or the District of Columbia, where instruction is carried on predominantly in the English language.

What is your comment on "predominantly carry on the English language"? I ask that literally because we have a great many in New York who are Puerto Ricans who are literate in the sense that they understand things and can make distinctions between candidates and issues but cannot speak the English language.

What shall we do with respective voters of that sort?

Mr. MEANY. I think there is a constitutional question that might be involved there. I don't know whether this could be used as a device to keep people from voting or not. I think there is a constitutional question about teaching in another language and I don't know enough about it.

Mr. CELLER. Well, in Ohio there is no language test.

Mr. MCCULLOCH. No language test?

Mr. CRAMER. Mr. Chairman——

Mr. MEANY. Mr. Harris would like to say a word on that, our counsel.

Mr. HARRIS. As I am sure you know, some of the bills in prior years were meant to apply this sixth-grade education standard to people who were educated in Spanish, as well as in English.

I think, however, that there is a very grave constitutional doubt whether the Federal Government, acting under the 13th or 14th amendment could invalidate State legislation requiring education in the English language.

There was a good deal of discussion of that a year or two ago when the proposal was up, and I think that was dropped because of doubts as to its constitutionality.

Mr. CRAMER. Another example is Ybor City, previously in my district, in which I would say at least 30 percent of the people in that area speak Spanish and do not speak English and have been educated in Spanish-speaking schools.

Mr. LINDSAY. That is an example where those people would be disqualified for voting under this provision; would they not?

Mr. HARRIS. No. If the State wished to permit them to vote, that certainly would be up to the State. All that this would say would be that if a person had a sixth-grade education in English that that would presumptively satisfy any literacy requirement but there is nothing in this that would require the State to use the literacy requirement or say that the State couldn't be satisfied if people were literate in Spanish.

You see the constitutional problem is this: The sixth-grade presumpton can most easily be upheld under the 15th amendment, which provides that the right to vote shall not be abridged by the United States or any State on account of color, condition of servitude.

Section 2 provides that the Congress have authority to enforce this article by appropriate legislation.

In the case of people who are Negroes, experience shows that these literacy tests are being used as a dodge for depriving people of the right to vote because of the color of their skins; so that there is a quite clear constitutional basis under the 15th amendment for making sixth-grade education a basis for either conclusively or presumptively establishing literacy. But that hardly applies, the 15th amendment hardly applies where it is a problem of people being disqualified because they are educated in Spanish rather than English. So to sustain a provision that people who have 6 years of education in Spanish shall be presumed literate, you would have to go to the 14th amendment. And there you would have to rest on the assertion that a State denial of the right to vote to those people violates the equal-protection clause of the 14th amendment and that Congress, acting under section 5 of that amendment, can override that denial. That is a pretty hard argument to make, and I think it was in recognition of that that both of the major bills this year backed away from any attempt to knock out State disqualification of people who are not educated in English, but if the State wants to let them vote, they do. You say they vote in Florida. I am sure they do in New Mexico, too. There is absolutely nothing in any of these bills that would interfere with the State legislation permitting them to vote.

Mr. CRAMER. What is your recommendation, if any, to be done with regard to the definition on page 5 which presumes that a person is not judged illiterate who has completed the sixth grade of school where the instruction is done predominantly in English language?

Mr. HARRIS. We would think that you should leave the reference to the English language alone.

Mr. MEANY. We think that the qualification of sixth grade should be decisive rather than presumptive.

Mr. CRAMER. That still doesn't deal with the question of what a sixth-grade schooling means. Does it mean education in a private or public school accredited where instruction is carried on predominantly in English? That is the question now. I understand presumptions, but we are talking about how you define a sixth-grade education.

Mr. HARRIS. We think that the requirement that the instructions should be carried on in English should be left in the bill because we think it is constitutionally necessary.

Mr. CRAMER. You don't think that that would exclude those educated predominantly in Spanish?

Mr. HARRIS. The States would be permitted to allow them to vote but would not be required by Federal legislation to allow them to vote under this language.

Mr. MEANY. The States could still bargain. The instruction is in that language rather neatly.

Mr. CRAMER. The States could bargain but could they permit it?

Mr. MEANY. They could permit it, too.

Mr. CRAMER. I don't know whether I agree with that or not.

Mr. CELLER. I would like to get, Mr. Harris, your views on whether or not, under this statement that could permit Puerto Ricans or somebody in Florida who speaks Spanish and who has finished sixth grade of school to vote?

Mr. MEANY. Definitely.

Mr. HARRIS. Yes. This simply says that the States cannot go beyond this in imposing restrictions on the right to vote.

The State can enforce universal suffrage, as far as that goes.

Mr. CELLER. Your view is if we pass this bill, a State could nonetheless adopt a provision—for example, use the example of my State—permit Puerto Ricans to vote whether they cannot speak or understand English?

Mr. MEANY. This would not interfere with the Ohio law that Mr. McCulloch referred to.

Mr. COPENHAVER. By reading the language there "predominantly English language" could it not be interpreted as to deny a presumption under this law to people who speak predominantly Spanish or are taught in Spanish-speaking schools? Aren't we denying a presumption to those people?

Mr. MEANY. It would permit the State to deny it.

Mr. HARRIS. Yes, that is true.

Mr. COPENHAVER. Wouldn't it be best to consider the removal of the words, with the court upholding the lawfulness along the lines you have discussed?

Mr. HARRIS. I think it would be very hard to maintain the constitutionality of a Federal statute which undertook to knock out a State restriction which required 6 years of education in English.

If the State law required 6 years of education in English and there were a Federal law that undertook to invalidate that, I think it would be very hard to sustain the constitutionality of the Federal law. The simple reason is that the clearest basis for the legislation is the 15th amendment, and it quite plainly has nothing to do with that situation.

Mr. CELLAR. Let me get this clear.

You answered my question by saying that even if we pass this language, New York could permit a Puerto Rican who doesn't understand English, can't speak English, to vote.

Now, he would have to have gone to a school where English is the predominant language.

Mr. MEANY. No. The purpose of this it to prevent the State from going further in restrictions. In other words, if the State wants to open it up wide, this wouldn't interfere at all.

Mr. HARRIS. If the State doesn't want to put any restrictions on voting, this bill doesn't say it has to.

Mr. CELLER. But you lay down the edict that in order to vote, he has to go——

Mr. MEANY. We don't lay down any such edict. We are saying the States should not go further than this.

Mr. HARRIS. This says that this is the maximum requirement that the State can prescribe.

Mr. MEANY. If the State doesn't want this requirement, there is nothing to stop them from removing all requirements.

Mr. FOLEY. Where a State has a literacy requirement to read and write English such as in the State of New York, they tested it in the courts of New York and it has been upheld. There was a drive put on to repeal that. It failed. It is going to be renewed this time to have the legislature repeal that English-speaking requirement.

If they do that, that is no problem of this language?

Mr. HARRIS. No. None at all.

Mr. MEANY. This whole bill is directed at the idea of saying to the States, "You cannot impose restrictions that are more stringent than those in the bill."

Mr. MCCULLOCH. And it is my understanding, Mr. Meany, that you are not advocating any test by States that do not have any tests now?

Mr. MEANY. That is right.

Mr. MCCULLOCH. It is your opinion and the opinion of your advisers that are with you at the witness table today that this section of the Celler bill would not affect State legislation such as Ohio has?

Mr. MEANY. It would not.

Mr. CRAMER. May I ask one more question along that same line, which I think involves a similar principle and that is, whether the proposed legislation would prevent people who could otherwise vote under present State laws from voting in the future. On page 4 of the bill, it states that no person shall employ a literacy test as a qualification for voting in a Federal election unless such test is administered to individuals in writing.

It is my understanding—and I am attempting to get a study made of it—that there are many people today who vote but who cannot write. What happens to those people in the future under those tests?

Mr. HARRIS. Nothing at all. It doesn't say that the State must use the literacy test.

Mr. MEANY. If the State test goes beyond the limits set here, then the Federal law would prevail.

Mr. CRAMER. That is the point I am getting at. In a State where you have a literacy test, obviously this is the only instance in which this would apply.

Mr. MEANY. Yes.

Mr. CRAMER. In those States where you have a literacy test, some of those States do not require a person to be able to write in order to be literate.

Mr. MEANY. This wouldn't affect them at all.

Mr. CRAMER. I would like your reasoning on that, because it appears to me that it obviously does require each test to be administered to each individual wholly in writing. Now, if that individual doesn't write, then he can't vote in a Federal election.

It is obvious that that is the intention.

Mr. HARRIS. The State could drop its literacy test if it wanted to. It could abolish it.

Mr. CRAMER. But that doesn't help the fellow that doesn't write if the State retains its literacy test.

Mr. HARRIS. If what you are suggesting is that some States with literacy tests have permitted white people who can't read or write to vote, I think that is true.

I think that this legislation would interfere with that. What has been going on is that white people who are illiterate are passed on the test while colored people, even those with a college degree, are sometimes failed.

That, of course, is the reason for this provision that the test must be administered in writing.

I think you are right, that this would interfere with the practice of having a literacy test on the books which is not applied to whites.

Mr. CRAMER. That is not the question. I understand that that is the objective, but it is not the question.

The question is, in those States where you have literacy tests, where Negroes or whites—it has nothing to do with preferential treatment of whites who don't write, who sign an X, who go into the booth with a helper who reads the names on the voting machines or has someone to read to them the ballot. That happens constantly in America, Negroes and whites.

Mr. MEANY. The bills would not touch them. Those State laws would stand.

Mr. CRAMER. If the objective of this is to purposely set up a test for writing in a literacy——

Mr. HARRIS. If the State chooses to have a literacy test at all, in the situation that you describe where they have a literacy test on the books but don't enforce it, it is perfectly open to them to drop the test.

Mr. CRAMER. That is not the point.

In other words, you are saying that in a State where they have literacy tests and where under those literacy tests a person who doesn't write is permitted to vote, in the future under this bill they can permit those people to continue to vote only by repealing the literacy test——

Mr. HARRIS. Right.

Mr. CRAMER. We would force the States to repeal the entire literacy test in order to accomplish this objective.

Mr. MEANY. Or limit it to sixth-grade qualifications.

Mr. HARRIS. Either to repeal it or administer it in writing. They could no longer have these oral examinations at which they flunked the Negroes and passed the whites.

Mr. CRAMER. I understand that. The committee is sympathetic——

Mr. MEANY. If our proposal is adopted, you have no problem.

Mr. CRAMER. Let's assume that the committee is sympathetic to the objective of not having discriminatory examinations in States that have literacy tests, but let's assume you have a Negro and a white, both of whom can't write and both of whom today can vote under the existing literacy test. This test written into this bill would deny both of them, the Negro and the white, the right to vote, would it not, unless the State repealed its literacy test?

Mr. HARRIS. That is right. I am not aware of this situation where the State has a literacy test law on the books, but generally permits the Negro to vote anyway. I am well aware of its happening in the case of whites, but I am not aware of it happening in the case of Negroes.

Mr. CRAMER. I don't think that the Congress should pass a bill that would deprive either whites or Negroes of the right to vote. That is my position.

Mr. HARRIS. You are talking about a situation where a State has a literacy test on the books, but you are saying that it doesn't really enforce or apply.

Mr. CRAMER. No; I am not.

Mr. HARRIS. If that is the case, the State's remedy is clear; it can simply repeal the law.

Mr. CRAMER. And this would require them to do so to permit people who can't write to continue to vote.

Mr. CORMAN. Will you yield for a question?

Mr. CRAMER. Yes.

Mr. CORMAN. Will you tell me the States that set up a literacy test but——

Mr. CRAMER. I suggested at the outset that a study is being made on my request at the present time as to whether by practice or permission of the law itself a person who doesn't write is permitted to vote in States that have literacy tests. There is no question that there are millions of people in this country who cannot write and who do vote.

Mr. MEANY. As I see our proposal, we are saying that a sixth-grade education should be decisive.

In other words, all you would have to do would be to prove that the person had a sixth-grade education, not as a presumption, but as a final decision. This, of course, would take care of the problem.

Mr. CRAMER. What if the person is blind? What happens to them?

Mr. MEANY. A person who is blind could still have a sixth-grade education.

Mr. CRAMER. But the examination has to be in writing.

Mr. MEANY. No; not under our proposal.

Mr. CRAMER. I am talking about the bill before us, recommended by the administration.

Mr. MEANY. I am taking the position that neither the administration bill nor the Republican-introduced bill covers this situation adequately. That is what I am testifying.

Mr. CRAMER. And I think your testimony, and that of counsel with you, is most helpful to us in clarifying what these respective bills do contain.

Therefore, I am asking your opinion as to whether or not the literacy test requiring writing for a blind person in a State that has a literacy test under the wording in the bill would prevent that person from voting because he doesn't write.

Mr. ROGERS. Ordinarily in those States dealing with the blind or disabled there are special sections to take care of them.

Mr. CRAMER. The proposal says that any test administered to anybody who votes in that State that has a literacy test must be in writing, with no exceptions.

Mr. MEANY. I am testifying to the effect that I don't agree with that. What I am saying is that the given period of formal schooling, we believe the sixth grade, serves the purpose and should be decisive, rather than presumptive, proof. That is what I said a few minutes ago.

What you are really doing is, I would say that you are lending weight to my argument that there should not be a presumptive sixth-grade education, it should be decisive.

Mr. MCCULLOCH. I think the gentleman from Florida has raised an important question and of course, Mr. Meany, we have the nesessity in this committee of assessing the bills as they are written and perfecting them as much as we can.

I certainly agree with the analysis of my colleague from Florida. If we do not wish to unintentionally bar the type of person he described from voting, we must write some exception in here to the general effect that such an individual may be exempted from such test in writing, otherwise he will be disenfanchized by this legislation wherever there is a literacy test in the United States.

Mr. CELLER. In my State, if a man can't write for reasons beyond his own control, he may have met with an accident, he may be paraplegic, we have special exemptions.

Mr. MEANY. Under my proposal that would present no problem. He would be entitled to vote.

Mr. CELLER. Suppose you go on with your statement.

Mr. CRAMER. But under this bill he would be denied the right to vote if he couldn't write for any reason.

Mr. MEANY. Yes; under the Republican bill and the administration statute.

Presumably this information might be used to enforce section 2 of the 14th amendment. That would be all to the good; we support Congressman Stratton's bill intended to achieve the same result. In addition, such a survey would elicit much valuable information on registration and voting patterns everywhere in America.

Mr. CELLER. You would deny representation for the votes if they happen to be Negroes? You deny representation?

Mr. MEANY. Yes.

Mr. CELLER. You get yourself into a thicket there. How would you do that, for example?

Mr. MEANY. How would we do what?

Mr. CELLER. How would you deny the representation to Southern States that are guilty of this discrimination? How would you go about it?

Mr. MEANY. That would be up to the law enforcement agencies.

Mr. HARRIS. The Congress could simply base the allocation of Representatives on the percentage of people voting in the State, rather than on the population.

Mr. CRAMER. What would you do in a situation like the State of Florida and many other places where you have in a number of counties more people voting than there are over age 21 in the whole county? There are 14 such counties in Florida, according to a Congressional Quarterly study. I think it might be well to place it in the record.

(The information is as follows:)

	Total population of voting age	Total registered voters	Number excess	Percentage
Calhoun	4,016	4,679	663	117
Dixie	2,501	2,709	208	108
Gilchrist	1,667	1,721	54	103
Holmes	6,380	6,810	430	107
Lafayette	1,688	1,851	163	110
Liberty	1,765	1,968	203	111

Additional counties of very high registration are Flagler, Jefferson, Madison, Taylor, and Washington. In addition, registration exceeded total population (all races) in these counties:

Florida

	White population of voting age	White registered voters	Number excess	Percentage
Calhoun	3,434	4,302	868	125
Dixie	2,138	2,519	381	118
Franklin	3,186	3,264	78	102
Gilchrist	1,513	1,660	147	110
Hamilton	2,486	2,540	54	102
Holmes	6,131	6,660	529	109
Lafayette	1,536	1,849	313	120
Liberty	1,525	1,967	442	128
Suwannee	6,409	6,717	308	105
Wakulla	2,120	2,219	99	105

Mr. CRAMER. In Chicago there are more people who vote than there are over 21, and that includes the tombstones.

Mr. CELLER. Not in New York.

Mr. MEANY. No, not in New York.

Mr. CELLER. Go ahead.

Mr. MEANY. The President, in the bill before you, has outlined enforcement procedures for insuring the right to vote which are superior to the long and involved remedies now available. We are glad he has recognized the need for prompt handling of complaints by the Federal courts and court-appointed referees.

We would have preferred authorization of Federal registrars in areas where the abuses are flagrant—as we have repeatedly said. But for the time being, at least, we are willing to go along with the President's alternative. The question can be reexamined on the basis of results, just as the work of the 85th Congress is being reexamined now.

It should be noted, in that connection that voting rights were once widely considered to be the one sure remedy for racial discrimination of every kind. It is now clear that this is not true. The evil of discrimination persists even where voting rights are unimpaired.

I make this point in order to emphasize that the proposals now before Congress, even if adopted in their entirety, are not necessarily final. The fight for truly equal rights must go on until it is finally and totally won.

TITLE II—PUBLIC ACCOMMODATIONS

In contrast to the previous title, this one, of course, is the most explosive. It generates the most heat on both sides. From a long-range point of view, it may not be the most important. But time has run out on longrun solutions, so it must be faced, and faced boldly.

It has been charged that this section of the administration bill would extend the control of the Federal Government to every store, restaurant, barber shop, and beauty parlor in America. It is alleged that this would destroy the sacred American right of freedom of association, and would deny to merchants their right to decide with whom they would do business.

There will undoubtedly be much oratory to this effect in the weeks ahead. Yet it seems to me that this is all irrelevant; and some of it is plain nonsense.

When a man goes into a business that invites and depends upon public patronage, he has already given up, voluntarily, a part of his freedom to do as he pleases. He has set up a public place and invited the public to spend money there. By so doing, in nearly all communities, he has also subjected himself to regulations as to fire hazards, other safety and health problems, workmen's compensation, weights and measures, opening and closing hours—a whole range of local, State, and Federal statutes, all based upon the established principle of protecting the public from dangerous or undesirable practices by those who operate public places.

The President now asks a Federal law to make it clear that a public business must in fact be open to the public—all of the public. Surely this is no more an intrusion on the rights of a merchant than any of the other matters I have mentioned.

The merchant still has a full opportunity to protect himself. Certainly he has a right to expect his customers to be able to pay their bills. Certainly he has a right to insist upon orderly conduct and proper dress. He can impose whatever standards he chooses—as long as they are equally applied, without regard to race, creed, or national origin.

Does he want men to wear jackets and neckties? Does he want to rule out Bermuda shorts, or bar women in slacks? Fine; that's up to him—as long as the rules are uniformly enforced on all customers, all members of the public.

Actually, experience in many State and municipalities, and in the facilities controlled by the Federal Government, has proved that the fears of merchants, and of the segregationist spokesmen, have no factual basis.

As recently as 1946 and 1947, in my own home area, New York City, a Negro could not be sure what sort of reception he would receive in a restaurant or at a lunch counter. He was not likely to be turned away, but there was a good chance that he would be ignored, badly served, or otherwise made to realize that he was not welcome. And this was in the Nation's most cosmopolitan city, known the world over for its diversity of population.

Within a few years all this was forgotten. Oh, I suppose there may be a few establishments in New York where Negro patrons are still regarded with hostility; you can find almost anything in a city of 8 million people. But for more than a decade, Negroes have been accepted in eating places—as they had long been accepted in retail stores and other places of public accommodation—on exactly the same basis as whites.

Mr. McCULLOCH. Mr. Chairman, I would like to ask this question at this point: Did this change come about in New York by statutory enactment in the State of New York or by reason of——

Mr. MEANY. I think the statutory enactment was the major cause of it.

It was stated in the FEPC law in 1947—1946 or 1947.

Mr. McCULLOCH. But did that have this immediate effect upon acceptance of patrons?

Mr. MEANY. I had an effect—I can testify personally to this—it had an effect in the retail and department stores practically over night. People were saying "If this law goes into effect, it will put us out of business." This was being talked about all over the city.

The law went into effect and within 30 days there was no more comment.

Mr. McCULLOCH. The reason, Mr. Chairman, that I asked that question—and again I refer to my home State of Ohio which has been a pioneer in so many good things—because as long ago as 75 years, as I recall, the legislature in Ohio first enacted public accommodations laws and I would like to read two paragraphs of the law in Ohio which has been in part on the statute books all of these years. I quote section 2901.35 of the revised code of the State of Ohio:

No proprietor or his employee, keeper or manager of an inn, restaurant, eating house, barbershop, public convenience by air, land, or water, theaters, stores or other place for the sale of merchandise or any other place of public accommodation or amusement shall deny to a citizen, except for reasons applicable

alike to all citizens, and regardless of color or race, the full enjoyment of the accommodations, advantages, facilities, or privileges thereof and no person shall incite the denial thereof.

The next paragraph of that statute is particularly significant to me.

Whoever violates this section shall be fined not less than $15 nor more than $500 or imprisonment not less than 30 nor more than 90 days or both, and shall pay not less than $50 nor more than $500 to the person aggrieved, thereby it could be recovered in any court in the county where the violation was committed.

That is the end of that section of the revised code of Ohio.

Mr. MEANY. Getting back to the eating places in New York, for more than a decade Negroes have been accepted in eating places—as they had long been accepted in retail stores and other places of public accommodation—on exactly the same basis as whites.

And do you know what has happened detrimental to the interests of the restaurants and lunch counters? Nothing. Absolutely nothing. New York still has some of the finest restaurants in the world—and, I suppose, some of the worst. But they are no better and no worse than they were before.

I have deliberately offered this part of our case in practical terms, rather than as appeal for fairplay, because I am aware that many businessmen in Southern States have dollars-and-cents concern about a public accommodations law. Their whole livelihood may depend upon the prosperity of their establishments. No matter what their personal sentiments may be, they are afraid that Negro patronage will lead to economic disaster.

But we are completely convinced that a uniform Federal law, uniformly obeyed, will not impose a burden upon any public establishment. Fears to the contrary have no basis in fact or experience.

Now let me refer briefly to the hard-core segregationists who argue that they simply do not want to do business with Negroes, and who defend this position on the grounds of "freedom of association" and "freedom of choice" as to those they will accept as customers. With them I have no sympathy.

The Negro ought to be, and in fact is, as much a part of the "public" as anyone else. I repeat, a man who sets up a place of public accommodation has, by that action voluntarily surrendered one segment of is right of "freedom of association."

During business hours, within the framework of whatever uniform and equally applied rules he may devise, he must "associate" with whatever members of the public choose to patronize his establishment. If he cannot accept this requirement, he should stop pretending to run a public place, and go into some other occupation.

A man who does not want to "associate" with certain parts of the public should not cater to the public. Subject to reasonable, uniform standards, he has to take the public as it comes. If he discriminates on the basis of race alone, he is in conflict with the public policy of the United States. He has a very simple choice—to comply with that policy or go out of business.

In presenting this point on a pragmatic basis, I do not in any way intend to brush aside its moral and human aspects. The rebuffs suffered by Negroes in places of public accommodation have been highlighted in most of the demonstrations in southern cities. For it is true that while a man may be poor, while he may have been denied a fair

chance to get an education, while he may live in a shack or a tenement, the open, public, and unashamed insult of denial of service—service that is available to others, regardless of their character, as long as they are white—is the last straw.

Here the Negro is told to his face that he is not like other men—no matter what he may be in himself. This is an incredible and intolerable state of affairs in any civilized society, and it cannot be allowed to continue.

We urge you to erase this blot from our record as a Nation by adopting the administration's proposals.

Title III—Public education:

Nine years ago the Supreme Court recognized that segregation, in itself, is a barrier to equal education. The AFL-CIO wholeheartedly agrees. Yet segregation in education is still an ugly fact.

The effects are exactly what the Court had in mind. For as we move into the area of equal employment opportunity—which I will discuss later—we find innumerable employers who say something like this:

"I don't discriminate, but there are no qualified Negroes available."

At a later time, under the discussion of title VII, I will discuss those instances in which this is a mere pretext. But it is not always a pretext. Sometimes it is the plain truth.

The most important single reason why it is sometimes true is that Negroes, as a whole, simply do not have equal educational opportunities.

They do not have equal educational opportunities in many parts of the country—North as well as South—because they are consigned to segregated schools.

A few weeks ago, the exercise of Federal power made it possible for newsmen to report that they were integrated schools, of some sort at some level, in every State in the Union. We were not impressed.

Yes, this represented progress of a sort. But it was the kind of progress that the Negro community, a tenth of the Nation, properly scorns.

The statistics are familiar and have been adequately presented by other witnesses. I will only say that you know, Mr. Chairman, that the public schools in the South have not been desegregated in fact; and that a large measure of segregation, intentional or not, still prevails in the North.

Mr. CELLER. May I at that point read some figures which I got out of the news report concerning the situation in the South. The heading is "Under Court Pressure."

In the State of Alabama Negro enrollment is 280,000. Negro enrollment with whites, none. Percentage of Negroes in schools with whites, none.

Arkansas, Negro enrollment 109,000. Negroes in school with whites, 250. Percentage of Negroes in school with whites, 0.25 percent and one-quarter of 1 percent.

In Florida, Negro enrollment 219,000. Negroes in school with whites, 1,168. Percentage of Negroes in schools with whites in 0.53 percent.

Georgia, 325,000 Negro enrollment, Negroes in school with whites, 44. The percentage of Negroes in school with whites, 0.01 percent.

Louisiana, Negro enrollment, 297,000. Negroes in school with whites, 107. Percentage of Negroes in school with whites 0.04.

Mississippi, Negro enrollment, 288,000. Negroes in school with whites, none. Percentage of Negroes in school with whites, none.

North Carolina, 340,000 Negro enrollment. Negroes in school with whites, 901. Percentage of Negroes in school with whites, 0.27.

South Carolina, 250,000 Negro enrollment. Negroes in school with whites, none. Percentage of Negroes in school with whites, none.

Tennessee, 161,000 Negro enrollment. Negroes in school with whites, 1,817. Percentage of Negroes in school with whites, 1.13.

Texas, 310,000 Negroes. In school with whites, 6,700. Percentage of Negroes in school with whites, 2.16.

Virginia, Negro enrollment 221,000. Negroes in school with whites, 1,230. Percentage of Negroes in school with whites, 0.56.

Four-tenths of 1 percent of eligible Negro students attend schools with whites in 11 States in the old Confederacy.

I thought it would be well to put that statement in the record.

Mr. MEANY. Getting back to the segregation of schools, my point is that this is indefensible. It flouts the findings of the highest Court in the land. It must be corrected by Federal legislation.

The President has proposed such legislation. Authorizing the Attorney General to institute civil action on behalf of the victims of school segregation is an obvious need. Such suits are beyond the financial means of most private individuals. And there are places in this country, shameful though it is, where a Negro could file such a suit only in the face of inevitable economic reprisals, and at the real peril of his life.

In this spirit, we have reservations about the requirement that written complaints must be the basis for action by the Attorney General. It would be more desirable, it seems to us, to empower the Attorney General to act on his own discretion when the circumstances warrant it. We object even more vigorously to the parallel provisions of H.R. 3139, which would stay the hand of the Attorney General—and the courts—if a State or school district were making an elaborate pretense of desegregation.

Mr. MCCULLOCH. It is my studied judgment that that is not a fair appraisal of H.R. 3139. In any event that was not the intention of the drafters. I would like to read to you that part of 3139 to which you have just referred.

In the first place we say that:

> The Attorney General shall have authority to move into these cases after the complainant has exhausted the remedies available to him under the laws of the State.

Let me finish.

Mr. MEANY. Which page are you reading from?

Mr. MCCULLOCH. Four. Paragraph (b) (4) and I am about to go into subparagraphs (1) and (2).

> * * * the complainant has exhausted the remedies available to him under the laws of such State.

Now while there have been ordinary delays which are regrettable in this field in some instances, that provision is in accordance with the best tradition and experience of Federal law drafting.

Furthermore, section 2 of that entire title says "When the laws of the State do not provide the complainant with a plain, speedy, and efficient remedy" and if that first section is used by a State to retard the speedy and effective remedy, then the Attorney General may move in under this provision. I am sure that a wise reader knows that there have already been handed down some decisions which have stricken down proposed desegregation plans that were only of a token nature.

I would be glad if the witness would reevaluate that part of H.R. 3139, in view of what I have said.

Mr. MEANY. Let me read section (c); in which you say:

> The courts of the United States having jurisdiction of proceedings instituted under this section shall not enjoin, suspend or restrain any person or persons named as defendants in such proceeding, if the public school to which admission is sought has entered upon a plan to desegregate its facilities with—

This is the section I am referring to.

Mr. MCCULLOCH. Yes, and I am glad that the witness reads that section, because it uses the very language of the Supreme Court in the *Brown* case which most people in America hold is not only the law of the case but is the law of the land under the facts of the case.

I repeat, we use the very language from the Supreme Court.

Mr. MEANY. I repeat that I would prefer that that provision was not in there because there is the possibility of delay and procrastinating in these things and drawing them out.

Mr. MCCULLOCH. Mr. Chairman, if I might interrupt again. Of course, I have no brief for delay and for procrastination, but we are, again, confronted with the possible and not with that which may be ideal in some of these fields.

Mr. CELLER. I might say that I think as a result of that language in the *Brown* desegregation case, there has been inordinate delays in the past and a recent decision in an opinion by Mr. Justice Goldberg, he said " 'All deliberate speed' now means 'at once, and that there shall be no further delay'," that they will brook no further delay. Maybe the language in the *Brown* decision has caused that delay.

Mr. MCCULLOCH. I thank you for that comment.

Mr. CRAMER. On this question of title III, relating to suits by the Attorney General to implement school desegregation, I am sure you are aware in that title there is discussed and included under the section "Racial Imbalance."

Racial imbalance is mentioned in every paragraph of the section as one of the things that is to be avoided under this title. As I read the enforcement section, permitting an individual to bring a suit or the Attorney General to bring a suit on behalf of the individual under section 307, it is to the effect that pursuant to a signed complaint that he or his minor children under a class similarly situated are deprived of equal protection of the law by reason of the school board's failure to achieve desegregation.

Is it your opinion that "racial imbalance would be one of the conditions raised by the Attorney General with the effect of forcing the local school board to redraw the school districts in order to have a greater proportion of Negroes to whites than presently exist?

Mr. MEANY. You say this would give the Attorney General the right to move in cases of racial imbalance?

Mr. CRAMER. I am asking you if it would. It is my opinion it would apply because the testimony we have to date is that desegregation includes the question of racial imbalance.

Mr. MEANY. I refer to that, I think, a little bit later in my testimony.

Mr. HARRIS. If I understand your question, I think the answer is that that would be an issue in school desegregation suits to the same extent that it is now. The change that this would make would be to allow the Attorney General to institute the suit.

Mr. CRAMER. So that the Attorney General could bring a suit on behalf of a person living in a Negro area and state that the student is still being discriminated against in that there are not enough whites to Negroes and ask to have the student transferred to the school next door where there are more whites than Negroes, or there is a better balance. The student would have that right through the Attorney General; would he not?

Mr. HARRIS. I would think so. You would have the same range of issues in those cases that you have now, in the litigation brought by parents.

Mr. CRAMER. Or a greater right if the Attorney General decides to provide it. Yes. I just wanted to make sure that it was clear on the record. This right of the Attorney General to bring a suit includes not only on the basis of discrimination or segregation, but those instances where the complainant believes that the proportion of Negroes to whites is still not proper and therefore should be corrected.

Mr. CELLER. As I gage that language, the Attorney General would have rather broad discretion there. "Imbalance" is a very broad term.

Mr. CRAMER. That is what is wrong with it. That is why I mention it.

Mr. CELLER. You may quarrel with it, but I think it is essential to have that language. If the Attorney General brings arbitrary action, the courts will refuse. If the imbalance is only slight, I don't think the courts will consider it, but you have to lodge the discretion somewhere.

If the imbalance is very severe, I think the Attorney General would have the right to bring suit. That is the sum and substance. I think you are right in saying that it does not come under discrimination.

Mr. CRAMER. I am not saying that. I have said from the beginning that I believe there should be some definition of what is meant by racial imbalance somewhere in the bill, so that the Attorney General will know and the public will know and the school boards involved will know, as well as the complainants, what their rights are because racial imbalance as such is apparently whatever the Attorney General or the Commissioner of Education cares to interpret it to be.

Mr. CELLER. Go ahead.

Mr. MEANY. The provisions for technical asistance to desegregating schol districts are not new, but their reiteration is welcome. In that connection, I call to your attention, with some pride, a resolution adopted by the AFL executive council on May 18, 1954—the day after the Supreme Court's historic decision.

The resolution said, in part:

The implementation of this decision will involve not only broad social adjustments but a tremendous physical expansion of inadequate school facilities in many States.

We strongly urge the administration and Congress to establish a billion-dollar fund for loans and grants to the States in urgent need of help to modernize and democratize their school systems.

This would be the wisest investment our Government could make in the future of our country. It would be an act of good faith on the part of the Federal Government in the implementation of the Supreme Court's decision and the democratic way of life.

Finally, it would prevent noncompliance with the Supreme Court's decision by any State which might otherwise plead poverty to excuse its failure to provide the necessary facilities for the integration of its public school system.

That is the end of the quote from the AFL executive council in the year 1954.

Now, 9 years later, let us hope that a system of rewards for school systems that are willing to desegregate will, in combination with the Attorney General's new powers, be adequate to meet the need. Certainly this approach is worth a trial; and the results will be a matter of record after 2 years, when the Commissioner of Education delivers the report called for in the bill.

Moreover, as we read title VI, Federal aid can be withheld from recalcitrant school districts under other educational measures, even though these laws do not in themselves make integration a requirement.

Another point is implicit here, as in many sections of this testimony.

When we talk about equal opportunity in education, what we mean is an equal opportunity to get a good education. This is not achieved by adding 5 Negroes, say, to an existing class of 40 whites.

Equal educational opportunities demand adequate educational facilities, regardless of race. Our country needs more and better schools, more and better teachers, more and better thinking about the nature of public education in America. I know this is not within the jurisdiction of your committee, Mr. Chairman, but I hope it will be a part of your thinking as you weigh the issue before you.

The same applies to the problem of housing, which is inseparable from that of education.

Segregated housing is one of the most fundamental causes of racial strife. It is the basis for de facto school segregation in the North. It is a source of explosive discontent—and I am understating the matter—in every metropolitan center.

It is certainly not my contention that all Negroes live in slums. There are comfortable, attractive Negro residential areas in almost every major city—well-kept homes, showing every evidence of the pride and care of their owners.

But much of the time, the desirable suburbs are closed off. The Negro is limited to certain, too-narrow neighborhoods, where there simply is not enough good housing or room enough to build it. This is certainly the dilemma that faces the Negro in Washington.

He may have a doctor's degree from Harvard, he may earn $15,000 or $25,000 a year, but he cannot buy a suitable home in Maryland or Virginia. His other qualifications do not matter; all that matters is the color of his skin.

A few moments ago I spoke about segregation in education. Let's face it; the only practical way to get rid of segregated schools is to

get rid of segregated neighborhoods. And we can do that when every American can buy any house he wants and can afford. This is the ultimate solution—not to transplant the students, but their parents.

President Kennedy's Executive order on housing may have great effect in the future. But because it does not apply to FHA and other loan commitments previously made, it does not help the Negro who is house-hunting right now for a house that is already built.

One reason why it doesn't help is that housing is still in short supply. As in the field of education, to insure equal access to housing there must be enough housing. And we do not have enough housing, especially for those in the middle and lower income brackets.

Here again, I am aware that housing in itself is not the direct concern of this committee. But since you are all Members of the Congress, you are well aware that no single problem can be considered out of the context of the Nation's needs.

Even the admirable housing bill enacted by the previous Congress did not cope with the dilemma faced by those who are a little too well off for public housing, but not quite prosperous enough to afford adequate private housing. At some early date, the Congress will have to grapple with this matter.

Mr. CRAMER. Before we leave that section, Mr. Meany, you cited at the outset of your discussion that it has been charged that a section of the bill would extend to every store, restaurant, beauty parlor, and barber shop in America, as well as many other businesses, would be involved.

I gather by that that you think that it should apply but that it does have such broad application under the bill, is that correct?

Mr. MEANY. Yes.

Mr. CRAMER. To every business that has the slightest effect on interstate commerce?

Mr. MEANY. Yes.

Titles IV and V—Community Relations Service, Civil Rights Commission:

These sections of the administration bill establish explicit mediation, conciliation, and investigatory agencies dealing with civil rights problems. Since mediation—a meeting of the minds—is fundamental to a successful attack on discrimination, and since facts are often elusive, we believe both agencies would be most valuable in assuring compliance with the other titles of the bill.

The 1961 AFL–CIO convention, as a matter of fact, instructed member organizations to originate or join with interracial committees in their own areas. Following the recent meeting of union officers with the President—which I regret to say I was unable to attend, because I was in Europe at the time—I wrote to all the State and local central bodies of the AFL–CIO, urging them to implement this policy and to report their actions to me.

We are wholly in favor of Federal efforts to encourage interracial dialog, which title IV contemplates.

As for the Civil Rights Commission, it has surely earned by its thorough and diligent work, the right to permanent status. As I said earlier, civil rights is not a temporary problem, subject to a one-shot solution.

Title VI—Federally Assisted Programs:

In the words of a distinguished southern spokesman, a Member of the other House—a man whose ability I admire, but whose views on this issue I deeply deplore—this is the "genocide law."

He says, in effect, that if Federal funds are denied to States which insist upon discrimination and segregation, the States will use what money they have for the benefit of the white population only, leaving the Negroes to shift for themselves.

Or to put it another way, he implies that the only reason there are any facilities for Negroes in the South is that Federal money pays for them.

I do not believe it; and I am certain, neither does he.

By our principles in the labor movement, many white southerners, including many union members, may be wrong headed on the race issue. But they are not monsters, and they are not fools, either.

In some respects this short section of the administration bill may be the most effective. It hits where it hurts—in the pocketbook. It makes discrimination an expensive luxury.

There is nothing unfair about this. Those who take the Federal Government's money are simply required to obey the Federal law.

Mr. CELLER. I would like to interrupt you there. We have had considerable discussion before this committee as to whether we should place in the hands of the President or a committee named by him the enormous power or discretion to turn off appropriations already authorized by Congress for installations in some of these States that discriminate.

What are your views?

Mr. MEANY. I think he should have that power.

Mr. CRAMER. May I ask a question, Mr. Chairman?

Mr. CELLER. Yes.

Mr. CRAMER. We, of course, have to get the definition for specifics as to what is meant by "direct or indirect" financial assistance that can be cut off, in "connection with any program or activity by way of grant, contract, loan, insurance guaranty or otherwise." Is it your opinion then, that this would apply to any type of Federal program, whether there is direct or indirect financial assistance of any kind, be it insurance, guaranty, such as Federal Deposit Insurance guaranty on banks and savings and loan activities?

Mr. MEANY. I don't know whether that is what the bill applies to, but I think it should.

Mr. CRAMER. You think it should apply to any kind of Federal fund?

Mr. MEANY. Yes.

Mr. CRAMER. Let me ask this:

Would this section support the power of the Secretary of Labor, for instance, to cut off unemployment compensation funds or apprenticeship training funds because the Secretary essentially believes that the State or some agency of the State in the Secretary's viewpoint in its hiring practices discrimination?

Mr. MEANY. I want those funds cut off the same as anyone else.

Mr. CRAMER. So that the agencies that have the duty of administration of unemployment and others——

Mr. MEANY. Federal funds should be cut off.

Mr. CRAMER. Because of that State hiring practice, all funds for unemployment and apprenticeship training should be cut off?

Mr. MEANY. Federal funds.

Mr. CELLER. Might that not, however, in some instances hurt the very people—the recipients of deserved compensation—that you want to help and that might cause a disservice to Negroes on Federal installations?

Mr. MEANY. I think that is a long shot possibility, but I am not worried about the Secretary of Labor having the discretion that Mr. Cramer refers to.

Mr. CRAMER. Well, you would go the whole way?

Mr. MEANY. Yes.

Mr. CRAMER. Even in prejudicing the right of the unemployed laborer through unemployment compensation?

This is the right of the laborer to this unemployment compensation that is being paid for his contributions?

Mr. MEANY. That is right. He has a right to unemployment compensation, but if the system is used by the State discriminatorily, there should not be any Federal funds. That would not affect the unemployment compensation completely. It would affect just that portion of the Federal funds which are returned to the States. I think there would be great pressure by that unemployed fellow, when he didn't get his unemployment compensation, on the officials in the State to see that they stop discrimination.

Mr. CRAMER. This decision as to whether discrimination exists in employment by the agency that administers unemployment compensation within the State, is a decision that the Secretary makes.

Let's assume that he makes the decision that Mr. X, a colored man, who makes application for unemployment compensation within the State structure, is denied such compensation. The funds are cut off?

Mr. MEANY. No, no, no. You are just begging the question. No. Funds are not cut off because Mr. X gets discriminated against. Funds would be cut off if it was the practice of the State in administering unemployment compensation laws to discriminate.

Then I say Federal funds should be cut off. That is entirely different than just one case. I think these things are subject to administrative action and discretion.

Mr. CRAMER. The question I asked at the outset, and you answered affirmatively was to the effect that if the State agency, administering these funds, practices——

Mr. MEANY. That is right, practices discrimination.

Mr. CRAMER. In its own employment practices.

Mr. MEANY. Right.

Mr. CRAMER. That is the people hired in its agency.

Mr. MEANY. Yes.

Mr. CRAMER. Then everybody that receives unemployment is to be, in effect, discriminated against by not getting funds because this agency wants to practice discrimination in its own employment.

Mr. MEANY. You agree with me exactly.

Mr. CRAMER. My example was that a colored person——

Mr. MEANY. No, that is not an example of discriminatory practice on the part of the State agency. That is just a case which would be subject to State law and review.

Mr. CRAMER. No, no. We are talking about indirect effect.

Now, it was testified, for instance, by Mr. Celebrezze, Secretary of Health, Education, and Welfare, that he would have the duty to enforce a number of the programs under this section. If, under the Hill-Burton Act, a hospital today wanted to add an addition, and during the period of this application, the administrators of that hospital refused to hire a nurse, a Negro nurse who makes an application, and that Negro nurse complained to the Secretary that she was being, in her opinion, discriminated against—now it may be that she was not being discriminated against; maybe she was not equally as well qualified as other applicants—that the Secretary, on his discretion, could cut off funds for that addition?

Mr. MEANY. In the case of probable unproven discrimination, that is nonsense. But if there was discrimination, the answer is the same.

Mr. CRAMER. Now we get to the crux of it.

Mr. MEANY. Yes.

Mr. CRAMER. The Secretary makes the decision.

What right of review does that State agency that refused to hire Mr. X that I mentioned a minute ago, or does that hospital administrator who refused to hire this nurse have if the funds are cut off in an arbitrary manner?

Mr. MEANY. I imagine they have the right of any other citizen who feels that a public agency is not treating them fairly, the right to go to court.

Mr. CRAMER. They would have to prove an abuse of discretion in order to have a remedy of any kind in the Federal court.

Mr. MEANY. Right.

Mr. CRAMER. Which is almost an impossible burden.

Mr. MEANY. Yes. Almost impossible burden and an almost impossible situation.

Mr. CRAMER. Why shouldn't, if it is admitted that they should have a remedy, why shouldn't some kind of remedy for the agency being accused of discriminating be written into this section of the law?

Mr. MEANY. I am not taking the position that there should not be some remedy put in the law to give these people a right of review.

You injected that question. I am addressing myself to the simple question, "Should Federal funds be given to any agency, any State agency, that discriminates in violation?"

Mr. CRAMER. I understand that.

Mr. CELLER. You are probably not a lawyer, Mr. Meany, but if, for example——

Mr. MEANY. I have often been thankful for that.

Mr. CELLER. But I want to say this:

There is a remedy. There is a remedy. The courts are open.

Mr. MEANY. My profession is much more important. I am a plumber. [Laughter.]

Mr. CELLER. I want to say, as a lawyer, if, for example, the Secretary of Health, Education, and Welfare capriciously or arbitrarily in the case of that nurse refuses to make a Hill-Burton grant, the hospital or the entity involved can go to court now and ask a review that is open to anyone. The courts are always open to review those.

Mr. MEANY. All of them.

Mr. CRAMER. Yes, but let me finish the line of interrogation, if the chairman will permit.

The thing that disturbs me on the basis of the question is the lack of an adequate review of the decision made by the Secretary in these different programs. Going to court and——

Mr. MEANY. I don't object to putting a review in.

Mr. CRAMER. I thank you.

Then you wouldn't object to an administrative or some other type of remedy for the agency involved, because what bothers me is that this fellow, this employee, is entitled to his unemployment compensation. He has paid his money into the fund and is unemployed and entitled to unemployment compensation and should have that right, which is a civil right as much as any other and which may be taken away from him because the State administering its own employment practices might practice discrimination?

There is no relationship between the private rights as such and the discrimination. But the Secretary could cut off funds and it seems to me it is too much authority and too much power.

Mr. MEANY. The question that occurs under the Secretary's power, we are not going to enter into that. That is something for you fellows in Congress to work out. I am just saying if the discrimination exists, the Federal funds should be cut off.

Mr. LINDSAY. If your policy here was consistently pursued, do you think it would in any way endanger the passage of Federal housing or Federal aid to education?

Mr. MEANY. Would it endanger?

Mr. LINDSAY. Yes, if it was persistently pursued.

Mr. MEANY. Well, it has endangered it in the past. For God's sake, where have you been? We have this problem. It is thrown into all sorts of legislation. Of course, our stand is endangered. It not only endangers us legislatively, it prevents us from organizing in the South. The record will show that we have had a very difficult time in the South, especially since 1954, but we still believe in this vital principle.

Mr. LINDSAY. Congress has struggled for years under the last three administrations with Federal aid to primary education in this country.

The question is, in part, founded on this question of civil rights.

Mr. MEANY. Right. I don't think that that is any reason to compromise with a vital principle.

Mr. LINDSAY. That was the question that I was anxious to get an answer to.

Mr. CELLER. Go ahead with your statement.

Mr. MEANY. It so happens that the section of the country where segregation and discrimination are most prevalent—the Southeastern States—is a section which, year in and year out, is heavily subsidized by the rest of the country.

Let me make it clear that we do not take sectional sides in the labor movement. We know—since the figures are a matter of record—that for the last 30 years, at least, the Federal Government has spent billions of dollars more in the South than it has taken out in taxes. We know that in many ways the South has used this subsidy to good advantage. Southern enterprise has been stimulated; the southern standard of living and level of education have come a little closer to the rest of the country.

But it makes no sense for the rest of the country to prop up a few States that cling to discredited, disgraceful, and undemocratic practices. It is unfortunate enough that some southern institutions seem to be dedicated to the eternal glorification of a rebellion against the United States; we do not have to pay their bills as well.

In short, we believe this title is just and necessary, and it has our unqualified support.

Title VII—Equal employment opportunity:

The administration bill is limited to the creation of a commission which would undertake the duties now being performed by the body established by Executive order of the President. We have no objection to this, but, of course, it is only a beginning.

In his message, the President repeated his endorsement of equal opportunity legislation already pending in Congress. Presumably he referred to H.R. 405, recently approved by a subcommittee of the Committee on Education and Labor.

There is, however, an equal employment opportunity section in H.R. 3139 as well. So I hope it will be in order for me to discuss the employment question in the broadest sense. As the spokesman for organized labor, I could hardly do otherwise.

The various aspects of civil rights I have covered up to this point affect the labor movement only to the extent that they affect other Americans.

Moreover, aside from voting rights, these other aspects—important as they are—apply for the most part to Negroes who have good jobs or a reasonable prospect of getting them.

Equal education, for example, has meaning only for those Negro children whose parents can afford to keep them in school, or for the young Negroes who can afford to finish out their apprenticeships.

Equal access to housing has meaning only for those who can afford to buy.

Equality in places of public accommodation is relevant only for those with money to spend.

So it seems to us in the AFL-CIO that the vital issue, the chief among equals, if you will, is jobs.

I referred earlier to a hypothetical example of an employer who would hire Negroes if he could find qualified applicants.

But that is only one side of the coin. On the other side you find the trained, qualified Negroes who cannot find a place for their talents. You find the untrained but naturally gifted Negroes who are denied a fair chance to develop their aptitudes. And you find the Negroes who on the basis of their own observation and experience, simply don't try.

Here again, I will leave the statistics to others. We have recited them often enough. A Negro unemployment rate at least twice that of the whites; a pattern of Negro employment concentrated in the lowest paid and most menial jobs—the figures tell their own story.

It would be easy for me to point the finger at southern industry, where genuinely integrated production forces are almost unknown, and let it go at that. It would be easy to say that the problems in northern cities stem to a considerable degree from the emigration of southern Negroes who face a hopeless future in their home areas.

All this is true, but it is not the whole truth, and the issue is too grave for hairsplitting.

The plain fact is, Mr. Chairman, that Negro workers as a whole, North or South, do not enjoy anything approaching equal employment opportunity.

We ask you now, as we have asked the Congress for many years, for effective, enforceable legislation to correct this glaring injustice, which must be corrected in order to make the other aspects of a civil rights program effective.

We have a selfish reason; in fact, we have two of them.

First, we need the statutory support of the Federal Government to carry out the unanimously-adopted principles of our own organization, the AFL–CIO.

Our conventions have repeatedly endorsed a Federal Fair Employment Practices Commission, armed with all necessary powers. Long before merger, the AFL and CIO separately pressed for such legislation.

The most recent AFL–CIO convention, in December 1961, while strengthening our own internal civil rights machinery, pleaded again for Federal help—help that would apply to the labor movement as well as to employers.

In other words, we need the force of law to carry out our own principles.

Why is this so? Primarily because the labor movement is not what its enemies say it is—a monolithic, dictatorial, centralized body that imposes its will on the helpless dues payers. We operate in a democratic way, and we cannot dictate even in a good cause.

So in effect, we need a Federal law to help us do what we want to do—mop up those areas of discrimination which still persist in our own ranks.

Second, we want Federal legislation because we are tired of being the whipping boy in this area.

We have never at any time tried to gloss over the shortcomings of unions on the subject of equal opportunity. Yes, some of our members take a wrong-headed view; I have just said so, I have said so before, and I repeat it again.

But we in the labor movement publicly deplore these few holdouts against justice. We do our utmost to bring them around to the right side. And at the same time, the employers—who actually do the hiring—escape in many instances with no criticism whatever.

Mr. CELLER. Would you care to put in the record just briefly what you are doing in that regard, so that we——

Mr. MEANY. What?

Mr. CELLER. Would you care to place in the record——

Mr. MEANY. Yes, I will be glad to place it in the record. It will be quite a long memorandum, Mr. Chairman. I will give you a memorandum showing all of our actions, what our civil rights department is doing. We have a regular established department here in Washington; we have civil rights committees working with minority groups in many sections of the country, and I will be glad to give you a memorandum going into this quite extensively.

Mr. CELLER. I would like to have it.

Mr. CRAMER. What sanctions has the AFL–CIO placed against southern unions that do not integrate? You say the Federal Government should place all kinds of sanctions against governing authorities and otherwise in the Southern States who do not integrate—including withholding funds—has there been any effort to withhold funds?

Mr. MEANY. No, they don't get any funds from us. We withhold certain services from them if they dont' go along.

Mr. CRAMER. What sanctions have you imposed, Mr. Meany, on the southern labor unions who have refused to integrate?

Mr. MEANY. What sanctions have we imposed? I just told you that we withhold certain services that they normally would get from the national organization that they can't get. We keep up the pressure, and we have been quite successful, I want to say, over the years. However, I would like to point out that this is a two-way problem. Our opposition in the South in at least 50 percent of the cases, in fact I would say over 50 percent of the cases, comes from the segregated Negro local. In a good many cases they don't want to integrate with the white local.

Mr. CRAMER. Do you admit or suggest by that there are, perhaps, other activities in the South in which the Negroes do not desire to integrate?

Mr. MEANY. That could be, but we insist on following our principles and I say we have been quite successful in this. We still have a few spots. I don't think we have any more national unions with a color bar. We did have one. We just kept up the pressure, and we finally got them to capitulate here just a few days ago, so I make no claim that we have had an outstanding success in this. I think we have had some success, but I do claim we keep on trying all the time.

Mr. CRAMER. The point I was getting at, in addition to the answers which you have very candidly given so far—do you have other pressures or other means that you could employ that you are not employing to force it, in that you are asking Federal Government to use every conceivable method?

Mr. MEANY. We don't have any other means except expulsion and that is not effective.

Mr. CRAMER. Has any consideration been given to that?

Mr. MEANY. Not in this type of case, no. We have talked about it, but we don't believe it would serve the purpose. We have put unions under trusteeship. In other words, put a man in to handle their own affairs and more or less put them under complete supervision of the international union in order to compel them to go along. Of course, this destroys, this limits their rights, the rights they would normally have as members.

Mr. CRAMER. As I gather, your testimony relating to some of the Southern States which you discussed at the bottom of page 15, practically calls for the expulsion from the union of these States. They should have no funds whatsoever from the Federal Government?

Mr. MEANY. I didn't propose that.

Mr. CRAMER. You support the sanction in this bill of no funds of any kind from the Federal Government and every other type of enforcement compulsion to try to get the Southern States to comply with what the national policies should be?

Mr. MEANY. That is right.

Mr. CRAMER. If that is your belief in the case of the Federal Government and you believe in it so strongly, why shouldn't you practice the same with the unions and take every available conceivable means——

Mr. MEANY. We do. We do. They don't have any funds coming from us but they have services coming from us, the services of our various departments and these, of course, are denied to them if they don't go along. We keep putting the pressure on. In some of the cases in which they are put under trusteeship, they actually lose the power to run their own business. I think we do everything, use every power that we have. After all——

Mr. CRAMER. Except the most effective and that might be expulsion?

Mr. MEANY. No. We have tried that and that doesn't work. That is not too good. It doesn't change the situation.

Of course, another thing, you see, we are under pretty rigid rules imposed by the Federal Government under the Landrum-Griffin Act and the Taft-Hartley Act. There are certain things that we can't do. You say "expel." Well, we don't think that that is the remedy. I imagine that we might run afoul of Taft-Hartley or Landrum-Griffin if we tried to expel.

Mr. CRAMER. I don't say "expel"—I say you are inconsistent in suggesting every Federal sanction to force integration while you do not practice this—do not practice what you preach—in the AFL–CIO. If there might be some inclination to amend those labor laws to permit you to take the action to force integration that you are asking the Federal Government to take—that is, unlimited sanctions—and it relates to your equally recalcitrant unions, what would be your attitude?

Mr. MEANY. I say we take all the authority we have the power to take.

Mr. CELLER. We have no power in this committee to do that. Go ahead.

Mr. MEANY. If there has been any widespread outcry from employers who want to hire Negroes, but have been prevented from doing so by a union, it has not reached my ears.

On the other hand, there have been innumerable instances in which a fair employment and promotion policy has been established in a company at the insistence of the union, over the employer's anguished protests.

When it comes to legislation, it has been the labor movement that has asked for equal employment opportunity laws, applicable to unions as well as to management; while it has been the employers and their associations which, at every level—local, State, and Federal—have been in bitter opposition.

Yet if you base your opinions on newspaper accounts, you would think that the barriers to Negroes, especially in the crafts, were union barriers, pure and simple. This is untrue and unfair.

Consequently, we take exception to the manner in which title II of H.R. 3139 proposed to deal with cases of discrimination. The guilty employer simply loses his Government contracts. But the guilty union

is subject to a whole range of continuing sanctions, including court action and National Labor Relations Board proceedings.

Mr. CELLER. In justice to those who sponsored bill 3139, there was a statement made in the record the other day that it was agreed that those sanctions would be removed as far as labor unions are concerned.

Mr. CRAMER. May I ask a question there, Mr. Chairman, relating to that?

Mr. CELLER. Yes.

Mr. CRAMER. I gather by that, from the sentence just read and other statements made, you believe that unions should be included in title VII as well as management?

Mr. MEANY. I think that the title should be reexamined, and I think that the guilty employer should be punished to the same extent as the guilty union. What I am complaining about is not that the guilty union has sanctions imposed. I am complaining against unequal treatment of the employer.

Mr. CRAMER. I am sure that you are aware of the fact that the bill drafted by the administration and sent to Congress does not include unions in title VII?

Mr. MEANY. I refer to title II of H.R. 3139, which does.

Mr. CRAMER. Yes. And therefore is it your position that both management and labor should be included under the fair employment practices?

Mr. MEANY. That is right. Yes, I have said that many a time.

Mr. CRAMER. As well as equal employment opportunity. Now, if that be the case, it is obvious that the Federal Government has a simple way of enforcing it, relating to management and that is by withdrawing contracts along with withholding funds. Now what sanction do you believe would be a reasonable one against a union's practice of discrimination?

Mr. MEANY. The union is subject to all sorts of sanctions under the National Labor Relations Act, which we feel are in addition to—over and above the employer, the sanctions against the employer.

Mr. CRAMER. I understand that, but what sanctions would you, on behalf of labor, agree to as an enforcement of title VII, to make certain that the unions do not——

Mr. MEANY. I don't agree to the sanctions that are in this bill.

Mr. CRAMER. There aren't any.

Mr. MEANY. Oh, yes, there are. Yes, there are.

Mr. CRAMER. Would you care to point them out?

Mr. MEANY. Well, a union that discriminates can be forced to give back pay to the victims. That is 3139. That is what I am talking about.

Mr. CRAMER. Well, I am talking about 7152 that is before us, introduced by the chairman and proposed by the administration, which does not include unions. Do you believe that cease-and-desist orders through the courts should be provided for?

Mr. MEANY. I believe that unions should be included, the same as employers and there should be whatever equality of sanctions that can be imposed on both sides.

Mr. CRAMER. Do you think that cease-and-desist orders relating to labor unions that discriminate would be a proper remedy?

Mr. MEANY. Do I think cease-and-desist orders? I think that they are all right, but I question whether they go far enough.

Mr. CRAMER. That is all.

Mr. CELLER. Go ahead.

Mr. MEANY. For example, a union that discriminates can be forced to give backpay to the victims. Not so the employer. A union that discriminates anywhere can be denied certification throughout the country—in other words, obliterated. It is not hard to imagine a southern employer, or even a northern one, cooking up a discrimination case as a device for getting rid of a union.

We do not object to strong, effective enforcement powers applied to unions. We do object to a slap-on-the-wrist approach to employers, who are in most cases responsible for job discrimination in the first place.

Moreover, H.R. 3139 merely clothes with statutory power the present jurisdiction of the President's Committee on Equal Employment Opportunity—that is, it would apply only to employers having Government contracts or subcontracts. That is true of the administration bill as well. However, the President's message endorsed in addition, the broader coverage of H.R. 405. This is clearly preferable, and we urge its adoption.

Mr. CRAMER. I gather that the H.R. 405 you referred to was included in the President's message referring to labor rights as well as the broad FEPC approach?

Mr. MEANY. Yes.

Mr. CRAMER. As I understand the broad FEPC approach that is being considered by the Education and Labor Committee now includes not only the private enterprise sector but Government contracts as well? It covers everything?

Mr. MEANY. It has been reported by the committee, I understand.

Mr. CRAMER. Either has been or is being. You probably have more information on that than I.

Mr. MEANY. Yes, it has been reported.

Mr. CRAMER. Assuming that it is to be considered by Congress in the near future, then doesn't that negate the necessity for title VII in the civil rights bill in that it covers exactly the same territory, discrimination in Government contracts as well as the additional territory of private contracts?

Mr. MEANY. If they pass 405, yes.

I have spoken about the labor movement's selfish interest in this question. But aside from that, we support enforcible equal opportunity in employment because it is morally right.

Surely every American is entitled to be judged on his own, on the basis of his ability. He ought to have the same rights on the assembly line, in apprenticeship training or anywhere else that he nows enjoys on the ballfield. We lost the best of Satchel Paige to ghetto baseball; we need every Willie Mays we can find.

However, as I have said from time to time in other sections of this testimony, equal opportunity is meaningless without full opportunity. We agree that it must be written into law. But as I have repeatedly pointed out, the one greatest contribution that could be made toward equal employment opportunities for Negroes would be full employment opportunities for everyone.

A program designed to open up jobs for Negroes at the expense of whites is no program at all. What we need is jobs for all who want and need them.

This is not a theoretical problem. For instance, one of the unions that has worked most vigorously and most successfully for job integration, all along the line, is the United Auto Workers. Yet in some of the auto plants, successfully integrated 20 years ago, the proportion of Negroes is steadily declining with the drop in employment. Twenty years' seniority is no longer enough to insure a job in Detroit.

Confronted with this problem—and I am not minimizing it—some Negro spokesmen call for "superseniority" and superior hiring preference for Negroes.

They say that except for discrimination in the past, Negroes would now have a fair share of the seniority enjoyed by white workers. That is true. But then they say, that as a form of penance, senior white workers should be dismissed to make room for Negroes with less service. And they say that hiring opportunities should not be equal; they should be loaded in such a way as to give Negroes precedence.

Believe me, Mr. Chairman, I understand the feelings that lead to these demands. They stem from a century of frustration. But as a trade unionist, I cannot accept them.

First of all, superseniority would throw into the street white workers who were in no way responsible for the previous discrimination against Negroes. They would be deprived of their personal livelihood because of a community sin. It is possible, of course, that the ax might fall on a leader of the Ku Klux Klan. It is equally possible that the victim might be the long-abused chairman of the local union's civil rights committee.

Mr. CRAMER. It has been suggested, and I think it is pretty well substantiated that orders have gone out for the hiring of Negroes in Government jobs in many places throughout the country, even though they may not have top standing on registers and even though they may not have veteran's preference, for instance. They are being permitted to jump over those that do have higher standing on the register or who do have veteran's preference.

I gather by your statement that you certainly would not approve that practice as it relates to non-Government sectors. I ask if you approve that action as it relates to the Government.

Mr. MEANY. If you are talking about the practice of insisting on a contractor not discriminating, of course, I am in agreement with that. But if you are talking about doing an injustice to one worker in order to eliminate a previous injustice against another worker, I do not agree.

Mr. CRAMER. That is what I am talking about as it relates to Government employees, not Government contracts. In many places of the country orders have gone out that a Negro shall be given preference in employment, shall be put in the front office.

Mr. MEANY. You ask me do I agree with that? The answer is "I do not."

Mr. CRAMER. Thank you.

Mr. MEANY. I think I stated that quite clearly. I said our common goal is justice and not vengeance.

Mr. CELLER. I take it that you deprecate some of the demonstrations that occurred?

Mr. MEANY. Mr. Chairman, I am not talking about the demonstrations. I was replying to Mr. Cramer on the question of——

Mr. CELLAR. Let me finish.

Mr.. MEANY. I certainly agree that the people have a right to demonstrate.

Mr. MEANY. Let me finish my statement. I probably didn't use the right words. I mean demonstrations in the form of boycotts and service against certain buildings now being erected because there are no colored employed, only skilled whites are employed and those that are objecting and demanding that the contractor in that building trade, of that building trade employ Negroes to do work on that job, which would mean the displacement of white workers. Now, you deplore those kinds of demonstrations; wouldn't you?

Mr. MEANY. I deplore a demonstration that is looking for a special treatment for Negroes.

On the other hand, I certainly think that the Negroes have a right to demonstrate against injustice and I don't think that there is any set answer to these problems.

I think they depend on the particular industry and trade involved. We talk about the building trades. We have many building trades which present no problem at all, because there are qualified people from both white and Negro races in the union.

There are other cases where there are not. I think that in those cases, especially the highly skilled trades, there has to be a campaign put on by the people who run the apprentice training programs, which in practically all cases are run jointly by an association of employers and unions, that we have to bring Negroes into that apprentice training. We have to bring in the qualified Negro boys and let them learn the trade. I don't know what you do with a contractor who does not have access to qualified Negro applicants at his particular trade in a particular locality.

I am not begging the question, but this is certainly true in certain areas of the country.

In some of the cases where there have been demonstrations, there has been a large percentage of Negroes on the job but they have not been in certain trades. They have been under, for instance, the plastering trade. In the plastering trade in many cases there are more Negroes than white in the local unions.

In bricklaying we have no problem. In carpenters we have very little problem, but when you get into some of the highly skilled trades, so-called specialty trades that have only a few people, comparatively, on the job, in those cases you will find out that there are no Negroes qualified, because they have never had the apprenticeship training because they have been barred from the apprenticeship list, and this is where it has to be corrected.

Mr. CELLER. I think in New York the building trades unions are inaugurating a system of hiring Negroes to become apprentices so that they finally can be skilled to take those skilled jobs.

Mr. MEANY. That is right. I want to say, Mr. Chairman, this is not an easy problem and you just don't solve it by saying that you are going to have another system, a quota system. I think you have

to understand that the people in these trades work for contractors. They don't work for people who initiate the job. They work for contractors who are looking for work just the same as the mechanics are, and that these contractors in a good many cases—especially in—well, in practically all cases, I would say, get their jobs by competitive bidding.

Into this competitive bidding goes all the materials they have to buy, all the supervision they have to give, all the preparatory work, the planning, the drawing of detailed drawings, and, in addition to that, the skilled labor.

Your contractor is faced with the problem, if you were to say to him "You have to have so many Negroes," he has the problem of not only finding Negroes who are willing to work but finding Negroes who are qualified to do this work.

I say in most cases—there are cases where there are Negroes working at the trades who are not in the unions, and I think the answer there is to bring them into the unions. But there are other cases where we don't have Negroes in the trades, and I think that in those cases they have got to approach it as the Electrical Workers in the city of New York are approaching it, by opening up their apprentice roles to Negroes, and not to just a few. They have invited hundreds of Negroes and they have several hundreds of Negroes where a few years ago they didn't have any.

As I say, this is a difficult problem, but I don't think you solve it by doing an injustice to the white worker in order to displace him with a Negro worker.

Mr. CRAMER. That is precisely what I am concerned about, because of the broad authority that is given to the executive branch in this bill. I trust you realize that under title VI, withholding of funds, that even that situation which you described, where there are no available, qualified Negroes, that if the Negro files a complaint, that the Federal Government could withhold funds.

Mr. MEANY. That would not be a clear case of discrimination. You can't—it would be complete nonsense to withhold funds if people were not there to be hired. If the people are not there to be hired, then nobody is being discriminated against.

Mr. CRAMER. Even though the fact that nobody is there is the fault of the union in this instance for him not being permitted to train himself because they practice segregation. Do you think that the administration, if it is going to carry out the intent and purpose of this act, could then say "We will rubberstamp or ratify this past union discrimination by going ahead and spending Federal funds even though these past actions result in present 'de facto' discrimination?"

Mr. MEANY. I think the administration should constructively try to correct that situation.

Mr. CELLER. I have listened to Mr. Cramer on this question. If you try to satisfy him, you have no bill whatsoever.

Mr. CRAMER. Mr. Chairman, I have listened to your comments on my questions before, too. I think we have a duty to try and draft a good bill and a further duty to find out what the thrust of this proposal is.

Mr. CELLER. We would have no bill.

Mr. CRAMER. I think the American people are as interested in knowing the thrust of this bill as any bill that has ever been before the Congress of the United States and I think it is the duty of every member of the committee to determine what the thrust of it is and I am certain Mr. Meany is interested in the thrust as it relates to union matters.

Let's say we have a Negro who is not a qualified union member but otherwise entitled by qualifications to be put on a construction project and he is denied the employment. What is the Government to do?

Mr. MEANY. Then the Government should insist that the union take him into membership.

Mr. CRAMER. Suppose the Negro doesn't want to join the union. He wants to be employed, but not join the union.

Mr. MEANY. Then it is very simple. The Government tells the employer to put him to work and the union men do what they do as individual Americans—they stay home. [Laughter.]

Mr. CRAMER. That is precisely it. This is a way of forcing union membership or denying any relief to a Negro that is not a union member. That is all.

Mr. MEADER. Mr. Chairman, may I ask a question? I regret, Mr. Meany, that I was unable to be here earlier. I was at another committee meeting where we were dealing with legislation.

When Mr. Wirtz was before the committee on June 27, and on page 241 of the transcript, we had a colloquy concerning the number of Negroes in the trades. He gave us some figures resulting from a survey that he had made and I quoted from an article in the Washington Post of that day, in which a figure was used by, I believe, an official of the NAACP, that there were only 300 Negro plumbers and electricians in the entire United States.

I wonder if that figure corresponds with your knowledge of the extent of Negro electricians and plumbers. It seems like a fantastically low figure that within the United States there are only 300 Negro plumbers and electricians.

Mr. MEANY. I am quite sure that that figure is wrong. We have no statistics in our unions where we record the color of a man's skin, and I might say to you that as long as I have been in the labor movement, there has been a very rigid rule that this should not be a question put to a person seeking employment, whether it would be in one of our trades or any place, so we do not have statistics on that score.

I know that the Chicago Plumber's Union has a Negro business agent, so they must have some Negro members there. There is no question that there are places in the country where the Plumber's Union does not have Negro members. There are undoubtedly places where the Electrical Union does not have Negroes, but to say there are only 300 in the whole country I think is nonsense.

I was discussing this question before with the chairman and I took the position that this is not an easy problem and that we have to bring the Negroes into these skilled trades and we have to bring them in either by the apprenticeship route or, if they are working at the trade and not in the union, we have to bring them in the union.

Insofar as the policy of the union is concerned, all of the unions, including the plumbers and the electrical workers, have a policy against

discrimination. They have taken action all the way down the line. But we are faced with local opposition.

We have 60,000 local unions, 60,000 local unions in the AFL-CIO, who are affiliated to 130 national unions and each of these unions have certain rights under the Constitution. They have certain rights even beyond the Constitution given to them by the labor laws of this country, and we run into opposition. There is no question about it.

In 1954 in my office I received 10,000 letters alone from local unions in the South, practically every one of them protesting the AFL's stand on the question of public school integration. Those letters, some of them, were pretty violent, but we have stuck right to our principles on this and we make no pretense. We cannot accomplish this overnight, but we are in there pitching and I think we are making definite progress.

Now, we are not going to make enough progress, ever, to satisfy some of the Negro organizations who want things done not tomorrow, but they want them done the day before yesterday.

Mr. MEADER. Mr. Chairman, yesterday I received from a Mr. Hill of the NAACP a letter which recited that Mr. Mitchell had called his attention to my questioning of this figure of 300 Negro plumbers and electricians in the entire United States, and in this letter he gave the source of information on which apparently he had relied.

I transmitted that letter to you, Mr. Chairman, with the suggestion that you might want to incorporate it in the record and I think that this would be an appropriate place—Counsel tells me you haven't received it yet.

Mr. CELLER. They haven't received it?

Mr. MEADER. Yes, but I made the request, I believe, of Secretary Wirtz when he was here, that he would make some effort in his Labor Department to ascertain the accuracy of this figure of 300 Negro electricians and plumbers in the entire United States, and I wonder if it wouldn't be appropriate to ask Mr. Meany if he would have any way of making a study?

Mr. MEANY. One of the heads of our unions asked Mr. Wirtz only a few days ago as to what method he should use to find out how many Negroes there were in his organization, because they had no vital statistics. They had all sorts of statistics, but they had no statistics showing the color of a man's skin, and this was because of a rule of the union going back many, many years.

I understand that he was told by a representative of Mr. Wirtz, "Well, go out and take a head count."

I don't know just how anyone can get accurate figures by taking a head count, unless you go from door to door and went to people's houses. I don't know. I would assume that there are reasonable estimates of Negro membership, but none of them are accurate and I doubt very much that the 300 figure has any accuracy at all.

Mr. MEADER. Would you be able to supply the committee?

Mr. MEANY. No.

Mr. MEADER. After having your people check?

Mr. MEANY. No, I have no facilities to get that kind of count. I can't get it from the records. I can't send out—I don't have the manpower to survey the membership by a head count, as was suggested, of 60,000 local unions. That is completely impossible.

Mr. MEADER. Do you have a figure, or can you supply a figure of the total number of plumbers and electricians in the United States?

Mr. MEANY. Yes.

Mr. MEADER. Do you have it in mind?

Mr. MEANY. The total figure, I would say perhaps between the two organizations, 500,000.

Mr. MEADER. But you could supply an accurate figure?

Mr. MEANY. Yes, I can do that.

Mr. CRAMER. Since one of the means is for the Federal Government to withhold funds in an area where the agencies practice discrimination, what authority do you think the Federal Government has under the bill for withholding funds from the local government agency on a project where the unions discriminate? Wouldn't the Federal Government have to withhold funds so long as such practice exist?

Mr. MEANY. Of course they would.

Mr. LINDSAY. Just one supplemental question to that. I am sure that you would agree that one of the great crises we have in the cities is the pressure of housing.

In the past, housing supporters have taken the view that it was more important to have housing legislation than it was to run the possible risk of losing legislation by attaching discrimination riders. My understanding is that the AFL–CIO supported that general strategy position. If I am wrong, please correct me.

My question is, "Does your testimony reflect a reversal or change in that position?" In other words, when we are faced as legislators with the problem of specific legislation, what is the position of the AFL–CIO with respect to any discrimination riders in connection with the application of those laws?

Mr. MEANY. Our position I think is made quite clear by my testimony, that we don't want riders, we want an overall prohibition, everywhere.

Mr. LINDSAY. Thank you.

Mr. MEANY. Mr. Chairman, I just have about 5 minutes more.

It seems to me that our common goal is justice; not vengeance. This is especially true when vengeance would be exacted from those whose only guilt was the color of their skin. We are against that sort of thing for Negroes; we are against it for whites as well.

Second, the demand for special treatment for Negroes, at any level, misses the point. There is not much future in a program for sharing misery. Yes, Negroes have been held back, unfairly and unreasonably, to the extent that unions have been responsible; we accept our share of the blame. But the road ahead must be broad enough for all; not a bottleneck through which we squeeze people of one kind or another, leaving some of every kind looking in from the outside.

In short, the only real remedy is jobs for all.

Third, the safeguards built up by the trade union movement over the years—seniority included—are important to workers of all races. And all workers, of all races, will suffer if they are destroyed. If you destroy seniority in the hope of correcting racial injustice, you destroy it entirely. Those who might reap quick benefits could also be the first losers. Once hired, what rights would they have to stay on the job? How and where would they plead if they were fired?

I repeat, I understand both the bitterness and the impatience of Negroes. But in this respect they are not thinking clearly.

In employment, as in all the rest, equal means enough; equal without enough means nothing at all.

These, then, are the elements we believe should be, and must be, incorporated into the law of the land.

Most of them are covered, as I have noted, by the administration bill.

But as the President also has said, the hour is too late for half measures. The battle for true equality for all Americans has now been joined; let us fight it out all the way.

It would help to clear the air, I think, if all of us recognized that equality can no longer be doled out in small portions. And it would help if the Negro minority realized that the final victory is at hand, and can be won—not in the distant future, but now—through the orderly processes of legislation and litigation as prescribed by the Constitution of the United States.

This would be a healthy thing all around, and I hope it will come to pass.

Let us, therefore, move forward, Mr. Chairman, here in this committee, whose heritage is so distinguished; let us move forward in the House and in the Senate; let us demonstrate that a goverment of law can work, that the Constitution means what it says, and that it applies equally to every American.

We, in the labor movement, hope with the deepest sincerity that this will be a truly bipartisan effort. Many times in the past, when the Nation has been plunged into crisis, the Congress has risen above narrow consideration of political advantage, and has provided the wisdom and statesmanship the occasion demanded.

This is just such a time. While for purposes of clarity, I have referred to the administration bill and to the Republican bill, the legislation that finally emerges from your deliberations should be the country's bill. Nothing less will fully serve the national interest.

Mr. CELLER. I want to state, Mr. Meany, that you have been refreshingly candid, you have been direct and logical, and I would say most effective and most helpful.

We are grateful for your presentation and grateful to those with whom you worked out your paper.

Mr. MEANY. Thank you.

AMERICAN FEDERATION OF LABOR
AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, D.C., August 7, 1963.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary, Cannon Building, House of Representatives, Washington, D.C.

DEAR CHAIRMAN CELLER: When I testified before your committee on the proposed civil rights legislation on July 17, I was asked to supply for the record of the hearing a description of the civil rights program of the AFL–CIO.

In response to this request, I have prepared a summary of the civil rights activities of the AFL–CIO over the period extending from January 1962 to July 1963. Two copies are enclosed. The inclusion of this statement, as a supplement to my testimony, will be appreciated.

With many thanks to you for your leadership in driving for the enactment of the urgently needed strong and forthright civil rights law, and with kind personal regards, I am,

Sincerely yours,

GEORGE MEANY, *President.*

SUPPLEMENTARY STATEMENT BY GEORGE MEANY, PRESIDENT OF THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

In 1962 and 1963 the AFL–CIO stepped up its drive for civil rights goals.

This period began with appointment of a reconstituted and expanded standing committee on civil rights, placed under the chairmanship of Secretary-Treasurer William F. Schnitzler.

Other members of the AFL–CIO standing committee on civil rights are:

Eugene E. Frazier, president of the United Transport Service Employees of America.

George M. Harrison, chief executive of the Brotherhood of Railway Clerks.

David J. McDonald, president of the United Steelworkers of America.

Lee W. Minton, president of the Glass Bottle Blowers' Association of the United States and Canada.

Louis Simon, vice president of the Amalgamated Clothing Workers of America.

Richard F. Walsh, president of the International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada.

Charles S. Zimmerman, vice president of the International Ladies' Garment Workers Union.

Albert J. Hayes, president of the International Association of Machinists and Aerospace Workers.

Ralph Helstein, president of the United Packinghouse, Food & Allied Workers.

Joseph D. Keenan, secretary of the International Brotherhood of Electrical Workers.

Emil Mazey, secretary-treasurer of the United Automobile, Aerospace & Agricultural Implement Workers of America.

John J. Murphy, president of the Bricklayers, Masons & Plasterers International Union of America.

James A. Suffridge, president of the International Association of Retail Clerks.

Milton P. Webster, vice president of the Brotherhood of Sleeping Car Porters.

Robert Powell, vice president of the International Hod Carriers, Building & Common Laborers Union of America.

David Sullivan, president of the Building Service Employes International.

Boris Shishkin, director of the AFL–CIO civil rights department, is secretary of the committee.

The AFL–CIO established close liaison with the President's committees established to advance fair employment and fair housing, and with other Federal agencies concerned with civil rights. This liaison has helped the AFL–CIO enlist support from appropriate Government agencies for its own efforts to stamp out discrimination in employment, in training, in education, in housing, in public accommodations, and in voting, and to resolve the remaining problems of discrimination within trade union's own ranks.

A closer working relationship was maintained during this period by the AFL–CIO civil rights staff with key cooperating organizations in the intergroup relations field. Of foremost importance to the day-to-day progress in our work was the stepped-up effort of our affiliates to extend and activate their own civil rights programs and to provide the necessary staff to carry these programs forward.

The central civil rights effort of the AFL–CIO through the past 2 years has been to eliminate the remaining pockets of discrimination in trade unions' own ranks and to win communitywide support for social and economic justice for everyone regardless of religion, nationality, or the color of one's skin.

Although much more progress is needed, the AFL–CIO has made solid progress in its civil rights effort over the past 2 years.

PROCESSING OF COMPLAINTS UNDER THE AFL–CIO COMPLIANCE PROCEDURE

In the series of meetings held by the civil rights committee during this period, each meeting was preceded by a session of the committee's subcommittee on compliance, where a searching review was made of all complaints and of staff findings, as well as of efforts made to obtain conformance with the AFL–CIO civil rights policy, in accordance with compliance procedure spelled out by the 1961 convention. The subcommittee's findings and recommendations in each case were thus promptly placed before the full civil rights committee for disposition.

The AFL–CIO civil rights compliance procedure may be described as an extension of the existing remedies available to complainants of discrimination on the basis of race, creed, color, or national origin.

The subcommittee on compliance, consisting of five members of the full committee, at each of its meetings, held prior to full committee meetings, reviewed the staff reports on each case docketed by the civil rights department.

With each complaint received by the department of civil rights, an early determination of its validity or the department's jurisdiction was made by the staff before referring the matter to the appropriate national or international union for its attention and action. All complaints received, however, were reported to the committee, including those which were dismissed because they did not involve civil rights problems or for other valid reasons.

During the period from January 1, 1962, to July 1, 1963, the department received a relatively low number of complaints. In several instances, investigations were initiated on the department's own motion, on the basis of public information about alleged practices. The great majority of complaints received by the AFL–CIO civil rights department were in the categories of alleged discrimination in admission to membership, in admission to apprenticeship training, in job referrals, and in representation of the complainants in the handling of grievances.

In every case referred to a national or international union by the department, the response was prompt and the required action was initiated immediately by the affiliate involved. The necessary action taken to resolve these complaints varied from reopening existing collective bargaining agreements in order to merge seniority districts as was done by the Brotherhood of Railway Clerks in Houston, Tex., to the simple adoption of programs of affirmative action by local unions to resolve the existing problem.

SEPARATE LINES OF SENIORITY AND PROMOTIONAL OPPORTUNITIES

The Fourth AFL–CIO Constitutional Convention, December 1961, called on our affiliates "to see that contracts that they and their locals negotiate do not permit separate lines of seniority on the basis of race, religion, or national origin, and to see that equal opportunity for tenure, promotion, terms, and conditions of employment are fully safeguarded for all workers."

Since the convention, a number of collective bargaining contracts have been amended and, in other cases, positive steps have been taken to insure that promotion opportunities on an equal basis are available for minority group workers. Many of these changes have been effected through cooperation by international unions and their affiliated locals with the AFL–CIO and the President's Committee on Equal Employment Opportunity. In many other cases, the initiative came from the union itself either through direct negotiations with the employer or through the normal process of the grievance procedure. In addition, some union locals have, where they have been unable to rectify a discriminatory practice through collective bargaining, filed complaints against the employer with the President's Committee.

Examples of unions either cooperating with the AFL–CIO and the President's Committee in effecting equal promotion and seniority rights or taking their own initiative to gain these rights directly are: International Chemical Workers Union, Brunswick, Ga., and Jacksonville, Fla.; Metal Trades Council, Lake Charles La., and Pascagoula, Miss.; Tobacco Workers, Durham, N.C., and Richmond, Va.; International Uonin of Oil, Chemical, and Atomic Workers, Port Arthur and Beaumont, Tex.; United Steelworkers, Birmingham, Ala.; United Auto Workers, Atlanta, Ga., and Norfolk, Va., and the Textile Workers Union, Front Royal, Va.

MERGERS OF SEGREGATED LOCALS

Since the 1961 convention, which called for a concerted and immediate effort by each affiliate having local unions with membership segregated on the basis of race to merge such locals with all possible speed, notable progress has been made to attain this end. The period saw a wide range of activity undertaken by our affiliates in this field.

The National Association of Letter Carriers established a special National Committee on Mergers in April of 1961. As a result of their crash-program effort, separate locals were rapidly merged in 17 cities, thus ending the existence of all separation of membership on the basis of race in this union.

Mergers were also successfully accomplished by the Bricklayers, Masons, and Plasterers International Union in Atlanta, Ga., and Jacksonville, Fla.

Mergers brought to an end the existence of segregated locals in the Chemical Workers Union with the merger of separate locals in Brunswick, Ga., and in the Aluminum Workers Union in Sheffield, Ala. Both international unions thus achieved 100 percent elimination of segregated locals.

The American Federation of Musicians, having completed successful mergers of separate locals in San Franciso, Denver, Sioux City, Hartford, and Cleveland, has stepped up its drive to merge the remaining segregated locals within its organization.

Mergers of separate locals in the same community have been accomplished also by the International Brotherhood of Boilermarkers, the United Brotherhood of Carpenters, the Communications Workers, the Glass Bottle Blowers, the Iron Workers, the Maintenance of Way Employes, the Oil, Chemical, and Atomic Workers, the Brotherhood of Painters, the Papermakers and Paperworkers, the Pulp, Sulphite, and Paper Mill Workers, the Operative Plasterers, and the Brotherhood of Railway Carmen.

Successful mergers have also been reported by the International Association of Machinists in Norfolk, Va., and by the Iron Workers and the International Brotherhood of Painters in Charleston, S.C.

A recent survey by the civil rights department indicated that of the 130 national and international unions affiliated with the AFL–CIO, 106 reported no remaining segregated locals as of July 1, 1963. Negotiations have continued by the remaining 24 organizations to bring about an end to all separate locals in accordance with AFL–CIO policy.

INTEGRATED FACILITIES AT AFL–CIO STATE AND CENTRAL BODY MEETINGS AND CONVENTIONS

On Februry 6, 1962, I sent a directive to all State and local central bodies stating that all conventions, meetings, and conferences must be held where facilities are available that provided accommodations for all delegates without discrimination. The directive stated that in those States where housing and eating facilities on a desegregated basis are not available anywhere, the maximum in equal facilities available in that State must be obtained.

Since the issuance of this directive, a number of our State central bodies have been successful in not only obtaining such facilities from hotels, but also, in some cases, themselves making the first breakthrough in local segregation by insisting on and obtaining full desegregated hotel facilities in the State. For example, the 1963 State AFL–CIO Convention in Little Rock, Ark., was held in the Marion Hotel. The Negro delegates were housed and fed on a completely equal basis. Following the convention, this hotel has kept an equal accommodations policy.

The Florida State AFL–CIO canceled its 1962 convention arrangements in Jacksonville because equal accommodations arrangements were not available for Negro delegates, and moved the convention to Sarasota where such arrangements were obtained. Earlier, the State AFL–CIO bodies in Texas, North Carolina, and Virginia were able to obtain completely desegregated facilities in hotels in those States.

In the case of Virginia, it will be recalled that the first completely desegregated State AFL–CIO convention was held in 1961, in the Golden Triangle Motel in Norfolk. Following this, hotels in Richmond and Roanoke agreed to change their policies and accept reservations on an equal basis for all.

At all of the four area COPE conferences held in the South in 1963, in Norfolk, Va.; Gatlinburg, Tenn.; Houston, Tex.; and Little Rock, Ark., all delegates met, were housed and fed without any discrimination or segregation.

The AFL–CIO Civil Rights Department, along with COPE, has been working jointly with the U.S. Department of Labor and the U.S. Department of State to find ways of hastening the process of desegregating hotel facilities in all parts of the country.

EQUAL OPPORTUNITY IN APPRENTICESHIP TRAINING

The AFL–CIO has given special emphasis in its work to enlist trade union initiative in taking steps to insure equal opportunity in apprenticeship programs, regardless of race, creed, color, or national origin and in encouraging affirmative actions by unions to raise the level of minority group participation in such programs.

The California State AFL–CIO has pioneered in this effort. Working in close cooperation with intergroup relations organizations in the State, the California Labor Federation pressed for the establishment by the State of California of a Statewide Committee on Equal Opportunity in Apprenticeship and Training for Minority Groups.

This committee, appointed by Governor Brown, adopted a program which included these objectives: (1) Promotion of apprenticeship and of employment of more apprentices by employers, (2) increase in the number of minority youth in apprenticeship programs and the elimination of any discrimination which may exist, and (3) arrangements to bring within ready reach of all young people, including minority youth, information in apprenticeship opportunities, on qualifications required for such training, on placement, and on procedures to be followed in applying.

Among the specific projects of the California committee was the setting up of local apprenticeship information centers, a series of surveys of minority group participation in apprenticeship programs and the setting up of nondiscrimination standards and their implementation.

The comprehensive California approach has received national attention, and its features adopted in other State and local programs.

On February 27, 1963, Secretary of Labor Wirtz announced the appointment of a National Advisory Committee on Equal Opportunity in Apprenticeship, under the chairmanship of Under Secretary of Labor Henning.

Information centers have already been set up in Washington, D.C., in New York City, and in several cities in California. Work toward the establishment of such a center is underway in Chicago, with the cooperation of the Building and Construction Trades Council in that city. In Philadelphia, the Building Trades Council and the city's human relations commission endorsed a proposal made there by the AFL–CIO civil rights director, to set up an Apprenticeship Information Center.

There are a number of examples of affirmative action by local unions to insure participation by minority group youth in the joint apprenticeship programs in which these unions participate. Here are a few instances of such action.

Local 3 of the IBEW in New York City—as part of the shorter workweek agreement, won in its last negotiations with the contractors in New York City—agreed that the joint apprenticeship committee indenture 1,000 additional apprentices.

In securing this extraordinarily large number of apprentices, Local 3 made special efforts to see that Negro and Puerto Rican youths were aware of the opportunities and informed that they would have equal opportunity to be indentured. As a result, between 100 and 200 of the newly indentured apprentices are Negro and Puerto Rican.

On a smaller scale, IBEW Local 24 in Baltimore, in order to insure that qualified Negro youngsters would have a chance to enter electrical apprentice programs in that city, sent representatives to vocation high schools and provided senior students with information on the qualifications and procedures for making application to the joint-apprenticeship programs. As a result, four Negro youngsters have been enrolled in the electrical apprenticeship program in Baltimore and two have already satisfactorily finished the first year's training.

On April 1, 1963, the IAM Tool & Die Makers in Chicago started a preapprenticeship class. This class includes many Negro workers.

PRESIDENT'S COMMITTEE ON EQUAL EMPLOYMENT OPPORTUNITY

The accelerated activity of the President's Committee on Equal Employment Opportunity under Executive Order 10925 led to a major effort, by the AFL–CIO Civil Rights Committee with the assistance of the civil rights department staff, to expand and supplement labor's existing program of affirmative action in the field of civil rights.

Secretary-Treasurer William F. Schnitzler replaced me on the membership of the president's committee. Vice President Walter P. Reuther also serves as member of the committee.

The AFL–CIO Civil Rights Department maintained close staff liaison with the committee's trade union liaison officer, as well as with many of the equal opportunity compliance officers of the various agencies in the executive departments of the Federal Government. Expeditious handling of problems as they arose was the result of this cooperative effort.

On November 15, 1962, the executive officers of some 100 national and international unions attended a White House ceremony to affix their signatures on behalf of their respective unions to a joint statement with the President's Committee on Equal Employment Opportunity, which served as a commitment to immediately develop affirmative action programs to deal with problems involving admission to membership, segregated locals, selection of apprentices, and upgrading. This became known as the union program for fair practices.

In the months that followed, 18 additional unions signed the joint pledge, thus bringing the total to 118 unions with over 10 million members.

On January 16, 1963, the first stage of implementation of these pledges began when each union named an official representative for civil rights to cooperate with the President's Committee.

In the majority of unions the international president personally assumed this responsibility, while the remaining organizations designated their already existing full time staff representatives to serve in this capacity.

In the early months of 1963, unions were engaged in a variety of activities designed to implement the pledges made in the joint statement.

The role of our affiliates in the elimination and prevention of all activities engaged in by employers which adversely affect Negro and other minority group members, has thus been reinforced and further redefined. In a number of cases, unions have affirmatively acted to bring about changes in hiring, promotion, and transfer practices of employers, with the cooperation of the President's Committee.

Negotiations were in progress during 1963, with the few remaining affiliates not yet participating in this effort with the aim that they also adop a union program for fair practices pointly with the President's Committee.

THE SUMMER, 1963, CIVIL RIGHTS DRIVE

A special intensified drive to mobilize the resources of the entire labor movement in active and positive participation in the AFL–CIO's civil rights effort was launched by us in the summer of 1963, pursuant to action taken by the executive council at its May 1963, meeting.

This drive was reinforced by close cooperation between the AFL–CIO and the executive branch of the Government, including the President himself, the Department of Labor, the Department of Justice, the President's Committee on Equal Employment Opportunity, and the U.S. Civil Rights Commission.

On June 13, 1963, President Kennedy convened a conference at the White House in which he, Vice President Johnson, Secretary of Labor Wirtz, and the Attorney General discussed the ways and means of furthering civil rights with more than 300 representatives or organized labor.

On June 26, I sent a letter to all State and local central labor bodies urging them to act promptly on the President's request for civil rights action to accelerate the destruction of racial barriers at the local level. I pointed out that the President was requesting no more than the AFL–CIO convention itself had proposed. I called on those central labor bodies which have not yet acted on the basis of the AFL–CIO convention actions to proceed forthwith to set up a civil rights or human rights committee of their own and proceed to implement the AFL–CIO program.

This appeal was followed by a circular letter to State and local central bodies from Secretary Schnitzler as chairman of the AFL–CIO Standing Committee on Civil Rights, giving examples of specific positive action taken by affiliated unions and asking for similar initiative from each central body.

Responses to these appeals from across the Nation indicated ready willingness for the overwhelming majority of these organizations to undertake a major civil rights effort at the State and local level.

In another development, on June 21, 1963, a meeting of the general presidents affiliated with the building and construction trades department adopted a four-point program designed to end discrimination in admission to membership, in job referrals, and apprenticeship training.

At their executive board meeting held the following week, the United Brotherhood of Carpenters and Joiners, AFL–CIO, called on their general president to issue a directive to all local unions to enforce nondiscrimination on the basis of race, creed, color, or national origin in union membership, in any union job referrals and in apprenticeship programs. Merger of racially segregated local unions was also called for by the directive. Similar action was taken the follow-

ing week by the Operative Plasterers and Cement Masons International Association.

With evidence of renewed determination on all sides, labor's drive for civil rights was greatly intensified in the summer of 1963.

On July 22, I appointed a special five-man committee of the AFL–CIO to step up the labor movement's campaign against discrimination. The committee's first task is to mount a campaign in 30 to 40 major cities to "wipe out discrimination wherever it exists—on the jobs, in the schools, in the voting booth, in the housing developments, stores, theaters, or recreation areas."

In a real sense, this is a campaign for the only kind of citizenship an American should understand—full citizenship.

The committee, which is chaired by me, includes AFL–CIO Secretary-Treasurer William F. Schnitzler, Walter P. Reuther, president of the industrial union department, C. J. Haggerty, president of the building trades department and A. Philip Randolph, president of the Brotherhood of Sleeping Car Porters. Messrs. Reuther and Randolph are vice presidents of the AFL–CIO.

Special staff is being recruited from the international unions affiliates and assigned to the committee.

In addition, I have instructed the directors of key AFL–CIO departments to work closely with this special staff. The directors of the legislative, political education, public relations, worker education, publications, and research departments, have been instructed to work closely with staff of the committee and to assign whatever manpower may be necessary to implement its work,

Reports I have received from my earlier directive to the AFL–CIO's State and city central bodies, urging establishment of biracial committees, were most encouraging. But biracial committees still must be established in many cities and nearly all those already existing must be strengthened. This is the first task of the committee.

WORK OF THE CIVIL RIGHTS DEPARTMENT, AFL–CIO

Included among the responsibilities of the department of civil rights are staff services to the executive officers of the AFL–CIO on all matters involving the effectuation of the AFL–CIO policies in the field of civil rights and civil liberties; staff services to the AFL–CIO standing committee on civil rights and its subcommittee on compliance, as well as the AFL–CIO Southern Advisory Committee on Civil Rights.

Foremost attention of the department's staff is devoted to the processing of complaints as well as staff investigations of its own in cases of alleged or reported practices that are contrary to the AFL–CIO civil rights policy. Equally important are services its staff renders to national and international affiliates as well as State and local central labor bodies in assisting them to carry forward civil rights programs of their own. This includes close cooperation with the civil rights committee or the specially designated civil rights officer of each affiliate. The department's staff also assists affiliated unions in the negotiation of antidiscrimination clauses in collective bargaining agreements between these unions and employers. Special problems of some affiliates, such as the effectuation of mergers of their remaining segregated local unions or assurance of nondiscrimination in apprenticeship training programs jointly maintained by these unions with management, likewise call for assistance by the department's staff.

Working closely with other headquarters departments, the department of civil rights, in addition, services AFL–CIO programs directed against discrimination in housing, in public accommodations, in schools, and in the exercise of citizens' voting rights. It assists the department of legislation in pressing for the enactment of civil rights, fair employment practice, and fair housing legislation in the Congress and in the legislatures of several States. In cooperation with the department of education, the department of civil rights participated in programing as well as staffing of civil rights sessions in labor schools, summer institutes, and conferences sponored by our affiliates in all part of the country. Mounted jointly by the two departments was a major program of distribution to affiliates of significant civil rights films and of discussion guides on civil rights problems. This supplemented the department's own effort to provide civil rights pamphlets, publications and reference materials to our affiliates and to all interested groups.

The onsurge of events which made civil rights the center of national concern in 1963, with labor's stepped up drive to speed the practical achievement of equal

opportunity in the summer of that year, greatly increased the call for department services.

The staff of the department of civil rights consists of Boris Shishkin, director; Donald Slaiman and Walter Davis, assistant directors; and a secretarial staff.

Mr. CELLER. The chairman wishes to put in the record a statement by our distinguished colleague from South Carolina, L. Mendel Rivers, and a statement from our distinguished colleague from Alabama, George Huddleston, in opposition to the bill.

(The documents referred above are as follows:)

STATEMENT OF HON. L. MENDEL RIVERS, DEMOCRAT, OF SOUTH CAROLINA, IN OPPOSITION TO CIVIL RIGHTS BILL

Mr. Chairman, distinguished members of the Judiciary Committee, I appear before you today on a matter of grave concern, the great tragedy besetting America in the turmoil over so-called civil rights.

I cannot overemphasize the importance of this legislation. That your committee hearing is uppermost in the minds of America today is unquestionable.

We can see the mobs demonstrating in the streets, shrieking their demands in the face of armed police patrols in racial-troubled communities. Death walks our streets nightly.

To those of us who love America, this wholesale turmoil perpetrated under the guise of civil rights is a tragic, ominous, and almost unbelievable development.

Even now the mob stands at the threshold of the sacred halls of the Congress, a blatant attempt to intimidate, to stampede, to coerce, to harass us into approving this legislation.

I for one, will not be intimidated, nor will I be coerced.

Mr. Chairman, the great philosopher and poet, Dante, wrote in Canto III of his "Dante's Inferno," as he descended into the murky depths of hell, "All hope abandon, ye who enter here."

Mr. Chairman, we must not plunge America into the holocaust of a racial hell by further encouraging the defiance of law and order which the demonstrators now exhibit.

This is only the beginning of an even more tragic path for the American Negro.

Led into revolutionary methods by his arrogant, militant leaders, he will only create a reactionary struggle against his former peaceful advancement among the white community.

Violence begets violence; revolutionary methods only fan the passions already at white heat.

The so-called civil rights bill, if enacted into law, instead of creating a better life for the American Negro will only nurture the seeds of discord now permeating our communities and ultimately destroy him.

Look at Savannah, Ga., where lawless mobs slashed tires, stoned police, wrecked stores. Are those who inspired and perpetrated such acts responsible citizens? Do they deserve the support of the Congress?

In nearby Maryland, gunfire is a nightly occurrence; even troops have been shot. The situation there has been described as "almost like war."

Mr. Chairman, I agree there must be a solution to the racial problems plaguing our Nation, but I submit it must be through orderly cultural evolution, not revolution.

When the turmoil ceases, when passions wane, then the white man and Negro must still find a way to live in harmony not only in the South, which has the bulk of the Negro population and which shoulders the greater part of the burden of assisting them, financially and otherwise, but also in the North, East, and West.

We do not do him a service by such legislation as proposed here, but only a disservice, both to him and the white people.

Mr. Chairman, as early as 1787, responsible men, the men who wrote our Constitution, knew that slavery was evil and doomed to die. But this institution had become so woven into our American life that time was needed to remove it.

It could have been removed without the sea of blood that was poured out during and following the Civil War. Leaders in the North, Abraham Lincoln, for instance, and many Southern slaveowners were groping toward a means of

sending the slaves back to Africa and to aid them there to develop their own independent nation and to lead their own way of life.

It was hatred, fanned to white heat, that made possible the awful inferno of the Civil War.

The slaves set free by the American Civil War were of a race which had never developed a civilization of its own. These people had no racial pride, nor racial traditions. Their forebears had known nothing but slavery, either in the Western Hemisphere or in their African homeland.

These were the people, illiterate and without property, who, in one violent step, were declared equal heirs of a civilization which it had taken the white man thousands of years to develop.

The Southern white man, upon whom fell the task of helping these people assimilate an ancient and alien culture, was himself pauperized, demoralized, and embittered by war.

In brief, he was a man whose own way of life had been shattered by military action.

Yet, somehow, he shouldered this monumental burden.

Any American who has a sense of shame or apologetic feeling about the history of the colored man in the United States should look at the history of his advancement elsewhere. Take, for example, his history in Haiti. Haiti was a French colonial possession from 1697 to 1804. During this period, it was the most prosperous European colony in the Western Hemisphere. In 1804, Haiti became independent under the rule of Jean Jacques Dessalines, who crowned himself emperor. He began his regime by massacring all whites. Haiti has been an all-Negro nation since.

The civilization taken over was as advanced as any in the Western Hemisphere. Yet, since that time, Haiti has been a land of brutal violence, bloody anarchy, tyranny, and poverty except for a 19-year period when it was under U.S. occupation.

Today, this Republic is the most illiterate and depressed area in this hemisphere despite massive U.S. aid.

But, on the other hand, take the history of the American Negro. Since 1865, he has made more progress than has any race during 1,000 years of history.

During this period, he has made a miraculous advancement toward full integration into the white man's ancient culture—not integration in the contemporary sense of losing his racial identity by full amalgamation, but integration in the sense he began to develop a pride in his race, and with the help of the white man, began to develop his own cultural and educational institutions, establish his own businesses and homes.

With marvelous speed, the American Negro, thanks to the understanding and and sympathetic aid of the southern white man, was becoming a proud and distinctive part of the total American people.

But today, what do we have? We have a major American tragedy. Peaceful communities are transformed into caldrons of violence. Death strikes almost daily, it seems.

The militant Negro leaders, encouraged by such proposed legislation as the so-called civil rights bill, are utterly destroying the evolutionary process through which their race has advanced so rapidly.

And all the power of Washington can never bring about an understanding, a sympathy, or a desire to live in harmony such as did exist in the South prior to the onslaught of racial agitators.

Each succeeding day compounds the problems of both races.

Washington appears determined to destroy the amity between the races in the South. But you have only to look at our Capital, where women and strong men fear to venture forth after night, to see what forced integration has brought to the people.

On June 19, President Kennedy asked the Congress for legislation which would, among other things, prohibit, in elections involving Federal offices, the application of different tests and standards to voter applicants.

One of the most important powers of State government is that of establishing voter qualifications. No subject was more thoroughly debated during the Constitutional Convention of 1787.

When an illiterate and irresponsible individual of any race has as much voice in selecting national rulers and changing the organic law of the land as does an industrious, responsible citizen, what is to prevent the drones of society from plundering the productive citizens?

The Founding Fathers were aware of this danger. They had studied the record of how it had destroyed ancient civilizations just as similar situations create poverty, wild disorder, and tyranny in many Latin American nations.

The Founding Fathers wanted a constitutional system in which all, high and low, rich and poor, good and bad, lazy and hard-working, thrifty and profligate, weak and strong, educated and illiterate, would be equal before the law.

All would be equally free to lead their own kind of life, as long as they did not infringe on the rights of others.

But the Founding Fathers felt that the vote which, in final analysis, is the power to direct the affairs of this Nation, should be restricted to mature individuals. Individuals who could understand, have some vested interest in the necessity of maintaining a constitutional system of government.

Hence, there was demand in the Constitutional Convention of 1787, that the right to vote be somehow restricted to responsible citizens. This proposal, however, was defeated, because of a greater fear of creating a too-strong Federal Government.

They feared a Federal Government so strong it could destroy State governments and eliminate God-given rights of individuals. While admitting the need for voter qualification, the Founding Fathers felt there was a greater need to leave this basic attribute of sovereignty to the individual States.

As to the need for action to guarantee qualified Negroes the right to vote, there is no need. Throughout the South, voter qualifications, whether they be poll tax or literacy requirements, apply equally to both races.

The proposal for a law requiring that civil rights "voting" suits be given preferential treatment in the Federal courts nullifies the constitutional concept of equality before the law.

Why should litigation by one class or color be given preference over litigation by other citizens?

In one proposal under Federal programs, the President asks for authority to withhold Federal funds, at his discretion, where racial discrimination exists. I would interpret this as a reversal of a stand he took in April when he rejected a Civil Rights Commission proposal that Federal funds be withheld from States and communities which discriminate.

I would assume the President did not like this proposal because it might have required him to withhold all Federal aid to offending States or communities. I must further assume he wants a free hand, and absolute authority to grant or withhold aid as he pleases whether racial discrimination is practiced or not. This is the broad authority he asks the Congress to grant.

In the desegregation of schools section, we are asked to grant authority for the Attorney General to initiate, in Federal district courts, legal proceedings against school boards and tax-supported colleges, or to intervene in existing ones, whenever the Attorney General receives a written complaint from any parent or student who says he is being denied "Equal protection of the laws" because of segregation.

What could be more unequal and discriminatory than to give one particular class of citizens the special privilege of bypassing the normal channels of justice which ordinary citizens must follow?

I submit that any agitator or troublemaker who happens to be a Negro can bring public school and college officials into Federal court, by merely writing a letter to the Attorney General.

The agitator would be represented, at no cost to himself, by officials and attorneys of the Federal Government.

But, I respectfully submit, the equal accommodations in public facilities aspect of the proposed legislation is the most dangerous of all. If this is enacted, the American citizen will have no right to own or use private property, unless he uses it in a way that officialdom considers to be consistent with the public interest.

Today, it is the demands of racial agitation groups which fix official notions of what is consistent with public interest. Tomorrow, it could be something else.

We are being asked to place restrictions on initiative, to create an artificial equality, and to engage in legislative experiments outlawing discrimination. But by whose concept shall discrimination be adjudged?

And bear in mind that under this bill every business in the United States that is subject to the provisions of the bill can be kept in court, defending itself at its own expense, indefinitely with the full power and the entire Treasury of the United States being used against them. The power that is sought in this bill could destroy every private business enterprise in the Nation.

Mr. Chairman, I know that my appearance here will not make the slightest impression on your deliberation. I am not that naive. I come from the wrong section of the Nation to make any impact on this subcommittee. You have chosen its membership well and you have seen to it that no southerner serves on this committee. Therefore, my section is discriminated against in the rankest sort of way. I have called this to your attention many times before. You know and I know that this is a political bill, nothing more and nothing less. Everything proposed in this bill now you can get by the fourth branch of the Federal Government, the legislative Supreme Court.

Mr. Chairman, you have been most cordial to me and your subcommittee has been most respectful. For this, I am grateful. You have been patient, and for this, I am thankful. But I know that I have disturbed the even surface of your mood more lightly than the titled swallow's wing disturbs the limpid, glassy solitude of some clear pool. When I am gone, it will be just the same, nothing to remind you that I ever came.

Mr. Chairman, you have presided over this committee for a long time but you could well be presiding, too, over the liquidation of the Democratic Party in these United States. I caution you, in all sincerity and in all friendliness, to go slow on this proposal. America is nearer civil strife today than at any time since 1861. You have it in your possession to delay this conflict. Before this bill will have been enacted and you have the power to ram it through the House, there will be a march on Washington. I pray that when this march comes, you will be able to advise your army because they are going to need some advice and a lot of innocent people are going to need some protection.

Thank you very much.

STATEMENT OF CONGRESSMAN GEORGE HUDDLESTON, JR., IN OPPOSITION TO ENACTMENT OF H.R. 7152—CIVIL RIGHTS ACT OF 1963

Mr. Chairman and members of the committee, my name is George Huddleston, Jr., and I come before you this morning to express my opposition to H.R. 7152, the so-called civil rights bill.

On July 19, 1963, the administration sent to Congress its legislative proposals. The message and the program the administration asks for is a dangerous piece of politicoeconomic demagoguery. I might say that generally these proposals hold out the prospect to many of our less qualified, less skilled Negroes of getting something for nothing. The tragedy of this approach is that it is false and misleading.

A further problem of the administration's message and the civil rights bills is that much of the administration's controversial economic legislative proposals are tied to it, apparently in an effort to stampede the Congress into action. Additionally, the bill asks that Congress forgo its traditional role, and to break with the Federal concept that each of the three coequal branches of the Federal Government act as a check on the others. Because of the tensions and pressures being fomented, created, and continued by Negro demonstrators, the President has asked the Congress to give the executive branch of the Government new and unusual powers over the daily lives of the American people and new control over their individually and corporately owned businesses. In making these requests to the Congress, the President cites the already awesome and dreadful power of the Federal bureaucracy and the economic tenacles that extend into all communities of our Nation. He asks for blanket legislation allowing individual Federal administrators to withhold or give funds to congressionally authorized programs. In short, this asks that the Congress forgo its right and duty to appropriate funds and to direct the way in which they shall be spent.

Despite assertions to the contrary, it is by no means clear that these proposals contained in H.R. 7152 are constitutional. It is clear that the administration is endeavoring to extend the powers of the executive branch and that the legislation he asks for is new, unusual, experimental, and expedient. Although the commerce clause of the Constitution is cited as a basis for his action, he ignores the more basic rights that a man has in operating a business free of governmental coercion and restraint. Property rights are merely an extension of human rights. He has asked for powers to enable the Justice Department to investigate the businessman who chooses to run his place of business in the manner he sees fit. Mr. Chairman, this is a big country and the Justice Department will find it cannot investigate every complaint from every drunk and

sorehead in the 50 States. These proposals are an attack on the American free enterprise system and every thinking American must be made aware of the dangers presented by such preposterous proposals.

Mr. Chairman, it is a terrible sign of weakness that the administration has given in to the demands of those troublemakers and agitators who have been trooping up and down the countryside for the last several months. The President now asks for laws placing a stamp approval of their actions, actions which are both illegal and dangerous and which breed tension and violence. I am hopeful Congress will not concur in their action. The problems are of a local nature. The complaints and demands of the Negroes are geared to local grievances, and the best solutions will be local solutions. Yet the President is asking for national laws and justifies this request by asserting, mistakenly, that "only the Federal Government, it is clear, can make these demonstrations unnecessary by providing peaceful remedies for the alleged grievances which set them off."

Further, it is asked that something he called a Community Relations Service be established to actively meddle in the affairs of individual communities. This Federal bureau would have broad powers to investigate, its work would be secret, and the Congress is asked to give such a bureau enforcement and subpena powers. Mr. Chairman, there is no need for any such service, bureau, or other investigative body.

In the same message the President asks for the continuation of the Civil Rights Commission, that useless creature which has yet to justify its existence. Community Relations Service, Civil Rights Commission, Civil Rights Division in the Justice Department, and job favoritism to Negroes, Mr. Chairman, will only create civil discord and discontent.

At one stage of his message to the Congress, the President says, "The enactment of the legislation I have recommended will not solve our problems of race relations." And, Mr. Chairman, that much is true. The proposals contained in H.R. 7152, if enacted, would create more problems, cause greater burdens, and be more inequitable than any of the so-called problems and wrongs they are designed to eliminate. These proposals are essentially a bid to have greater power yielded over to the Central Government. Broad discretionary powers are asked for Federal administrators to allow them to withhold or give funds to areas where alleged violations of the Federal Government whim occurs. This request cannot be granted and must not be granted.

Now, Mr. Chairman, I wish to deal with the problems of those demonstrators whom the President is so anxious to appease. As the President says—"These demonstrations have increasingly endangered lives and property, inflamed emotions, and unnecessarily divided communities." Now the President seeks to give these unlawful demonstrators what they want, give them what has not been earned. He asks for new laws and legislation for these people who have not used the legal resources now at hand, who have not exhausted their legal remedies, but who take to the streets. He is yielding to the pressure of the mob. They have not petitioned Congress for redress of grievances real or imagined; they have broken the law leading unruly mobs into the streets, misled and callously used little children, and endangered their lives and the lives of others in pursuit of money and power. Now he asks for legislation that these men want. The bill asks legal sanction for the unlawful. Such laws would demand respect for the disrespectful and would give special privileges unenjoyed by any other group.

Passage of H.R. 7152 will give, as a gift outright, what every group of Americans has earned for itself. No good can come from it. Even now a march on Washington by these same irresponsible elements is being planned. They riot in the streets until they get their way in the name of so-called justice. There is no justice in these proposals for behind the enforcement powers asked for is the full military power of the United States. That these military force powers can and will be used is obvious. I believe that all Americans should be deeply concerned about use of Federal power to control the lives and businesses of its citizenry.

I am hopeful and confident that every Member of Congress will give these proposals careful and thoughtful consideration. Certainly if there ever was a time for thoughtful, careful concern on the part of Congress it is now.

Thank you.

Mr. CELLER. We will now adjourn and reassemble at 2:15.

(Whereupon, at 12:30 p.m., the committee was adjourned to reconvene at 2:15 p.m. of the same day.)

AFTERNOON SESSION

Mr. CELLER. The hearing will come to order.

Our first witness this afternoon is Mr. Aryay Lenske, executive secretary of the National Lawyers Guild. I understand, Mr. Lenske, you are accompanied by Mr. George W. Crockett, Jr., and Mr. Benjamin Smith of New Orleans, and Mr. Crockett of Detroit.

Mr. SMITH. My name is Benjamin Smith. Mr. Lenske is not here. I am a member of the board of the National Lawyers Guild. With me is Mr. William Higgs. Mr. Lenske wrote the letter, Mr. Chairman. I was designated to represent the guild along with Mr. William Higgs.

Mr. CELLER. Do you have a statement?

Mr. SMITH. Yes, I do; I have no letter to distribute to the committee, but I would like to start off with a statement of which I have the only copy.

STATEMENT OF BENJAMIN SMITH, MEMBER, EXECUTIVE BOARD, THE NATIONAL LAWYERS GUILD, ACCOMPANIED BY WILLIAM HIGGS, DIRECTOR, WASHINGTON HUMAN RIGHTS PROJECT

Mr. SMITH. Mr. Chairman, I would first start off and say that the National Lawyers Guild has read with care and with approval the text of the proposed civil rights legislation that this committee is now considering and that we wholeheartedly endorse the statute as it now stands, but with certain recommendations to make in regard to certain parts of it.

I am going to confine my remarks to comments relative to certain cases involving titles 18 and 42, the portion relative to remand of civil rights cases back to the Federal district courts and Mr. Higgs is going to devote a portion or all of his testimony to matters covering voting rights, that portion of the bill.

I would like to lead off and say that we believe that this Congress must take and should take immediate steps to protect the safety of those, both Negro and white, who are engaged in the fight for civil rights. Our daily newspapers describe only a few of the unlawful official acts, shootings, and beatings by police and officials. Charges against integration leaders——

Mr. CELLER. Are you reading from a statement which you have submitted?

Mr. SMITH. I have not submitted it, Mr. Chairman. This is the only copy I have of it.

Mr. CELLER. Our rules require that a statement be submitted in advance for the convenience of the members.

Mr. SMITH. I am sorry. If that is the rules, I will simply testify without reading from the statement, if that is permissible.

Mr. CELLER. All right. Go ahead.

Mr. SMITH. We wish to call particularly to the attention of the committee the prosecutions that take place under title 18, sections 241 and 242. Many times these are ineffective prosecutions because of the difficulty of showing an intent to deprive a citizen of his civil rights, under the color of law. We found what would be a remedy to this situation in Mr. Kastenmeier's proposal; that is, that there be an

amendment to those two sections of title 18, which would (as provided in the first section of H.R. 6030) eliminate the necessity for such a finding of intent by prohibiting the performance of six specific acts under color law. These are—

(1) Subjecting any person to physical injury for unlawful purpose;

(2) Subjecting anyone to unnecessary force during the course of arrest.

Mr. CELLER. Where and what page is the amendment and what bill are you referring to?

Mr. KASTENMEIER. Mr. Chairman, I think the witness is referring to a proposal that I have in draft form which has not been submitted to the Congress as yet in the form of a bill.

I notice that you mentioned——

Mr. SMITH. Yes, I did; there are bills, Mr. Chairman, that do contain that. I don't know the numbers and these bills have been submitted to the Congress, but the items that I was going to read you now are contained in written form in the proposal Mr. Kastenmeier has reference to.

These six acts, Mr. Chairman and committee members, would substitute for the intent which is required in title 18, to deprive a person of their civil rights.

It would simply say that when it is found in fact that those acts have been committed, that is subjecting persons to physical injury for an unlawful act, subjecting a person to unnecessary force in an arrest, or subjecting a person to violence or unlawful restraint while in the course of giving confession, or violence or unlawful restraint for obtaining anything unlawful such as in a bribery situation, or aiding and assisting private persons to carry out unlawful violence.

Then you substitute these six acts for the finding of intent in title 18, sections 241 and 242, you have gone a long way toward strengthening that particular statute.

I note from my own experience in New Orleans where I practice law—and I have practiced there as a private practitioner as well as a prosecuting attorney for some years—that those are important factors in preserving a person's civil liberties and rights when subjected to arrest, particularly in situations where there are confessions elicited by the police, so we feel that this would be a strengthening of the civil rights act in a very vital area.

We would recommend this to the committee because in many instances it is simply not available to the prosecution to be able to show that those acts of violence done to arrested persons by law enforcement officials either in rural or urban areas was done with a specific intent to deprive that person of his civil rights.

I think it would be sufficient under the criminal law to show that those six acts or at least one of those six acts were done.

In addition to that, we had a request to make in connection with title 42, section 1971——

Mr. CELLER. I wish you would correlate those titles in accord with pending bills.

Is this all connected with Mr. Kastenmeier's proposal?

Mr. SMITH. Yes; it is not a part of the bill as distributed by the committee as of right now, Mr. Chairman. It would be a separate portion of the bill and would relate to the existing United States Code

as an amendment to title 18, sections 241, 242, but would have to be correlated into the present bill as a separate part.

Mr. CELLER. Mr. Kastenmeier, may I ask, is your bill also a civil rights bill and do you intend to place the bill in the hopper?

Mr. KASTENMEIER. Yes, Mr. Chairman, I do, within the next several days.

In a sense I am sorry that the witness is in a position of referring to a proposal I have, which is not already in the record.

Mr. CELLER. He seems to know all about your bill without your having put it in the hopper.

Mr. KASTENMEIER. Perhaps he does. I was hoping more people would, but testimony on it is permature.

Mr. FOLEY. What you are telling us with regard to the amendment of the title 18 is that you want to overcome the specific rule; that in order to proceed under those titles, sections of the title 18, you avoid the burden of proving specifically that when the act of violence occurred it was with the specific intent to deprive a man of a constitutional right.

Mr. SMITH. That is correct, as required under the *Screws* case.

Mr. FOLEY. In the last Congress, a bill was sent here entitled "Anti-Police brutality bill." That bill has not been sent to this committee in this Congress.

Mr. SMITH. I see.

As another suggestion to the committee. Mr. Celler, under title 42, section 1971 of the United States Code, there is a section which provides and authorizes specifically the Justice Department to sue for an injunction whenever a person has engaged or they have reasonable grounds to believe that——

Mr. CELLER. May I ask you this question, and Mr. Kastenmeier also: These sections of title 18 that you referred to are criminal sections?

Mr. SMITH. Correct.

Mr. CELLER. They involve sanctions. Why is it necessary to tie it up with civil rights? What is the advantage and to whom?

Mr. SMITH. One of the advantages is this, Mr. Celler, that when these persons in the South desire to exercise their rights to voice their grievances, that is, to exercise a first amendment right, to demonstrate or to picket or to in any way air their grievances in the public eye, it is my experience, as a lawyer familiar with practices in the South, that many of those people are arrested and before they can be taken to any particular place of safety or before their counsel can see them or their relatives, many times they are subjected to physical violence by the police.

Mr. CELLER. But if they are arrested, they are arrested for violation of some section of title 18: is that correct?

Mr. SMITH. No, no. They would be arrested under a State charge.

Mr. FOLEY. State or local?

Mr. SMITH. Yes, or an ordinance. Before they could get some succor or some help of counsel, what happens is that under color of law, the State police officers or city police officers are going to beat them up to get a confession out of them or mistreat them on the way to the jailhouse or after they have gotten them there.

These people that do this can be charged under title 18, sections 241 and 242. That is the purpose of these criminal statutes.

Mr. CELLER. Your suggested amendment would bring the policemen and State officers under Federal statute?

Mr. SMITH. Much more securely than I think this present statute brings them under the prosecutive abilities of the U.S. attorney in that district. We feel that this would be a reasonable amendment, and I think it is certainly called for because I know, from experience in New Orleans, and Mississippi, and other States I have had occasion to practice in, including Alabama, that these cases occur.

Some of us that practice law down there bring suits under title 42, section 1893, 1895, as civil damage suits. There has been a recent one decided by the Fifth Circuit Court of Appeals, involving 12 or 13 college students on a tour of the South who happened to be eating lunch with Negroes. This fits in to the purview of this committee when you want to talk of a protection of civil rights in the South. We had to go all the way to the Fifth Circuit Court of Appeals to overcome an adverse jury verdict in a case where there was obviously no reason to arrest people. Where they were put in jail without reasonable cause, they were lucky; they were not beaten up.

But there are other cases handled by my office where people have been severely beaten by the police in their exercise of civil rights, particularly first amendment rights, so that we feel that where the demonstrators wish to exercise a right to talk to the public and to air their grievances, when the police can come in under a State charge and mistreat them, and then be able to protect themselves by saying, "Well, I didn't mean to do it. I had no intent—not that I didn't mean to do it, I had no specific intent to deprive them of their civil liberties," something should be done either to prevent this in advance or to grant a more effective prosecutive remedy.

I think all you should have to do in such a prosecution, if you are the U.S. attorney prosecuting, would be to show that you did this act or another act among those six that I have just outlined. I think it is perfectly proper and pertinent for this committee to consider that sort of an amendment.

Also one of the things we wanted to bring up as a suggestion to the committee would be that where you have sections 1893 and 1895 rights, that is color of law deprivations or deprivations of civil liberties and rights under color of law, and the conspiracy situation of section 1985, and where the U.S. attorney can ask for an injunction under 242. he also ought to be able to get an injunction to protect those rights under 42 U.S.C. 1983 and 1985 when they are in danger of being destroyed.

We have a situation where the police can enter into a conspiracy to arrest people. We know the conspiracy is going to take place. They actually arrest people under a disturbing-the-peace statute, worded just as in the *Garner* case and others. They say when somebody does something designed to alarm or inflame the public, this is a disturbing of the peace.

In the *Montgomery* case, the inflaming or alarming thing was having luncheon with Negroes. That is the way these statutes have been enforced.

Mr. FOLEY. You are talking about a broad one, to seek an injunction for the denial of any constitutional right?

Mr. SMITH. Yes, it would be a broad power.

Mr. CELLER. We passed that in 1957 in our bill. It passed the House but was defeated in the Senate.

Mr. SMITH. Of course I would reurge it on the committee. I think the passage of time since that defeat, Mr. Chairman, shows, even more clearly, the need for such a statute.

Mr. CELLER. I offered that provision. It is embodied in 1768.

Mr. FOLEY. Do you know of any case where a court has issued an injunction to enjoin a law-enforcement officer?

Mr. SMITH. Yes. As a matter of fact, I participated in a case in New Orleans, 2 months ago, where a three-judge Federal court issued an injunction to restrain the law enforcement officials of the city of New Orleans for enforcing a hotel segregation statute.

Mr. FOLEY. Wasn't that after the case that was recently decided by the Supreme Court?

Mr. SMITH. This, I think, rested upon—the case was so clear, I don't think it was necessary to rest on any recent decisions of the Supreme Court. This was a State segregation law that required segregation in hotels, and they restrained the police chief of the city of New Orleans from enforcing it.

Mr. CELLER. I just want to announce that we have three other witnesses besides yourself, and we must have those witnesses conclude their testimony.

Mr. SMITH. I will be very brief.

We would like to talk to you about one other thing, or two other things, and that is, first of all, the remand provisions of the United States Code, and that is 28 U.S. section 1447, Mr. Chairman. Certain civil actions or criminal prosecutions in the State court involving civil rights may be removed by the defendant to a Federal district court. Specifically, these actions are those described in 28 U.S.C. 1443 as pending against anyone who is denied or cannot enforce, in the State, the equal or civil rights. We know that the way this statute has been applied is that they will remove these cases, as you ordinarily do, by filing a petition for removal and then the judges almost uniformly remand these cases back because of their subjective judgment and mere opinion that there is no equal civil rights question or they are going to be afforded an equal civil rights remedy in a State court.

The problem is that there is no appeal from that remand. We would like to amend the statute to provide for an appeal from that remand, because I think it is incumbent for us to have an appellant review of that question.

There is something that I would like to call the committee's attention to that was in the morning paper. It relates to the problem in Virginia.

Mr. FOLEY. You have a case right in point in Danville.

Mr. SMITH. Right. I have a clipping right here where if there had been a review forthcoming from the circuit court you wouldn't have the problem they are going through with the injunction statute. After removal, the State asked for a remand, and there was a remand granted, and the persons arrested had no appeal rights. They are back in court on injunctions and Judge Sobeloff is sitting on the case and doesn't know exactly what to do. He doesn't know whether or not he can grant a declaratory judgment which would declare rights as to whether or not those arrested were entitled to a removal.

I think that that statute should be amended to allow appellant review of a remand order. I think it is incumbent in many of these situations that they be taken out of the State courts because it is clear you are not going to get a fair trial in State courts. I know that is true in rural Louisiana and rural Mississippi. You are just not going to get it.

We applied many times for writs of habeas corpus from State judges who tell us they are not going to enforce 14th amendment rights in their courts. You have to go to the Federal courts to get those rights enforced. They are simply not going to enforce civil rights. I think the case should be put in the hands of the Federal judges immediately who are willing to give some relief.

One other thing that I would like to talk about, and then I will turn it over to Mr. Higgs, Mr. Chairman. That is, we have another problem in the South, and that is a shortage of lawyers to represent people in civil rights and civil liberty cases. I have been in private practice for 12 years. I don't practice civil rights law to make money at it, we generally have a labor practice in my office, but I know that there are more civil rights cases in Louisiana and Mississippi and Alabama, where I can reach, than there are lawyers to cover them.

One of our problems, although I am a member of the supreme court bar of my State, the U.S. Supreme Court Bar and the bar of the Eastern District of Louisiana I cannot represent a civil rights plaintiff in a civil rights suit in a Federal court involving Federal law in another Federal district unless I can get somebody in that district to introduce me. A lot of times the lawyers say "I don't want to introduce you, it is going to cost me money, I will lose clients." Then they will say "I will do it for $1,000." Generally, you are in the case for nothing, or if not you don't get much, so I cannot afford it.

What I think we need in the South—and that is one of the things that the Lawyers Guild has addressed itself to, and that is to allow a lawyer in good standing with his own bar and in good standing with the Federal district court bar, whether Washington or Florida, to practice in any other Federal district court where the issue is not a diversity case, involving matters of local law. In other words, in civil rights cases there is a shortage of lawyers in the South that can take them or will take them, and the local bar associations are not meeting their responsibility. The existing lawyers have to spread their efforts very thin.

I think where a lawyer is a member in good standing of his home bar or Federal district court bar, he should be in matters of civil rights allowed to practice anywhere.

Mr. CELLER. Don't the rules of the Federal courts deny you the right to practice unless they know what you are there for?

Mr. SMITH. The practice varies. Sometimes they are very courteous and sometimes they are not. Sometimes they are obstructive and sometimes they will let you come right in. It depends how the individual judge feels about it. In Judge Johnson's court in the Middle District of Alabama, he is a very courteous gentleman, I had no trouble although I had to have a local bar member admit me for practice.

Mr. FOLEY. That is true outside of the Federal courts, too. You were admitted in Louisiana. You can't come up to New York and practice.

Mr. SMITH. Of course not.

Mr. FOLEY. And each district court decides by its own rules as to the admission of each lawyer.

Mr. SMITH. Yes. I think, however, as far as matters of civil rights go, that this should not be a matter for the district judges to decide on. I think if they are a member of one bar on these points, they ought to be able to practice in other bars.

Mr. FOLEY. Why do you distinguish civil rights from property rights in the question of admission to a bar?

Mr. SMITH. I would not feel competent to practice in Alabama on matters of local law, where they would come up to Federal jurisdiction.

Mr. FOLEY. Suppose it was not a question of jurisdiction?

Mr. SMITH. If it were Federal statutory law I think I should be allowed to practice there.

Mr. CELLER. Of course you could really circumvent State laws if you would be permitted to go from one Federal district to another regardless of how far you may travel. That means that you are admitted to the Federal court in your State. Then you go out to California and practice in the Federal court there, also. There may be State lawyers involved, and there may be citizens of the State of California involved. Do you want to go that far?

Mr. SMITH. It wouldn't make any difference to me about what citizens were involved. I would say the important thing is as to the kind of law involved. I am not going to tell you I can practice a law that I am not competent in. But in Federal law, a civil rights case, or Federal interstate commerce appeal in Birmingham the law would be the same as it would be in Little Rock. I don't see the difference.

Mr. CELLER. When you were refused by any Federal judge to appear in any Federal court, have you communicated with the chief judge of that district, or with the chief judge of the Judicial Council?

Mr. SMITH. To be quite frank, I have not been turned down. I can't say that that is the case. I do know of others that have been. We have tried to meet the rules requirements.

Mr. CELLER. How many such cases do you know of?

Mr. SMITH. I would say at least a half dozen offhand, right now. For example, I got a call the other day from the Student Non-Violent Coordinating Committee in Greenwood, Miss. They had 23 or 24 boys and girls up there in jail who had been helping people to vote. The city police had arrested everybody that was helping these people to vote, and had arrested the people they had registered to vote under an ordinance. The Justice Department comes there and takes the position that they will take care of the people registering because there was interference with their right to vote. They got them out of there. They filed a suit, and before an injunction could issue they let them go. But as to the youngsters under voting age the Justice Department said we won't fool with them. Twenty-three had been in jail for 2 weeks. They asked me to come up there. I knew I was going to have trouble in being admitted to that district. There are only three lawyers in the State of Mississippi that will take civil rights cases. Three of them, and their time is necessarily limited.

I will leave you with that. I know you are in a hurry and I appreciate your committee being kind and courteous and to give us the time to get these things across to you.

Mr. CELLER. You may submit any statement that you have.

Mr. HIGGS. Mr. Celler, on the voting, the committee has our two statements on the voting part. If I could just make these short comments which I believe will be of assistance to the committee.

Mr. CELLER. Do you want to put that in the record?

Mr. HIGGS. Yes.

Mr. CELLER. It will be put in the record.

Mr. CORMAN. May I touch briefly? It seems to me he has touched the thing that is the greatest threat to a breakdown of law and order and that is these instances where local law enforcement becomes a tool of illegal actions. Any of the people that I talked to in the trip through the South were more concerned about the protection of their physical being than they were of the other rights that we are discussing.

I appreciate the fact that the specific remedies he is discussing are not in the bill before us, but unless we meet this problem at the Federal level, we can not hope for establishment of peaceful conditions in many communities in the South.

I would be most hopeful that we could do something along the lines you suggested, because there is no question but that the brutality which is being inflicted on people a number of places now is unconscienable and there is no local remedy for it and far as I can detect no remedy under existing law, nor can these people look to the Attorney General's office for help because I doubt that he has the ability to help.

Mr. SMITH. That is right.

Mr. CORMAN. I think we are in for serious problems in the South unless we meet this specific problem promptly.

Mr. SMITH. I join in those comments. I would beg leave to submit to the committee an addendum to my remarks and I will submit it in sufficient copies to cover the entire committee.

Mr. CELLER. You may do that.

Mr. HIGGS. Mr. Chairman, on the voting part, in just a couple of minutes——

Mr. CELLER. Yes; identify yourself to the stenographer.

Mr. HIGGS. I am William L. Higgs for the Lawyers Guild. This is to title I of the administration's bill. I have these very brief comments.

First, there is no overall limitation in which the application must be decided in the district court. We would recommend that something like perhaps a 30-day limitation be placed upon finally deciding the application for a voting order in the district court.

There is a provision that says the court or the referee must hear it within 10 days, but there is no overall limitation in the present bill within which it must be decided. We fear that if such a limitation is not in the bill, then perhaps this will not take care of——

Mr. CELLER. You mean you want to tell the judge in what time he must decide a case?

Mr. HIGGS. We feel, if this is possible, if the committee concludes that this could be done, this would be a very useful provision.

Mr. FOLEY. Do you know of any Federal or State statute that does that?

Mr. HIGGS. Not offhand. There are State statutes. I know of State statutes, for example, New York.

Mr. FOLEY. Don't you think that would be encroaching on the judicial branch of the Government?

Mr. HIGGS. We feel that in view of the many other provisions in the voting rights title, which provides for the assignment of additional judges and as many judges as are necessary and also for expediting the cases, that some limitation would not be unreasonable.

Mr. FOLEY. But you are not touching upon the decision. In other words, you have taken the machinery of the court and expedited it, but do you think that the legislative branch has any right to say to the judicial branch "You must decide this case within that period of time"?

Mr. HIGGS. I am not certain that they do have the right. I think it would be a very useful thing if it could be done.

Mr. CELLER. I would hesitate to do that, sir. That would be putting undue clamps upon the judiciary freedom and discretion. I would hesitate to do that.

As I pointed out, there are school cases where judges have been dragging their feet as to their decision. One case is still pending after 7 years. Several cases are pending for 2 years.

I admit that that is an inordinate length of time, but most of the cases, I think, are expeditiously heard and tried, but this would be almost an insult to the judiciary, to put a limitation on the time during which they must render a decision.

Mr. HIGGS. We felt that in view of the other expediting provisions this would not be unreasonable, but I would like to move on very briefly to the other points, sir.

Secondly, the present bill provides that the panel of judges, as it is now written, will only apply to temporary voting referees. In other words, the panel to be appointed—the panel of judges to be appointed would not apply to all refrees. This would mean that a southern judge, if he were so inclined, could completely bypass the guarantees in the temporary voting refree procedure by, as soon as the Attorney General files a complaint, immediately making a finding of a pattern or practice.

This would then mean that he could appoint a permanent refree of his choice without paying any attention to the panel that had been created. Therefore, we would recommend that the district judge in appointing either a temporary or a permanent referee would have to pick that referee from the panel that had been created. We think that this is a loophole in the bill as now written.

The page is page 7, line 21, and so forth. We would recommend that in line 21 it read "In appointing a temporary or permanent voting referee."

Also, the panel, as now proposed here, is provided by the judical conference of the circuit, which would include all of the district judges, in addition to the circuit judges. We believe that this should be amended to read "chief judge of the circuit" or perhaps "judicial council of the circuit," which would be administratively similar and would provide that the creation of the panel be done at a high level. We think of it as a matter of crucial importance, particularly in the Fifth Circuit which includes the six key Southern States. This would make a very big difference because the district judges are to some

degree certainly influenced by the mores and customs of the district in which they sit.

Finally, we have the new proposal which is embodied in this addenda to the voting rights memorandum. We think that this bill would be tremendously strengthened by the addition on page 4, starting with line 4, (C), if they were to insert the proposed amendment here, which is the second one. It says:

> Employ any test or device as a qualification or prerequisite for voting in any election if the effect of such test or device is to deny or abridge in any way the equal right to vote of any class of citizens on account of race or color.

The effect would be to outlaw poll tax, literacy test, and other devices.

Mr. CELLER. Well, poll taxes are on the way out.

Mr. HIGGS. In Federal elections, but not State elections.

This would apply wherever there would be an attempt to deny the equal right to vote.

Mr. CELLER. There are only a few States with a poll tax now. If the administration recommended they drop it and there could be no poll tax for Federal elections, do you think that those States would maintain poll taxes for States elections?

Mr. HIGGS. I know they would, Mr. Chairman. In Mississippi I voted a year or two ago at the polls. They have separate boxes, separate proposals. Some you don't need the poll tax for, and some you do. If you have it, then you can vote in both. If you didn't bring your poll tax receipts with you, then you can only vote in one.

We would recommend this proposal most strongly. We fell that this one proposal would probably be stronger than any voting rights legislation on the books, because it takes care of any conceivable situation that might come up, not only the existing ones. The present legislation might be passed and then the Southern States adopt something else to bypass it.

The Congress would have to play cat and mouse and pass another bill to take care of the new southern ruses and devices. This proposed amendment would provide for any such future ruses or devices.

Thank you very much.

Mr. KASTENMEIER. Mr. Higgs, I appreciate your comments about—well, on all aspects of voting. You mentioned the chief judge and the reason for the desirability in your memorandum for having the chief judge of the circuit act. This is relevant not only in terms of this bill to the fact that yesterday, as a matter of fact, this committee passed out a bill purporting to aid indigent dependents but it did not include a public defender in which an earlier version of the bill did have a chief judge which was stricken and made judge of the district court, as well as to strike out any reference to any organization as a defender organization other than the bar association or the legal aid society.

This was the purpose of it.

With that in mind, I would think that in such a system this would also be a difficulty in the South, would it not, if you had a district judge who could appoint attorneys to be public defenders?

Mr. HIGGS. I think you are absolutely right, Congressman Katenmeier. It seems to me that when you put this in the hands of the district judge—in terms of civil rights, and particularly as far as Negroes

are concerned, who make up about half the population in a lot of States, and more among criminal defendants—this is a very unfortunate provision.

I think it should have been kept chief judge. I think other organizations should have been allowed to represent the defendants and I think the defendant himself should have been allowed to choose counsel of his own choice in that public defender bill.

Mr. FOLEY. This is only applied to criminal proceedings in violation of the Federal statute.

Mr. HIGGS. I understand.

Mr. KASTENMEIER. You lost the first round in the civil rights case, I might say, Mr. Higgs, at this point, so I can't be too optimistic for some of these provisions, although I agree with you.

Mr. CELLER. Thank you very much, sir.

Mr. HIGGS. Thank you so much, Mr. Chairman.

(The material referred to by Mr. Higgs is as follows:)

WASHINGTON HUMAN RIGHTS PROJECT,
Washington, D.C.

EVALUATION OF THE ADMINISTRATION'S CIVIL RIGHTS BILL, TITLE I (VOTING RIGHTS)

The provisions of the Kennedy administration's civil rights bill dealing with voting rights (H.R. 7152 and S. 1731, title I) would enact several changes in the existing statute, the Civil Rights Act of 1960. The proposed changes are, in essence:

1. A declaration that no person acting under color of law shall, for Federal elections, "apply any standard, practice, or procedure different from the standards, practices, or procedures applied to individuals similarly situated who have been found by State officials to be qualified to vote."
2. In registration for Federal elections, a presumption of literacy in the case of a person who has completed the sixth grade.
3. A ban on refusing to register a person for Federal elections based on immaterial errors or omissions in his application.
4. A temporary voting referee procedure under which citizens may be registered for all elections during the period of time taken for trial, when the Attoney General certifies that less than 15 percent of the Negroes in an "affected area" are registered.

The voting rights section of the 1960 act has not been enforced in practice, principally because southern Federal district judges have used the broad discretionary powers granted them to frustrate its intent. The revisions suggested by the present administration represent a distinct improvement. But the bill, as it now stands, does not restrict those discretionary powers to a degree sufficient to provide assurance of a meaningful increase in the number of Negroes registered to vote in the South. Note that 1, 2, and 3 apply only to Federal elections; 4 applies to all elections, State and Federal.

Background

The 1960 Civil Rights Act empowers the Attorney General to bring an action in Federal district court against officials of a State who deprive any person of his right to vote by reason of color or race. The Attorney General also is empowered to request the court to "make a finding whether such deprivation was pursuant to a pattern or practice" of the area. If the court finds that such a pattern or practice exists, then any citizen of the same race in the area who has been denied the right to vote is entitled to apply for an order declaring the applicant qualified under State law to vote. This provision, aimed at enrolling Negroes in significant numbers, was the act's crucial innovation.

The statute established a procedure of registration whereby the qualification order issues after a hearing before the court or before a voting referee appointed by the court. The act directs the referee to use the State law in determining whether the applicant is qualified. The hearing is ex parte; that is to say it is not a trial-type hearing where testimony is taken on both sides, witnesses

cross-examined and attorneys permitted to argue. Instead, the applicant's answers alone are prima facie evidence of his literacy and of the denial of his rights to vote or to qualify as a voter. The record of the hearing is closed to further introduction of evidence, and the issue of the applicant's "literacy" is determined solely on the record before the referee, though the State may go before the court to contest legal and other factual findings by the introduction of evidence.

After receiving the referee's report, the court, under the statute, must dispose of the case by sending a copy of the report to the State's attorney general, together with a show cause order why the order declaring the applicant qualified should not be entered in 10 days. If the State makes no answer, the order is entered and the applicant declared qualified to vote. If the State files its exceptions within the 10-day period, then a hearing is held before the court, or the referee, if the court so directs. If the court denies the applicant his order, his case may be appealed to the court of appeals.

How has this machinery created by the 1960 act functioned in practice? Unfortunately, its results have been extremely minimal. In particular, the voter referee plan for the enrollment of Negroes has proven a purely paper advance. Thirty-eight suits have been filed by the Attorney General under the 1960 act and its predecessor, the Civil Rights Act of 1957, but in none of these has the district judge exercised his option to appoint a referee. In only one of these cases has the judge himself consented to hear the applications of Negroes in addition to the one on whose complaint the Attorney General's suit was based.[1] In the remaining 22 suits brought under the acts and decided, presumably the local registrars are under an injunction to cease discriminating against Negro applicants.[2] With respect to the 16 suits still undecided, no such injunction exists. And, of course, in the hundreds of localities unaffected by these suits, authorities are under no form of compulsion whatsoever to end discriminatory registration. The Attorney General claims to know of at least 200 counties where less than 15 percent of the Negro population of voting age is registered. The Civil Rights Commission reports that in 100 southern counties selected for review in 1960 and again in 1963, the ratio of Negroes of voting age who are registered to Negroes of voting age has increased about 3½ percent.

The administration bill in the light of experience

In short, the increase in Negro voters affected by the Civil Rights Act of 1960 must be termed marginal, at best. Loopholes in its language and obstacles to its enforcement have proven powerful enough to frustrate its intent almost completely. Do the voting rights provisions of the bill just presented to Congress by the present administration overcome the deficiencies of its predecessor? The Kennedy bill does appear to close the majority of loopholes in the old law. But these are discouraging weaknesses in its approach to the paramount obstacle encountered in the enforcement of the Eisenhower act: the refusal of southern district judges to serve as agents of Negro enfranchisement.[3]

In any case, a number of former loopholes are disposed of by the new bill. Formerly, registrars applied stringent standards to Negroes and lax standards to whites; the new bill explicitly forbids such practices. The "errors or omissions" paragraph closes the door to a common excuse given by registrars in denying registration to Negro applicants who are otherwise qualified. Requiring literacy tests to be given in writing preserves evidence which can be used in

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[1] *U.S.* v. *Manning*, May 1962 (East Carroll Parish, La.). Federal Judge Dawkins personally heard approximately 60 applicants, after the local registrar had closed his office and resigned. The Judge found 41 of the applicants qualified, and they were allowed to vote in the 1962 State and Federal elections, though they were not placed on the official State list of registered voters.

[2] The Civil Rights Commission reports that although significant results are seen in those few counties where judges have issued "meaningful decrees," many injunctions have gone unobserved because judges have refused to use the contempt power to enforce them. The Justice Department says that it is beginning a complete followup on decrees won under the 1960 act.

[3] A recent incident involving Judge Cox of Mississippi shows how far a racist on the bench will go to prevent Negroes from registering. A Justice Department attorney reports that in several Mississippi counties affected by suits, the voting registrar doubles as clerk of courts, and that Cox has in 7 cases invalidated applications addressed to the registrar on the grounds that they were sent to the wrong official. Judges like Ellis and West of Louisiana, Algood of Alabama, Elliot of Georgia, and Mize and Clayton of Mississippi have proven themselves possessed of similar predilections. Mize, in one of a plethora of opinions reversed by the Fifth Circuit Court of Appeals, held that the University of Mississippi had never practiced a discriminatory admissions policy, and that James Meredith had been refused simply because he was not qualified for entrance.

subsequent contempt proceedings. This provision, coupled with the present law referee plan for the enrollment of Negroes has proven a purely paper advance. followup action by the Department of Justice. More important, H.R. 7152 contains a presumption of literacy when the applicant has completed the sixth grade in a "public school in, or private school acredited by, any State." The language of the presumption closes a major escape to Southern States who do not accredit Negro public schools.[4] It is an easily administered standard; one that can be rebutted only by actual proof of illiteracy.[5] Note, however, that these three improvements apply only to Federal elections.

Encouraging as these revisions are, their effect will be nil, unless the bill's key mechanism of enforcement can be made to work. This is the basic voting referee procedure created by the 1960 act, made more efficient by the stipulation that the court or a temporary referee appointed by it hear applicants as soon as the Attorney General brings suit. Under the law now on the books, the registration procedure does not go into effect until after the district judge finds a pattern or practice of discrimination.

Under the administration bill's provisions, whenever the Attorney General has requested a finding of a pattern or practice of discrimination and has alleged that in the affected area fewer than 15 percent of the total number of voting-age Negroes are registered, then any Negro in the area is entitled to an order declaring him qualified to vote upon proof that "(1) he is qualified under State law to vote, and (2) he has since the filing of the proceeding * * * been (A) deprived of or denied the opportunity to register to vote or otherwise qualify to vote, or (B) found not qualified to vote by any person acting under the color of law." Copies of the order are served upon State election officers. The refusal by any officer to permit persons declared qualified to vote constitutes contempt of court. Outlined voting referee procedure continues in effect until a final determination of the primary suit. This includes review by the court of appeals or the Supreme Court. If the case then is decided against the Attorney General, all orders issued by the court are void.[6] (If a "pattern or practice" is found by the district court, then a permanent referee merely takes over from the temporary one.)

However effective this procedure might be if administered by an impartial judge, such will not be its fate if it becomes law. At two crucial points in the procedure stipulated by the administration's bill, ample opportunities are available for a judge bent on stymieing its purpose.

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[4] The 9 different voting rights bills introduced so far in Congress (representing more than 50 Congressmen) split over the issue of permitting the State to determine by its accreditation of its public schools whether it will recognize the sixth-grade education of an individual to be the equivalent of literacy for voting purposes. The language embodying this proposal usually reads: "the sixth grade in a school accredited by any State." Its practical effect in States such as Mississippi, where the majority of its Negro elementary schools are unaccredited even today, is to negate any operation of a literacy presumption in significant numbers.

[5] The legal effect of a presumption is not to be confused with irrefutable fact. A presumption can be rebutted by a showing of some appreciable evidence which negates or contradicts the presumption. Since the hearing is ex parte, no fact can come before the referee contradicting the sixth-grade presumption of literacy unless it comes from the applicant himself; and when the referee makes his findings as to the applicant's "literacy," the referee's decision is reviewable only on the record made before him.

[6] The procedure to be followed by the applicant is as follows:

1. He attempts to be registered by the proper State official and is denied an opportunity to register or is found to be not qualified.
2. He applies to the court for an order declaring him qualified.
3. A hearing is held within 10 days of his application before either a temporary voting referee or the court.
4. The referee may receive applications, take evidence, and report findings as to whether the applicant is entitled to an order declaring him qualified to vote under State law. The hearing before the referee is ex parte. It is not a trial-type hearing; only the referee and the applicant take part.
5. The court, upon receiving the referee's report, sends copies to the State attorney general and to each party together with an order to show cause why an order should not be entered within 10 days declaring the applicant qualified to vote.
6. At the end of 10 days the order is required by law to be entered unless the State has filed exceptions.
7. If exceptions are filed, the court or the referee holds a hearing to settle the issues of fact and law raised. The applicant's literacy, however, is determined solely on the basis of answers included in the report of the voting referee.

The first of these points is the appointment of referees to receive Negro applicants, once the Attorney General has brought suit. The stipulation in the bill that the judge appoint referees from among a panel chosen by the Judicial Conference will not seriously inhibit his power to appoint referees who will not give applicants a fair hearing. The Judicial Conference is composed of the district court judges and the circuit court judges within the jurisdiction of a given circuit. Any panel selected by the conference of the fifth circuit (Alabama, Florida, Mississippi, Georgia, Louisiana, and Tennessee, which includes most of the States of the Deep South) will contain a number of dedicated racists. The best remedy for this loophole—and one which will not be open to the charge of registrars imposed upon a locality by Washington—is to substitute "the chief judge of the circuit" for "Judicial Conference" as the nominating agency. Alternative, but progressively weaker proposals are:

(1) "The chief judge of the circuit with the advice (and consent) of the judicial council of the circuit," or

(2) "The judicial council of the circuit."

The judicial council is composed of the circuit judges alone, men who are freer from local prejudice and, in the case of the fifth circuit area, men who, in the civil rights field, take their responsibility as judges considerably more seriously than do the district court juges. However, the chief judge alone would be even less likely to be so influenced. The present chief judge of the fifth circuit, Judge Tuttle, is most fair and progressive on the civil rights issue, as is his probable successor. Both are Eisenhower appointees and Republicans.

The second facet of the bill's procedure that offers opportunity to a recalcitrant district judge is that its provisions enable him to allow applications to go undecided indefinitely. The bill does state that all applications to the court must be heard within 10 days. Unless the State files exceptions to the referee's report, the order declaring the applicant qualified to vote issues as a matter of course. But this crucial "unless" gives the judge the opportunity to allow State exceptions (the State may challenge each individual application) to subvert the entire voter referee procedure. Only the immoderately loose prescription that it is his "duty to cause the case to be in every way expedited" inhibits the judge. This loophole can be closed by adding a reasonable time limit, such as 30 days, within which applications must be heard and finally decided in the district court. Objections have been raised against this sort of constraint by southern district judges on the grounds that their dockets are already overloaded and behind schedule; this argument is specious and can be answered by pointing out the summary nature of normal voter registration proceedings, and the power of the judge to appoint referees to handle this chore for him, and also by the new provisions of the act requiring and authorizing the bringing in of additional judges—as many as necessary.

Concluding remarks

Even if the voting rights section is tightened as suggested, its success in practice will depend heavily on political factors. Paramount among these will be the number and quality of suits emanating from the Department of Justice, and the size and discipline of Negro registration drives in the South. Also helpful will be more indirect forms of pressure, as, for example, House Judiciary Committee Chairman Celler's remark that he might look into his responsibility with respect to impeachment proceedings, if district judges continue to defy the intent of the law so blatantly. The airing of more efficient alternatives would help make clear to the South the stake it has in complying with the administration's relatively moderate approach. The best example of such proposals is the concept of presidentially appointed Federal enrollment officers endorsed by the Civil Rights Commission report of 1959, introduced in Congress in 1960 by Representative Kastenmeier and Senator Javits, and in 1963 by Representative Moorhead (H.R. 6300). Others are the bills introduced by Representative Stratton (H.R. 6801) and Senator McNamara (S. 1766) providing for enforcement of the second section of the 14th amendment by reducing a State's representation in the House in proportion to the extent that it discriminates in voter registration, and the constitutional amendment introduced by Representative Dingell (H.J. Res. 3) to make universal suffrage a constitutional guarantee.

WASHINGTON HUMAN RIGHTS PROJECT,
Washington, D.C.

ADDENDA TO VOTING RIGHTS MEMORANDUM

I. The following suggested amendment to the administration's voting rights title is designed to provide a far reaching, new guarantee of the Negro's right to vote. The amendment would be inserted as clause "(C)" after the present clause "(B)," and the present clause "(C)" would be relettered clause "(D)."

The newly proposed clause "(C)" would read as follows:

"No person acting under color of laws shall * * *

"(C) employ any test or device as a qualification or prerequisite for voting in any election if the effect of such test or device is to deny or abridge in any way the equal right to vote of any class of citizens on account of race or color."

An alternative formulation is as follows:

"No person acting under color of laws shall * * *

"(C) employ any test or other device as a qualification or prerequisite for voting in any election if a principal purpose and effect of such test or device is to deny or abridge in any way the equal right to vote of any class of citizens on account of race or color. If an effect of any such test or device is to deny or abridge in any way the equal right to vote of any class of citizens on account of race or color, then such effect shall be presumed to have been intended, unless clearly shown to be otherwise."

Historically, beginning with Mississippi and its constitution convention of 1890, the Southern States adopted the poll tax, literacy test, constitutional interpretation test and other such means to circumscribe and to effectively deny the Negro's right to the ballot. The above provision would strike at the heart of these devices, all of which are designed to and do fall unequally upon whites and Negroes. While the provision covers the poll tax, literacy, and interpretation tests and other such devices already in use, its chief virtue is its generality and comprehensiveness which enables it to apply to yet unborn ruses of voting discrimination.

All other proposed legislation, by prohibiting one or another specific discriminatory test, only encourage southern inventiveness to work out new methods for limiting the franchise. The "good moral character test," for example, could well become a new and legal frontier for discrimination; many Southern States have already enacted it—Mississippi by way of an amendment to the State constitution. This new test could, of course, be eventually prohibited or regulated by Federal legislation. But most effective would be a law at one stroke outlawing all tests which are now being used or might be used by Southern States to deny Negroes as a class the right to vote.

The new provision would be enforced under existing law, either by (1) an individual, who could enjoin the application as to him or others similarly situated of a discriminatory test (42 U.S.C. 1983), or (2) by the Attorney General, who could enjoin the application of a discriminatory test to a racial group (42 U.S.C. 1971c).

The provision has a clear constitutional base in the enforcement powers granted to Congress by the second section of the 15th amendment. The equal protection clause and the 5th section of the 14th amendment provide further constitutional support.

It is to be noted that the proposed provision could in effect have a built-in penalty for those States that enacted discriminatory voting qualifications. Since the discriminated race would not be subject to the particular qualification and the favored race would, the Negroes would gain a distinct advantage.

In addition to its direct effect on the discriminatory tests and devices, this provision would have the important collateral benefit of removing the present incentive Southern States have for maintaining the education of Negroes at a relatively low level.

It should be noted that under the first formulation, proof of intent or purpose to deny the Negro the ballot is not required. Only the effect need be shown. However, the presence of "on account of race or color" could allow a court to exclude from the proposal's ambit those laws which are clearly not intended to be discriminatory. The second formulation explicitly recognizes the element of intent, but places a burden of rebutting the presumption of intent upon the State.

II. A second technical recommendation deals with a short but important amendment to the voting rights title that would remove a procedural loophole

which could be used to defeat the title's intent. The title as now written instructs the Federal district judge that "In appointing a temporary voting referee, the court shall make its selection from a panel * * *(subsec. f, par. 5, 7, line 21). This sentence should be amended to read, "In appointing a temporary or a permanent referee, the court * * *."

Without this change a judge could evade the purpose of the bill of requiring that the referee be chosen from the panel. He could do this by the following procedure: The judge would decide the case immediately to the extent of affirming the Attorney General's allegation that a pattern or practice of discrimination exists, thus terminating the temporary voting referee procedure of the present bill, thereby invoking the permanent voting referee provision of the 1960 act, which allows the judge to bypass the panel and have unlimited discretion in appointing the referee.

H.R. ———

IN THE HOUSE OF REPRESENTATIVES

June —, 1963

Introduced by Mr. ———— and referred to the Committee on the Judiciary

AN ACT To amend Chapter 89 of Title 28 of United States Code for the purpose of providing for the effective removal of criminal prosecutions from those State courts where citizens of the United States are being deprived of their equal constitutional rights and other equal rights as guaranteed by the laws of the United States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

SECTION 1. Title 28, United States Code, Section 1443 is amended by the addition of the following paragraphs:

"The right of removal under this section shall be freely sustained; and this section shall be construed to apply to any State action (executive, legislative, administrative, or otherwise) having the effect of denial or abridgement of equal rights."

SEC. 2. Title 28, United States Code, Section 1446(c) is amended by the deletion of the words "before trial".

SEC. 3. Title 28, United States Code, Section 1447(d) is amended by the deletion of the word "not".

COMMENTS ON PROPOSED AMENDMENTS

At the present time, citizens of the United States engaged in the struggle for equal rights for all citizens are being viciously presecuted and incapacitated by means of totally unfounded criminal prosecutions in many State courts, primarily in the South. Review by the U.S. Supreme Court via the State court system is often years away and largely ephemeral. The present civil rights removal statute (title 28, United States Code 1443) has been so restrictively interpreted (as a matter of statutory construction, not as a lack of congressional power under the Constitution, *Virginia* v. *Rives*, 100 U.S. 313 (1879)) that its use has been almost totally limited to cases where the State constitution or State statutes deny or create the inability to enforce a citizen's equal rights. The proposed amendment would explicitly extend the right of removal in cases of denial or abridgement of equal rights to any situations brought about by State action of any kind. This extension should cover the recent arrests and prosecutions in Greenwood, Birmingham, Jackson, and elsewhere.

In addition, the amendment to the judicial code of May 24, 1949, added a new subsection (d) to section 1447 of title 28, United States Code, which guaranteed that the remand by a Federal district judge of a removed case could not be reviewed in any way by a U.S. court of appeals or the U.S. Supreme Court. This provision has effectively given many southern racist Federal judges a carte blanche to deny any effective Federal judicial relief for citizens prosecuted in State courts for exercising their constitutional rights of assembly, petition, speech, and otherwise. The proposed amendment would expressly make freely available review by the U.S. circuit court of appeals of a judge's decision to remand.

Also, as the Supreme Court pointed out in the *Rives* case, the present statutory language of title 28, United States Code, 1446(c) does not allow for removal when rights are denied by the State courts after trial has begun. And in many cases at the present time it is just after the beginning of trial that the grossest

deprivations of equal rights occur. The proposed amendment to subsection 1446 (c) will allow removal at any time the denial or abridgement of equal civil rights occurs, whether before or after the beginning of the State court trail.

It should be further noted that the removal from State court into Federal court takes effect immediately upon the filing of a removal petition in the Federal district court and in the State court; the State court is immediately divested of all jurisdiction; and any subsequent proceeding by the State court is void.

APPENDIX

CHAPTER 89.—DISTRICT COURTS: REMOVAL OF CASES FROM STATE COURTS

1443. Civil rights cases

Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendent to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that is would be inconsistent with such law.

(June 25, 1948, ch. 646, 62 stat. 938.)

1446. Procedure for removal

(a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a verified petition containing a short and plain statement of the facts which entitle him or them to removal together with a copy of all process, pleadings, and orders served upon him or them in such action.

* * * * * * *

(c) The petition for removal of a criminal prosecution may be filed at any time before trial.

* * * * * * *

(f) If the defendant or defendants are in actual custody on process issued by the State court, the district court shall issue its writ of habeas corpus, and the marshal shall thereupon take such defendant or defendants into his custody and deliver a copy of the writ to the clerk of such State court.

1447. Procedure after removal generally

(a) In any case removed from a State court, the district court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise.

(b) It may require the petitioner to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court.

(c) If at any time before the final judgement it appears that the case was removed improvidently and without jurisdiction, the district court shall remand the case, and may order the payment of just costs. A certified copy of the order of remand shall be mailed by its clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(d) An order remanding a case to the State court which it was removed is not reviewable on appeal or otherwise.

STATEMENT OF DR. WALTER J. LEAR, MEDICAL COMMITTEE FOR CIVIL RIGHTS

Dr. LEAR. I am temporary general coordinator of the Medical Committee for Civil Rights.

Our committee deeply appreciates the opportunity to present its views on the President's civil rights bill.

As you have requested, I will try to summarize our statement. As a committee we feel that racial segregation and discrimination are immoral and undemocratic. It is urgent that they be eliminated promptly and completely.

Mr. CELLER. Will you tell us first what is the Medical Committee for Civil Rights?

Dr. LEAR. We do have an introductory paragraph here that I was skipping trying to follow your suggestion.

The Medical Committee for Civil Rights was recently organized by a group of physicians and other health workers. Our purpose is to enable physicians and other health workers from all sections of the country to participate in the current historic struggle for equal opportunity and human dignity for all citizens.

Mr. CELLER. Where is your office?

Dr. LEAR. Our office is located in New York City.

Mr. CELLER. Are most of the physicians from New York?

Dr. LEAR. We have received financial support from physicians and health workers throughout the Nation. We estimate somewhere more than 50 percent of our supporters come from outside of the New York area. Our temporary officers, since we were only formed about 6 weeks ago, all do come from the New York area.

Mr. CELLER. How many members do you have?

Dr. LEAR. We do not have membership at this time. We are only 6 weeks old and we have not yet decided whether to have members. We have over 200 physicians throughout the country who have given us financial support, but we have not yet decided about membership.

Mr. CELLER. Where do you practice?

Dr. LEAR. I am a specialist in public health and administrative medicine.

Most of the physicians associated with our committee are practicing physicians. My professional areas of interest are community health services, health legislation, and health insurance. This is one of the reasons why I was asked to prepare the testimony of the committee on H.R. 1752.

In addition to our attitude as citizens, we would like to emphasize as physicians and health workers we are particularly aware of the tragic impact of racial segregation and discrimination on the health of the Negro people. We see abundant evidence of this in our daily office, clinic, and hospital experience. Our personal experience is corroborated by many categories of public health statistics.

For those of us who are not statisticians (that is, most of us) the statistics on infants are the simplest to follow and the clearest in their implications. In most communities in the South and in the northern cities with Negro ghettos, the chances of a Negro baby dying within the first year of life are usually at least twice that of a white baby.

We have given examples of figures for three cities in our statement and in our appendix B we have several other selected cities.

Of course, most Negro babies, like most white babies, do survive but the Negro babies have a greater chance of starting life with a health handicap. A particularly well-documented and significant health handicap is prematurity, best shown by the weight of the baby at birth. In communities where Negroes are subject to major segregation and discrimination, the Negro baby is much more likely to be born prematurely.

Here again we illustrate with figures from selected cities.

Premature babies may get excellent medical care if they are born in or near a hospital with a modern center for premature infants, but all of them have to struggle with their underdevelopment and the many premature babies who never overcome this handicap are unable, as they grow older, to take full advantage of the opportunities available to them in their homes, schools, churches, and communities for development as a complete human being.

The substantial disadvantage in the health status of the Negro population as compared to the white population is also shown by the figures for life expectancy and death rates. Only one example need be cited, the death rate for tuberculosis. This is a disease well recognized by the medical profession to be associated with deprivation.

Death rate from tuberculosis of the respiratory tract (number per 100,000):

	White	Nonwhite
U.S.; males	7.9	17.4
U.S.; females	2.5	8.3

These figures are all obtained from a standard Government reference which is called "Vital Statistics of the United States," the last edition covering the figures for the year 1959. We have the page numbers and the title numbers in the references.

No matter which disease or health handicap, the social consequences are similar for the afflicted individual and his family.

Deprivation and poor health become a cycle which is unbreakable by most of those involved. Low income, inadequate education and occupational training, poor housing and environmental sanitation, improper nutrition and health habits, insufficient and often second-class medical care, all produce more and more severe health problems. These in turn, make difficult or impossible improvement of income, education, job capabilities, housing, sanitation, nutrition, health habits, and medical care.

More tragic still, as shown in the first set of figures, is that the deprivation of the parents fosters disease and health handicaps in the children. These usually combine with the forces producing the original deprivation to assure the continuation of this cycle in the children as they grow up. And so deprivation and poor health are "passed on" from one generation to the next.

For the Negro, this cycle cannot be broken unless the pattern of racial segregation and discrimination is eliminated. H.R. 7152 is a necessary part of a program that would break this cycle. Consequently, we as citizens and as professional health workers respectfully urge you and the Congress to approve H.R. 7152 as quickly as possible.

Our committee is particularly concerned with racial segregation and discrimination in medical societies, hospitals, and all other aspects of medicine and health services. As physicians and professional health workers we know that racial segregation and discrimination lower the quality of patient care and violate professional ethics.

A major task of our committee is to encourage the medical profession to work voluntarily for full integration wherever racial segregation

and discrimination exist in medicine and health services. For this reason, the committee's first project was an appeal to the American Medical Association to speak out against racial segregation and discrimination and to give leadership to efforts to eliminate the racial exclusion policies of medical societies and hospital staffs and to eliminate the racial segregation of patients in all community health services and facilities.

Mr. CELLER. Which they refuse to do?

Dr. LEAR. That is correct.

Mr. CELLER. In other words, the American Medical Association has refused to go on record, very likely because of their southern chapters, against discrimination in the medical and health services?

Dr. LEAR. They have refused so far. Mr. Celler, we have publicly announced that since we believe strongly that the American Medical Association must take leadership we are going to continue our appeal to them to assume their responsibilities in this connection.

Mr. KASTENMEIER. Are many or most of your members members of the American Medical Association?

Dr. LEAR. Dr. Holloman and myself are both members of the American Medical Association.

As you probably know, Mr. Kastenmeier, there are physicians who are supporting what we are doing in one way or another that are not permitted to join medical societies in the counties in which they practice.

Mr. CELLER. Has that been publicly stated, that the American Medical Association has refused to go on record as being opposed to discrimination in the medical profession and in the health services?

Dr. LEAR. We have attached to our statement an appendix which is a photoreproduction of the publicity that our project received in Atlantic City. This was the first time, to my knowledge, that the subject, which you refer to, received this kind of national publicity. It was also recorded by the television news people and the radio news people.

Mr. CELLER. Did the American Medical Association absolutely refuse to go on record with any kind of a statement by the American Medical Association?

Dr. LEAR. Yes, sir. They issued two statements in 2 days during the annual convention. They issued one statement on the day before the picture that you see there was taken, and they issued the second statement an hour prior to the time that picture was taken.

I do have their statements, and I would be glad to submit these for the record if you would like.

Mr. CELLER. What was the statement? What did it say?

Dr. LEAR. This is the first statement from the American Medical Association. "A thermofax copy of a letter from the Medical Committee for Civil Rights in New York, signed with the names of two Negro physicians"—(I am one of the signers but I am not a Negro)—"who are members of the American Medical Association has been given to the AMA board of trustees by newspapermen."

Although none of the officers or members of the board of trustees has received this letter officially, inquiry has been received from the members of the press and members of the board will reply to the four questions contained in the copy submitted to the board.

The questions and the board's reply follow: They answer four subsidiary questions in what I will read here. What they did not answer is the first general question; namely, would they issue a statement opposing racial segregation and discrimination. With this interjection, I will then read their answers to our four specific——

Mr. CELLER. Does that appear anywhere in your statement?

Dr. LEAR. Our letter to them and their reply?

Mr. CELLER. Yes.

Dr. LEAR. No, but I will——

Mr. CELLER. I would like you to put that in the record.

Dr. LEAR. I will submit the entire correspondence for the record.

Mr. CELLER. Meanwhile, read what you intended to read.

Dr. LEAR. You do not want me to read any further from the answer of the medical association?

Mr. CELLER. You were going to read something when I interrupted you.

Dr. LEAR. My testimony.

Mr. CORMAN. The letter.

Dr. LEAR. The first question, which is our question:

Will you use your considerable personal and organizational strength for terminating the racial exclusion policies of State and county medical societies?

Their answer:

The American Medical Association has a longstanding policy of nondiscrimination in the association and similar organizations.

My interjection: We know of no such written policy.

Mr. CELLER. Negroes have been admitted to the American Medical Association?

Dr. LEAR. This is what they say: "Many Negroes are members of the AMA. Dr. Peter Marshall F. Murray, New York, a Negro, was a member of the AMA House of Delegates for 12 years."

My interjection: He has been the only such member of the house of delegates, of the national association.

Their statement continues:

In a special address before the house of delegates in 1961 he reviewed the progress and the admission of Negroes to membership in medical societies. He said, "Only in America could a man of my race experience the rich and varied evidence of friendship in my service in the House of Delegates of the AMA."

"One resolution," the AMA continues—

adopted by the AMA House of Delegates in 1950 recommended "that constituent and component societies, having restrictive membership provisions based on race, study this question, with the view to taking such steps as they may elect to eliminate such restrictive provisions."

What I have read is to the best of our knowledge the only written statement of policy by the House of Delegates of the American Medical Association or its board of trustees. Despite the fact that they have said they have a longstanding policy, this is the only thing in writing that we have been able to find or that they have ever issued as coming from their two principal policy bodies, the board of trustees or the house of delegates.

Mr. COPENHAVER. Doctor, would you estimate, if you know, how many of the local county societies remain——

Dr. LEAR. We are working closely with all the other civil rights organizations. One of these organizations is the National Urban League. We are working with them right now in developing the answer to the question you have asked. There apparently is no up-to-date figure on this for today. We would hope we will have this answer for you in the next month or so.

Mr. COPENHAVER. Secondly, Doctor, under the existing regulations of the AMA, do they have authority now, without having to amend their constitution to take action against the local society which continues to segregate?

Dr. LEAR. To answer your question, I would like to start first with the last paragraph of the AMA's reply on this subject and that says:

> The decision as to membership in the component county medical societies or on hospital staffs is outside the jurisdiction of the AMA and is a matter of local concern. (House action June 1944.)

This is the date of the answers given in June 1963 by the American Medical Association to this problem. I am not a student of the constitution of the American Medical Association. Listening a little bit to Mr. Meany today, I would suspect that if the labor movement could prevail upon most of its constituents to take actions, we would think that the American Medical Association leadership might also be able to prevail on some of their more recalcitrant constituent societies.

Mr. CELLER. I would say personally, I think the attitude as you express it, if it is so on the part of the American Medical Association and their failure to give full devotion to the principle of integration is, to my mind possibly reprehensible. I think the American Medical Association should be subject to criticism.

Dr. LEAR. I will summarize the answers from the AMA on the other three points. One had to do with whether they would provide national membership and, to skip the details, they end up by saying they could not change their membership provisions for the "exclusive purpose of favoring any group."

The third question had to do with the "separate but equal" clause of the Hill-Burton Act and their answer was, "This will be referred to the council on legislative activities," which is the proper body in the AMA to deal with legislation.

The fourth point had to do with the system of accrediting hospitals in this country, which is done by a nongovernmental, national organization, supported by the four principal health organizations in this field, the American Medical Association and the American Hospital Association being the most important.

A commission representing these national organizations has a staff which inspects hospitals and measures their performance and their facilities against a set of criteria. We had suggested that one of the criteria for a hospital being approved by this joint commission on accreditation of hospitals be racial integration of patient services. We suggested this on a professional basis, that having parallel services in a hospital, one for white and one for Negro, lowers the quality of medical care.

Mr. CELLER. That is separate?

Dr. LEAR. Within the hospital they segregate their patients with Negroes in one section and whites in one section. This can only lower the quality of medical care.

Mr. CELLER. What is the name again of those four organizations in the accreditation commission?

Dr. LEAR. This is the Joint Commission on the Accreditation of Hospitals.

Dr. CELLER. What is the first one, American Medical?

Dr. LEAR. The two most important are the American Medical Association and the American Hospital Association.

Mr. CELLER. Does the American Hospital Association take the same attitude as to discrimination that the American Association does?

Dr. LEAR. To the best of my knowledge, the American Hospital Association has never issued any statement concerning the subject one way or the other.

Mr. CELLER. Have you asked them concerning their views?

Dr. LEAR. They will have a convention in the end of August and the Medical Committee for Civil Rights will address an appeal to them, also, to take leadership to desegregate hospitals.

Mr. CELLER. When you send your letter and get your answer, let us have the letter and the answer.

Dr. LEAR. We would be very pleased to do that.

Mr. CELLER. What are the other two of the four?

Dr. LEAR. The American College of Physicians and the American College of Surgeons.

Mr. CELLER. Do those two organizations assume the same attitude as the American Medical Association?

Dr. LEAR. To the best of my knowledge, neither has ever issued a statement on the subject.

Mr. CELLER. Are you going to address a letter to those two organizations?

Dr. LEAR. We would hope to.

Mr. CELLER. When you get an answer, let us have your letter and their reply.

Dr. LEAR. Actually, the joint commission of this body is meeting in August. We have asked the joint commission whether the answer to the AMA on this particular point; namely, that it would be discussed by the joint commission, is on the agenda for their August 10 meeting.

Mr. CELLER. What about the American Dental Association? Do you know anything about them?

Dr. LEAR. The American Dental Association at a national level does have a definite policy opposed to racial exclusion policies in their State societies. As I understand it, although I have not personally seen the resolutions or the correspondence, the national office of the American Dental Association has sent a directive to its State branches requesting that they comply with the national policy.

To the best of my knowledge, certain States have still not complied although this directive to them went out, as I understand it, over 1 year ago.

We will submit for the record the correspondence that we have had with the American Medical Association.

However, even if the AMA leadership accepts its national responsibilities, it is neither morally nor scientifically proper that the optimal health and, at times, even the life of any Negro patient be dependent on the willingness of the medical profession and the hospitals of his own community to offer him voluntarily what is his right.

The Negro has several major approaches to use in obtaining or protecting his rights. One is recourse to the courts. As is well known, this is time consuming, expensive, and usually impractical with respect to securing relief from racial injustice connected with necessary medical care. Another approach is nonviolent direct action. Although this has proved successful in many situations, it would be difficult if not impossible when it comes to health services. It is absurd to think a person with a heart attack or a seriously mangled leg would sit in an all-white hospital or the white admitting room of a hospital that segregated patients by color, and wait to be taken care of.

We are convinced, therefore, that one of the most useful approaches to full integration in medicine and health services is appropriate civil rights legislation. H.R. 7152, if passed, would as we shall explain, contribute greatly to the elimination of racial segregation and discrimination in medicine and health services. To assure the applicability of this bill to all health services and facilities rendering essential services to the public we would like to suggest some additional language for title II. (App. E.)

The proposed inserts are based on the authority of Congress both with respect to commerce and to the 14th amendment. The lines of reasoning developed in title II for public accommodations apply with equal validity to nongovernmental hospitals and other community health services. Every nongovernmental community hospital provides care, frequently of an emergency nature for accidents and medical emergencies, to individuals from other parts of the country who are traveling through or visiting the particular community. Every nongovernmental hospital and other community health service provides or would provide care to employees of business concerns engaged in interstate commerce with offices or factories in the particular community. Every nongovernmental hospital and other community health service purchases a wide variety and a large volume of goods from business concerns located in other States and in foreign nations.

As I recollect these are the commerce-based reasons presented in the bill for the public accommodations provisions.

In addition, nongovernmental hospitals and other community health services have a vital community function which in many communities are the responsibility of State and local government and which would have to be assumed by a State or local government agency if the nongovernmental health service or facility ceased to exist.

The public nature of these health services and facilities is recognized by Government in many ways, particularly, in the case of those established on a nonprofit basis. Governmental agencies purchase from these hospitals, nursing homes, and other community health services care of indigent patients, of medically indigent patients, and

of other special classes of patients as authorized by numerous Federal, State, and local laws. Many State and local laws as well as the regulations of the governmental agencies which charter or license these community health services specify the qualifications of their governing boards, or proprietors, their standards of service, and their fiscal policies so as to protect the public interest. Other Federal, State, and local laws grant these community health services, when established on a nonprofit basis, special financial privileges including grants and exemptions from taxes on income and real property.

We, therefore, do not believe it is logical to exclude nongovernmental hospitals and other community health services from the proscriptions on public accommodations contained in title II nor to deny citizens the preventive relief available from the Attorney General, which title II authorizes in connection with racial injustices practiced by public accommodations, just because the injustice is practiced by a nongovernmental health service or facility.

For all these reasons, we respectfully suggest that additional language be added to title II so that it would clearly apply to nongovernmental hospitals and other community health services rendering essential services to the public.

(The complete prepared testimony of Walter J. Lear, M.D., temporary general coordinator, Medical Committee for Civil Rights, is as follows:)

TESTIMONY OF THE MEDICAL COMMITTEE FOR CIVIL RIGHTS ON H.R. 7152, THE PRESIDENT'S CIVIL RIGHTS BILL, BY WALTER J. LEAR, M.D., MEDICAL COMMITTEE FOR CIVIL RIGHTS

Mr. Chairman and members of the committee, the Medical Committee for Civil Rights deeply appreciates this opportunity to present its views on the President's civil rights bill, H.R. 7152.

The Medical Committee for Civil Rights was recently organized by a group of physicians and other health workers. Our purpose is to enable physicians and other health workers from all sections of the country to participate in the current historic struggle for equal opportunity and human dignity for all citizens.

A list of the officers and priority tasks of the committee is attached as appendix A.

We believe that racial segregation and discrimination are immoral and undemocratic; it is urgent that they be eliminated promptly and completely. As the President recently stated in his eloquent speech on civil rights, "race has no place in American life or law."

As physicians and professional health workers we are particularly aware of the tragic impact of racial segregation and discrimination on the health of the Negro people. We see abundant evidence of this in our daily office, clinic, and hospital experience. Our personal experience is corroborated by many categories of health statistics.

For those of us who are not statisticians (that is most of us), the statistics on infants are the simplest to follow and the clearest in their implications. In most communities in the South and in the northern cities with Negro ghettos, the chances of a Negro baby dying within the first year of life are usually at least twice that of a white baby. Here are the figures for a few cities:

Babies dying within the first year of life (number per 100):

	White	Nonwhite
Albany, Ga.	3.0	6.3
New Orleans, La.	2.2	5.4
New York, N.Y.	2.2	4.3

Figures for additional cities are given in appendix B.

Of course, most Negro babies, like most white babies, do survive but the Negro babies have a greater chance of starting life with a health handicap. A particularly well-documented and significant health handicap is prematurity, best shown by the weight of the baby at birth. In communities where Negroes are subject to major segregation and discrimination, the Negro baby is much more likely to be born prematurely. Here are some figures on prematurity.

Babies weighing 5½ pounds or less at birth (number per 100):

	White	Nonwhite
Albany, Ga.	7.0	11.1
New Orleans, La.	7.5	16.4
New York, N.Y.	7.9	15.3

Figures for additional cities are given in appendix B.

Premature babies may get excellent medical care if they are born in or near a hospital with a modern center for premature infants, but all of them have to struggle with their underdevelopment and the many premature babies who never overcome this handicap are unable, as they grow older, to take full advantage of the opportunities available to them in their homes, schools, churches, and communities for development as a complete human being.

The substantial disadvantage in the health status of the Negro population as compared to the white population is also shown by the figures for life expectancy and death rates. Only one example need be cited—the death rate for tuberculosis. This is a disease well recognized by the medical profession to be associated with deprivation:

Death rate from tuberculosis of the respiratory tract (number per 100,000):

	White	Nonwhite
U.S.; males	7.9	17.4
U.S.; females	2.5	8.3

Figures for additional causes of death are given in appendix C.

No matter which disease or health handicap the social consequences are similar for the afflicted individual and his family.

Deprivation and poor health become a cycle which is unbreakable by most of those involved. Low income, inadequate education and occupational training, poor housing and environmental sanitation, improper nutrition and health habits, insufficient and often second-class medical care, all produce more and more severe health problems. These in turn make difficult or impossible improvement of income, education, job capabilities, housing, sanitation, nutrition, health habits, and medical care.

More tragic still, as shown in the first set of figures, is that the deprivation of the parents fosters disease and health handicaps in the children. These usually combine with the forces producing the original deprivation to assure the continuation of this cycle in the children as they grow up. And so deprivation and poor health are passed on from one generation to the next.

For the Negro, this cycle cannot be broken unless the pattern of racial segregation and discrimination is eliminated. H.R. 7152 is a necessary part of a program that would break this cycle. Consequently, we as citizens and as professional health workers respectfully urge you and the Congress to approve H.R. 7152 as quickly as possible.

Our committee is particularly concerned with racial segregation and discrimination in medical societies, hospitals, all other aspects of medicine and health services. As physicians and professional health workers we know that racial segregation and discrimination lower the quality of patient care and violate professional ethics.

A major task of our committee is to encourage the medical profession to work voluntarily for full integration wherever racial segregation and discrimination exist in medicine and health services.

For this reason, the committee's first project was an appeal to the American Medical Association to speak out against racial segregation and discrimination

and to give leadership to efforts to eliminate the racial exclusion policies of medical societies and hospital staffs and to eliminate the racial segregation of patients in all community health services and facilities.

A description of this project is attached as appendix D.

The response of the American Medical Association to this appeal was totally unsatisfactory. Consequently, we are proceeding with plans to convince the leaders of the AMA of the seriousness and the urgency of the problem.

However, even if the AMA leadership accepts its national responsibilities, it is neither morally nor scientifically proper that the optimal health and, at times, even the life of any Negro patient be dependent on the willingness of the medical profession and the hospitals of his own community to offer him voluntarily what is his right.

The Negro has several major approaches to use in obtaining or protecting his rights. One is recourse to the courts. As is well known, this is time consuming, expensive, and usually impractical with respect to securing relief from racial injustice connected with necessary medical care. Another approach is nonviolent direct action. Although this has proved successful in many situations, it would be difficult if not impossible when it comes to health services. It is absurd to think a person with a heart attack or a seriously mangled leg would "sit in" an all-white hospital or the white admitting room of a hospital that segregated patients by color.

We are convinced, therefore, that one of the most useful approaches to full integration in medicine and health services is appropriate civil rights legislation. H.R. 7152, if passed, would, as we shall explain, contribute greatly to the elimination of racial segregation and discrimination in medicine and health services. To assure the applicability of this bill to all health services and facilities rendering essential services to the public we would like to suggest some additional language for title II. (App. E.)

The proposed inserts are based on the authority of Congress both with respect to commerce and to the 14th amendment. The lines of reasoning developed in title II for public accommodations apply with equal validity to nongovernmental hospitals and other community health services. Every nongovernmental hospital and other community health service provides or would provide care to employees of business concerns engaged in interstate commerce with offices or facories in the particular community. Every nongovernmental hospital and other community health service purchases a wide variety and a large volume of goods from business concerns located in other States and in foreign nations.

In addition, nongovernmental hospitals and other community health services have a vital community function which in many communities are the responsibility of State and local governments and which would have to be assumed by a State or local government agency if the nongovernmental health service or facility ceased to exist.

The public nature of these health services and facilities is recognized by government in many ways; particularly, in the case of those established on a nonprofit basis. Governmental agencies purchase from these hospitals, nursing homes, and other community health services care of indigent patients, of medically indigent patients, and of other special classes of patients as authorized by numerous Federal, State and local laws. Many State and local laws as well as the regulations of the governmental agencies which charter these community health services specify the qualifications of their governing boards, or proprietors, their standards of service, and their fiscal policies so as to protect the public interest. Other Federal, State, and local laws grant these community health services when established on a nonprofit basis special financial privileges including grants and exemptions from taxes on income and real property.

We, therefore, do not believe it is logical to exclude nongovernmental hospitals and other community health services from the proscriptions on public accommodations contained in title II nor to deny citizens the preventive relief available from the Attorney General which title II authorizes in connection with racial injustices practiced by public accommodations just because the injustice is practiced by a nongovernmental health service or facility.

For all these reasons, we respectfully suggest the additional language be added to title II so that it would clearly apply to nongovernmental hospitals and other community health services rendering essential services to the public.

Title VI, entitled "Nondiscrimination in Federally Assisted Programs" is potentially the most significant part of the bill for the health field. The Federal Government provides a substantial part of the Nation's expenditures for patient care, for construction of hospitals and other health facilities, for medical research, and for the education of professional health workers.

To be specific, the Federal Government provided $3½ billion, or 12 percent, of the total of $29 billion in 1960–61 for health and medical care in the United States. Most major health services and facilities now receive direct or indirect financial assistance from the Federal Government by way of grant, contract, loan, insurance, guarantee, or otherwise.

The comprehensive applicability of title VI is impressive. As we understand the language of this title, it would clearly invalidate the "separate but equal" clause of the Hill-Burton Act, which provides Federal grants for the construction of hospitals and other health facilities. As you know, several members of the Congress have strongly urged the Congress to delete the "separate but equal" clause of the Hill-Burton Act and bills having this specific purpose have been introduced in both the House and the Senate.

Because of the "separate but equal" clause, the Public Health Service has financed and continues today to finance the construction of hospitals and other health facilities which segregate patients because of their color.

As recently as March, the Public Health Service has stated that it has no basis in law to deny a Hill-Burton grant to a hospital or health facility project which admittedly practices racial segregation. (App. F.)

In addition, this apparent Federal sanction of racial segregation of patients lends strong support to those elements who have been unwilling to integrate health services and facilities, in general.

For this reason alone, that is, the elimination of the "separate but equal" clause of the Hill-Burton Act, the enactment of title VI would constitute a major civil rights achievement in the health field. If passed and fully implemented, that is, if Federal financial assistance was furnished only to health services and facilities which did not practice racial segregation and discrimination, such practices would virtually disappear from all medical centers and all other major aspects of medicine and health services.

All other sections of H.R. 7152 would also affect medicine and health services in a direct or indirect fashion.

For example, title III, "Desegregation of Public Education," applies to medical schools and other graduate level schools for professional health workers operated by a government or a governmental agency. Although, many such schools in the South today are willing to accept Negro students, this title would help eliminate the racial exclusion policies of the minority of such schools.

Title III would be of even greater significance to medicine and health services, if it helps young Negroes obtain better education at the elementary, secondary, and college level. There is a grossly insufficient number of young Negroes adequately prepared to enter medical, dental, and other graduate level schools for professional health workers. At the same time, all these schools report an insufficient number of qualified applicants while the staff needs of health services of the Nation continue to grow.

The health professional potential of the Negro population has been largely ignored. The Negro population could play a particularly valuable role in the Nation's health services by contributing a greatly increased number of qualified students to our medical schools and other graduate level schools for professional health workers. Of course, this will be possible only if the education of the Negro population at the levels below graduate education is substantially improved. This should be one of the major achievements of this bill.

For this reason and for the other reasons discussed earlier, we physicians and other professional health workers believe the enactment of H.R. 7152 would be of great importance to the health of the people. We, therefore, urge its prompt approval by you and by the Congress.

APPENDIX A–1

MEDICAL COMMITTEE FOR CIVIL RIGHTS,
New York, N.Y.

A national effort of physicians and other health workers to provide promptly the medically oriented assistance requested by those fighting throughout the country for equal opportunity and human dignity for all citizens.

Priority tasks

1. Appeal to the major national organizations in the health field to assume their proper leadership role in assuring a prompt and orderly transition to full integration wherever racial segregation and discrimination exist in medicine and in health services, using, if neecssary, nonviolent action projects.

2. Organize on request of local Negro communities, 2- to 4-day factfinding missions regarding segregation and discrimination in hospitals and health services in 6 to 12 cities, large and small, throughout the South.

3. Recruit, on request of local Negro communities, physicians and other health workers for nonviolent action projects focused on hospitals and other health services.

4. Recruit, on request of local Negro communities, physicians and other health workers for nonviolent action projects without specific medical issues (e.g. Birmingham).

5. Appeal to the executive and legislative leaders of the Nation to eliminate racial segregation and discrimination in all medical activities and health services financed in whole or in part by Federal funds, using, if necessary, nonviolent action projects.

6. Provide to the extent obtainable and on request of recognized Negro rights organizations primarily engaged in nonviolent action projects and without medical advisers, medical checkups and 1- to 2-week-long rest arrangements for those who have worked on nonviolent action projects full time in the South during the past year.

7. Provide on request of recognized Negro rights organizations primarily engaged in nonviolent action projects and without medical advisers, pertinent information and advice concerning health services and health professions to enable the inclusion of racial integration in hospitals and other health services among the principal goals of citywide nonviolent action projects.

8. Provide as far as possible on request of local Negro communities, emergency medical services in cases of major violence.

9. Collect and distribute to physicians and other health workers reports on public demonstrations and nonviolent action projects focused on hospitals and other health services.

10. Collect money from physicians and other health workers for the above tasks and for the recognized Negro rights organizations primarily engaged in nonviolent action projects and without medical advisers.

11. Find existing permanent organizations to assume responsibility as quickly as possible for the above activities, particularly those, the need for which may be expected to continue beyond a few months.

APPENDIX A–2

MEDICAL COMMITTEE FOR CIVIL RIGHTS,
New York, N.Y.

Temporary officers:
Chairman: John L. S. Holloman, Jr., M.D.
Vice chairmen:
Clinical medicine: Aaron O. Wells, M.D.
Clinical psychology: Tom Levin, Ph. D.
Dentistry: Leonard Gorelick, D.D.S.
Health insurance: William Lievow
Pharmacy: George Glotzer, Ph. G.
Physical therapy: Ted Childs, R.P.T.
Psychiatric nursing: Mrs. Rachel Robinson, R.N.
Podiatry: George Rubin, Pod.
Social work: Mrs. Mary G. Harm, M.S.W.
General coordinator: Walter J. Lear, M.D.
Coordinator, appeal to the AMA: George D. Cannon, M.D.
Coordinator, legislative affairs: Charles H. Goodrich, M.D.
Coordinator, medical services: Howard J. Brown, M.D.
Coordinators, summer hospitality:
Mrs. Trudy Orris
Mrs. Virginia Wells
Coordinators, Washington march:
Paul B. Cornely, M.D.
Arthur C. Logan, M.D.
Editor, Newsletter: Mrs. Francis Frazier.

National advisory board (in process of formation):

Roy C. Bell, D.D.S., of Atlanta, Ga., a leader in the struggle against racial segregation in medical facilities and societies in Georgia.

Abbott B. Britton, Jr., M.D., of Jackson, Miss., a member of the Mississippi advisory committee to the U.S. Commission on Civil Rights.

James P. Dixon, Jr., M.D., Yellow Springs, Ohio. President, Antioch College, and former commissioner of health of Philadelphia.

Carlton Goodlet, M.D., of San Francisco, Calif. An internist and publisher of the Sun Reporter.

Charles A. Perera, M.D., of New York, N.Y. Associate professor of ophthalmology, Columbia University, College of Physicans and Surgeons.

Earl B. Smith, M.D., of Pittsburgh, Pa. Chairman of the Committee on Discrimination in Medicine of the National Catholic Conference for Interracial Justice.

Joseph Stokes, Jr., M.D., of Philadelphia, Pa. Former chairman of the Department of Pediatrics, University of Pennsylvania School of Medicine.

BIOGRAPHICAL INFORMATION

Dr. John L. S. Holloman, Jr., temporary chairman of the medical committee for civil rights, is deeply convinced that segregation and discrimination in medicine and the health services can no longer be tolerated.

Dr. Holloman, a general practitioner in New York City, is a member of the New York County and New York State Medical Societies and the American Medical Assoication. Dr. Holloman has been active in the affairs of the National Medical Association for many years and is currently a member of its board of trustees.

Dr. Holloman is a graduate of Virginia Union University, University of Michigan and Cornell University. He is president of the trustee board of the Virginia Union University in Richmond, Va.

Dr. Holloman resides in New York City with his wife, a professional singer, and his daughter. He is a life member of the National Association for the Advancement of Colored People, a member of the Century Club, YMCA, and the National Urban League.

Dr. Walter J. Lear, temporary general coordinator of the medical committee for civil rights, is a consultant on community health services who has long been concerned with assuring that the full benefits of medical science should be available to all people regardless of race, economic status, or place of residence.

Dr. Lear, a Fellow of the New York Academy of Medicine and the American Public Health Association, is the chairman of the Public Health Committee of the Community Council of Greater New York. He is also a member of the New York County and New York State Medical Societies and the American Medical Association. He is a member of the National Urban League's Committee on Health Needs and Resources.

The author of many professional articles and reports on health and medical services, Dr. Lear is the coauthor of "Medical Care and Family Security," to be published by Prentice-Hall in August.

Dr. Lear is a graduate of Harvard College, Long Island College of Medicine, and Columbia University School of Public Health and Administrative Medicine.

Dr. Wells is a specialist in internal medicine and a member of the attending staffs of New York Hospital and Harlem Hospital.

Dr. Levin is a practicing clinical psychologist and chairman of the committee of conscience of social scientists.

Dr. Gorelick is a practicing dentist and former president of the Queens County Dental Society.

Mr. Lievow is director of contractor group service of the Health Insurance Plan of Greater New York.

Mr. Glotzer is drug division director of Local No. 1199, Drug and Hospital Employees Union, AFL–CIO.

Dr. Rubin is a practicing podiatrist and a leader in the affairs of the New York region of the American Friends Service Committee.

Mrs. Harm is supervisor of social work training, Bronx YMCA and chairman of the Committee on Health Needs and Resources, National Urban League.

Mr. Childs is director of physical therapy, Brooklyn Veterans' Administration Hospital and former chairman of the New York region, American Physical Therapy Association.

Mrs. Robinson is a psychiatric nursing supervisor at Albert Einstein College of Medicine and has been active in the civil rights movement.

Dr. Cannon is a specialist in radiology and has been active in the affairs of the NAACP for many years.

Dr. Goodrich is associate director, comprehensive care and teaching program, New York Hospital-Cornell University Medical College.

Dr. Brown, a specialist in both internal medicine and medical administration is associate director of Beth Israel Hospital and medical director of the Gouverneur ambulatory care unit.

Mrs. Orris and Mrs. Wells are both wives of physicians and have been active in many community organizations.

Dr. Cornely is chairman of the Department of Preventive Medicine, Howard University Medical School, Washington, D.C.

Dr. Logan is a specialist in surgery and chief of surgery of the Upper Manhattan Medical Group.

Mrs. Frazier is editor of the Subscriber Bulletin of the Health Insurance Plan of Greater New York.

APPENDIX B

Selected statistics on the health of babies, 1959

[Number per 100]

Name of city	Babies dying within the 1st year of life		Babies weighing 5½ pounds or less at birth	
	White	Nonwhite	White	Nonwhite
Albany, Ga.	3.0	6.3	7.0	11.1
Birmingham, Ala.	2.2	4.0	6.8	13.2
Indianapolis, Ind.	2.6	4.2	7.6	13.4
Jackson, Miss.	2.8	4.4	7.7	11.1
New Orleans, La.	2.2	5.4	7.5	16.3
New York, N.Y.	2.2	4.3	7.9	15.3

Source: "Vital Statistics of the United States, 1959," vol. I, table 25.

APPENDIX C

Selected death rates for the United States, 1959

[Number per 1,000]

	Male		Female	
	White	Nonwhite	White	Nonwhite
General age-adjusted death rate	9.2	12.6	5.7	9.2

Source: "Vital Statistics of the United States, 1959," vol. I, table 6-B, pp. 6-12.

[Number per 100,000]

	Male		Female	
	White	Nonwhite	White	Nonwhite
Specific death rates for selected causes:				
Accidents caused by fire and explosion of combustible material	3.7	11.0	2.4	10.0
Complications of pregnancy			.4	2.4
Nutritional deficiency states	.8	1.5	.9	1.3
Pneumonia	31.3	58.1	23.1	40.4
Tuberculosis of the respiratory system	7.9	17.4	2.5	8.3

Source: "Vital Statistics of the United States, 1959," vol. II, table 66, pp. 18, 23, 27, 29.

MEDICAL COMMITTEE FOR CIVIL RIGHTS,
New York, N.Y., June 12, 1963.

Dr. GEORGE M. FISTER,
President, American Medical Association,
Chicago, Ill.

DEAR DR. FISTER: Our Nation is currently engaged in a great effort to assure equal opportunity and human dignity to all its citizens. Racial segregation and discrimination can no longer be tolerated in a society based on democratic principles.

In addition, racial segregation and discrimination in medicine and in health services lowers the quality of patient care and violates the ethics of the medical profession.

We, therefore, respectfully ask the American Medical Association, the most important and most eloquent spokesman of American physicians, to speak out immediately and unequivocally against racial segregation and discrimination. Further we ask the American Medical Association to use its dominant leadership position in the medical field to assure a prompt and orderly transition to full integration wherever racial segregation and discrimination exist in medicine and in health services.

In particular, we ask you, the president of the AMA, the other national officers, the board of trustees and the house of delegates the following four questions:

1. Will you use your considerable personal and organizational strength for terminating the racial exclusion policies of State and county medical societies?

2. Will you make available direct membership in the American Medical Association to Negro physicians who are denied membership in their State and county medical societies because of their race, as has been requested for years?

3. Will you actively oppose the "separate but equal" clause of the Hill-Burton Act which provides Federal construction grants to hospitals and other health facilities when this act comes up for renewal in the Congress in the next few months?

4. Will you instruct your representatives on the joint commission on accreditation of hospitals to vigorously urge that racial integration of patient services be added to the minimum standards for hospital accreditation?

Sincerely yours,

JOHN L. S. HOLLOMAN, Jr., M.D.
WALTER J. LEAR, M.D.

APPENDIX D–3

A STATEMENT RELEASED BY THE PRESSROOM OF THE AMERICAN MEDICAL ASSOCIATION AT THE HOTEL TRAYMORE, ATLANTIC CITY, N.J., JUNE 18, 1963

A Thermo-Fax copy of a letter from the Medical Committee for Civil Rights in New York, signed with the names of two Negro physicians who are members of the American Medical Association, has been given to the AMA Board of Trustees by a newspaperman. Although none of the officers or members of the board of trustees has received this letter officially, inquiry has been received from representatives of the press and the members of the board will reply to the four questions contained in the copy submitted to the board. The questions and the board's reply follow:

1. Will you use your considerable personal and organizational strength for terminating the racial exclusion policies of State and county medical societies?

The American Medical Association, by action of its house of delegates, has a longstanding policy of nondiscrimination for membership in the association and constituent societies. Many Negro physicians are members of the AMA. Dr. Peter M. Murray of New York, a Negro, was a member of the AMA House of Delegates for 12 years. In a special address before the house of delegates in 1961, he reviewed the progress in the admission of Negroes to membership in medical societies. He said: "Only in America could a man of my race experience the rich and varied evidence of friendship in my service in the House of Delegates of the AMA."

One resolution, adopted by the AMA House of Delegates in 1950, recommended "that constituent and component societies having restrictive membership provisions based on race study this question, with a view to taking such steps as they may elect to eliminate such restrictive provisions."

The decision as to membership in the component county medical societies or on hospital staffs is outside the jurisdiction of the AMA and is a matter of local concern (house action, June 1944).

2. Will you make available direct membership in the American Medical Association to Negro physicians who are denied membership in their State and county medical societies because of race, as has been requested for years?

Direct membership in the American Medical Association as suggested here is not made available to anyone, whether white or nonwhite. Membership for anyone is contingent on membership in a State society and should not be changed for the exclusive purpose of favoring any group.

3. Will you actively oppose the "separate but equal" clause of the Hill-Burton Act which provides Federal construction grants to hospitals and other health facilities when this act comes up for renewal in the Congress in the next few months?

This question will be referred to the council on legislative activities which considers all matters pertaining to testimony before congressional committees.

4. Will you instruct your representatives on the joint commission on accreditation of hospitals to vigorously urge that racial integration of patient services be added to the minimum standards for hospital accreditation?

This question will be referred to the joint commission for consideration.

APPENDIX D–4

MEDICAL COMMITTEE FOR CIVIL RIGHTS,
New York, N.Y., June 19, 1963.

Dr. EDWARD R. ANNIS,
President, American Medical Association,
Atlantic City, N.J.

DEAR DR. ANNIS: Again we appeal to you and the officers of the American Medical Association to speak out immediately and unequivocally against racial segregation and discrimination. We believe your moral and scientific responsibility as leaders of the medical profession and of this Nation's health services is to declare that there is no room in medicine and patient care for racial segregation and discrimination.

We are sorrowed and dismayed that instead of such a declaration you reply to our letter of last week with policies adopted in 1944 and 1950. As you know, the historic Supreme Court decision regarding school desegregation came in 1954. This, subsequent decisions of the Supreme Court, and the President's forthright statement, clearly indicate the kind of leadership the American Medical Association should assume at this time.

The Nation is on the brink of a crisis. We appeal to you publicly, the only way we know which will convey the seriousness and the urgency of the situation. Keep this crisis out of the area of medicine and health services. We appeal to you to use your well-known and greatly respected strength to assure the prompt and orderly transition to full integration wherever segregation and discrimination exist in medicine and health services.

Your comments on our specific questions offer little if any hope of prompt and constructive resolution of these problems.

The American Medical Association has yet to state that racial exclusion policies of State and county societies are wrong, despite your comment yesterday that "its house of delegates has a longstanding policy of nondiscrimination for membership in the association and constituent societies." The 1950 house of delegates resolution fails to state this and we know of no other policy statement on this subject. We urge you to make a statement immediately so that the absence of it cannot be interpreted as a sanction of this immoral and un-American practice.

The American Medical Association has yet to state that racial segregation of patients and hospitals and other health services is wrong. We urge you to make such a statement immediately. Without it, the assumption must continue that the board of trustees and the house of delegates is indifferent to—

1. The action of the council on legislative affairs regarding the "separate but equal" clause of the Hill-Burton Act; and

2. The action of the representatives of the American Medical Association on the joint commission on accreditation of hospitals regarding the elimination of racial segregation as a prerequisite for hospital accreditation.

Dr. Annis, there is no time to lose. We appeal to you to speak now, to speak unequivocally, to speak with the moral conviction appropriate to the medical profession's tradition of ethical and humanitarian concern for high quality of medical care. The time has come for the medical profession to play its special and important role in assuring equal opportunity and human dignity for all citizens.

Sincerely yours,

JOHN L. S. HOLLOMAN, Jr., M.D.
WALTER J. LEAR, M.D.

APPENDIX D–5

STATEMENT OF PERCY E. HOPKINS, M.D., CHICAGO, CHAIRMAN, BOARD OF TRUSTEES, AMERICAN MEDICAL ASSOCIATION, JUNE 19, 1963

The American Medical Association is now holding its annual meeting, the largest meeting in the world devoted to the science of medicine. It is unfortunate that this incident has tended to obscure the achievements in medical science being reported at this meeting, which will improve the health of all people regardless of race.

For many years, the American Medical Association by action of its house of delegates has had a strong policy opposed to discrimination in membership in the AMA and its constituent State and county societies. A Negro physician, my friend, Peter Murray, of New York, served for 12 years as a member of the AMA's policymaking house of delegates, and today Negroes serve as officers of county medical societies. Many nonwhites are employed by the AMA.

When Dr. Murray retired as a delegate 2 years ago, he said: "Only in America could a man of my race experience the rich and varied evidence of friendship in my service in the House of Delegates of the AMA."

It is the unequivocal policy of the AMA that every person in the Nation should receive the best possible medical care regardless of race, creed, or color and regardless of his financial circumstances.

APPENDIX E

SUGGESTED ADDITIONS TO TITLE II OF H.R. 7152

1. Insert page 11, line 9:

"(d) Negroes and other minority groups who travel interstate are frequently unable to obtain adequate hospital, clinic, and other necessary health services particularly for accidents and medical emergencies with the result that many are dissuaded from traveling interstate, while others are compelled to use health facilities and services of poor and inferior quality or travel distances detrimental to their health to find adequate health facilities and services."

2. Insert page 12, line 13: "community health services" between the words "stores" and "and."

3. Insert page 12, line 23:

"(i) Nonprofit nongovernmental hospitals, nursing homes, clinics, and other health services and facilities provide an essential public service which would otherwise be provided by government agencies. The public service nature of these health services and facilities is recognized by government in many ways including (1) the purchase from them of patient services for which governmental agencies are responsible and (2) special laws and regulations including those authorizing the chartering and licensing of hospitals and other community health services, some of which specify qualifications of governing boards, standards of service, and fiscal policies, all of which are designed to protect the public interest and others of which grant exemptions from taxes on income and real property and other special privileges."

4. Insert page 13, line 1: "and community health services" between the words "businesses" and "involved."

5. Insert page 15, line 10:

"(4) any hospital, nursing home, clinic, or other health service or facility serving the public, including patients from other States or traveling in interstate commerce."

APPENDIX F

Excerpt from a March 13, 1963, letter from Dr. Jack C. Haldeman, chief, division of hospital and medical facilities to the National Association for the Advancement of Colored People:

"We have been advised by the general counsel that the internal segregation of patients in institutions which admit both races is in accord with the intent of Congress at the time the legislation was enacted, and in this respect, Congress has made no change in the law. Therefore, it is the duty of the Surgeon General to make grants without reference to internal racial segregation by the grantee, provided that all essential services are equally available to all persons.

"Generally speaking, administrative officers are obligated to carry out the statutes they are charged to administer despite any doubts they individually may entertain regarding the constitutional validity of the statutes. You are perhaps suggesting, as others have suggested, that the *School Desegregation* decisions make the invalidity of grants to segregated institution so clear as to relieve the administrators, in these instances, of what would otherwise be their duty to carry out the statutes as written. The argument is appealing, but after careful study it has been concluded that, in the present state of judicial authority, it is not tenable, and former Secretary Ribicoff so testified with respect to grants for school construction and operation."

Mr. CELLER. I think I know the balance of your statement. That is that Hill-Burton provides for separate but equal—the passage of another bill would eliminate separate but equal, and make the grants under the Hill-Burton Act similar to H.R. 1752.

I know the thrust of the rest of your paper.

Dr. LEAR. Title VI is very important, not only because that is eliminated from the hospital grant program, but having it on the books sets an atmosphere in the medical field which is very deleterious to integration, and this title would, therefore, be very helpful.

Our last section deals with the desegregation of public education. In this section I would like to highlight the point that we are short of people in all fields of health. We desperately need more doctors, dentists, nurses—the whole range of health workers.

Mr. CELLER. I don't want to hurry you, but we are here day after day, and we need doctors like you.

Dr. LEAR. Right. If this were enacted into law, if this would improve the education of young Negroes, if more Negroes could go to medical and dental schools, title III would make a significant improvement on our health services. These are the reasons why we urge you to approve this bill, and we urge the Congress to enact it.

Mr. CELLER. Thank you, Doctor. You have given us some very interesting material here today.

Dr. LEAR. We do appreciate having a chance to discuss this with you and the other members of the committee.

Mr. CELLER. The next witness is Mr. Timothy A. Manring, vice president of the U.S. National Student Association.

We will accept your full statement for the record as we have accepted the statements for the previous speakers. I must insist on your summarizing it.

(The statement of Mr. Timothy A. Manring is as follows:)

STATEMENT OF TIMOTHY A. MANRING, NATIONAL AFFAIRS VICE PRESIDENT, U.S. NATIONAL STUDENT ASSOCIATION

Mr. MANRING. Mr. Chairman and members of the committee, the United States National Student Association, a confederation of student bodies represented through democratically elected student governments from 390 colleges and universities with a total enrollment of over 1,200,000 students, has long opposed discrimination and segregation. Ever since our founding convention in 1947, the association has propounded the beliefs which, in part, inspired its creation: the necessity that all people, because of their inherent dignity as individuals, be guaranteed equal rights and possibilities for primary, secondary, and higher education regardless of sex, race, religion, political belief, or economic circumstance.

Since that time, as a testimony to these convictions, we have insisted on holding only integrated meetings whether in the North or the South; we have actively attempted to end discrimination, particularly since February 1960, in the field of public accommodation; we have assisted financially with the desegregation of the University of Alabama and other colleges; we have conducted voter registration and education campaigns and worked with other organizations to improve educational opportunities for children of minority groups.

Civil rights of all people regardless of race have been a prime concern. They are the very fabric of democracy, the essence of that which distinguishes our society from others which have little regard for the individual.

Each year the association holds a national student congress, which is the policymaking body of the association.

I am enclosing with this statement the resolution passed by that body regarding the Federal Government and civil rights.

My remarks are predicated on the belief that governments, local, State, and Federal, must be active participants in securing and protecting civil rights for all people. I wish to make clear that we do not come here today as lawyers, but rather as a group which wishes to make both specific and general comments regarding the proposed legislation. These remarks are, for the most part, based on our personal experiences.

The United States National Student Association wishes to support H.R. 7152 as a minimal effort the Federal Government must undertake to insure equal opportunity, equal rights, and equal protection of the law.

Let me turn my attention to title I regarding voting rights. The Federal Government must do everything in its power to insure that all people have the opportunity to participate in the political process. This process is basic to our system; it insures that each individual is a participant in Government. It grants minorities the chance to become majorities; for the oppressed or forgotten it offers the chance of opportunity for redress of legitimate grievances.

From time to time, Congress will need to perfect and strengthen present legislation to meet changing situations, particularly when an effort is made to deny segments of the community this legitimate

right. The present proposals to insure equal application of voting registration regulations are not only appropriate; they are necessary.

Without going through each line, I would like to point to a few specific points in title I. In section 101 on page 4, we urge that the word "five" be substituted for the word "twenty-five" in line 9.

Five days will allow sufficient time for officials to check applications and written literacy tests. The present proposed 25 days would allow so long a time to pass that if a qualified applicant were denied the right to register, he might not have sufficient time for redress of the wrong before an election had passed.

On page 7, we would encourage the inclusion of the following italicized words so that line 2 would read:

* * * shall be heard *and decided by the court* within ten days, and the execution of any order * * *.

Such a change would insure speedy action by the court.

In line 7 of the same page we would suggest the following wording which we feel is more decisive and more clear:

* * * *In hearing and deciding such applications* the court *shall* appoint as many persons as may be necessary to be * * *.

In the same section on page 9 we urge that lines 5 and 6 be changed to read:

* * * any candidate for public office; the words "affected area" shall mean *the State as a whole,* or that county, parish, or similar subdivision of the * * *.

This would allow action taken against State officials to be applied to an aggrieved person or class within the entire State if he were so affected.

The National Student Association feels that voting rights are paramount to participation in, and preservation of, the democratic society. We have urged and continue to urge the Congress to enact laws necessary to secure those rights.

At the same time, we have urged the Department of Justice to insure the protection of those rights and the protection of individuals involved in voter registration activity.

Title II of the proposed legislation has been, thus far, the most controversial part of the legislation. It is difficult for me to understand why. Certainly the power of the Congress to regulate interstate commerce has been extended far beyond the legislation asked here. The Federal Trade Commission Act of 1914 includes in section 5 the following:

Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce are hereby declared unlawful.

Certainly, discrimination solely on the basis of race is "unfair" and "deceptive." Nor does the association believe that this legislation is a new and unwarranted encroachment on the rights of property, for those property rights also are built upon a degree of responsibility. That responsibility requires a recognition and respect for human values and human dignity. In many cases it demands their utilization on a basis of equality for all people.

There has been considerable talk recently of including a "Mrs. Murphy clause" in the legislation; that is, a clause which would exempt small business from provisions which prohibit discrimination.

The United States National Student Association cannot agree to such a clause. President Kennedy has correctly pointed to the moral issues involved in civil rights.

Are we then to say it is morally wrong to discriminate unless you do less than $20,000 of business a year? The moral imperatives of the issues are just as clear for the small operator as for the large.

Since students travel perhaps more than any other group of people in America, this legislation is of particular interest to the National Student Association.

We suggest that the present insults that members of the Negro race endure should and must be eliminated. The present practices of discrimination are a particular hardship for foreign students studying in this country, and to those visiting here in delegations from national unions of students or other youth organizations in other countries.

Each year NSA brings a number of foreign student delegations from Africa and Asia to this country. It is embarrassing, both to NSA and to America, to have these students discriminated against at a hotel, motel, theater, or restaurant. Nothing drives an African student to the radical Socialist or Communist viewpoint more quickly than discrimination personally experienced.

How is the American student or the foreign student to know if the restaurant or motel is closed to him or to his friend? How is he to know if a hotel or theater does less than the amount of business necessary to be exempted by a restrictive "Mrs. Murphy clause," if one should be added to this legislation?

We cannot publicly denounce discrimination against Africans in Bulgaria and Buddhists in South Vietnam and then not do everything possible to eliminate discrimination in our own country.

In neighborhoods adjacent to some of the largest and most renowned colleges and universities of this country, we can today find dozens of "Mrs. Murphys" whose house is closed to Africans and Negro Americans purely because of their skin color. Often it is difficult for the foreign student to find a place to live. It is the small boarding house, the house of Mrs. Murphy, which is closed to him. No "American History" or "Problems of Democracy" course can undo the damage done to the spirit of the young man who hears the words, "Colored not wanted here."

The Founding Fathers would, we believe, recoil in horror if they could know that the meaning of their Revolution was so soon lost. In a day when our actions are watched the world over, segregation, even by Mrs. Murphy, is not only immoral but detrimental to the victory we seek—a world made safe for democratic values.

The National Student Association strongly supports section 204, title II, which empowers the Attorney General to initiate legal action whenever possible; but such redress should also be decided speedily. Ten days, instead of the present 30 days for the Community Relations Service which the present proposal suggests, seems to us to be sufficient time to determine whether useful negotiation can solve the situation.

As noted earlier, USNSA has long supported an end to segregation in public education. Many members of NSA have personally felt the effects of a segregated school system. One week ago, Secretary Celebrezze recounted for this committee the economic and social impact

that a history of segregated schools has had on our national life. The moral degradation is perhaps more important.

We support fully those aspects of the proposed legislation which would allow the Office of Education to assist, technically and financially, any school system which has recently desegregated or wishes to desegregate.

It should be noted that desegregation is not equivalent to integration. James Meredith said, after his enrollment at the University of Mississippi that he was the most segregated person alive. Our southern project has been working for the last 4 years in assisting students to confront issues and problems on an interracial basis. It has assisted the integration of southern schools. The Office of Education can greatly assist the public schools in similar endeavors.

We support strongly, also, section 307 which empowers the Attorney General to initiate action for aggrieved individuals or classes of people so that their right to an equal, free, and desegregated educational system might be secured.

The Supreme Court has recently stated again that segregation must be ended as quickly as possible. In compliance with this, and in support of the above, we urge the Congress to amend the proposed bill so that school boards in districts which presently segregate will be required to submit by May 30, 1964, a plan which contains details for desegregation beginning in the fall of 1964, as well as provisions which pledge that the district will move to complete desegregation as rapidly as possible. Such action is necessary on all fronts, not merely through the courts, if equal educational opportunity is to be insured.

The U.S. National Student Association supports the proposals contained in title IV of H.R. 7152. The Community Relations Service can be of great assistance not only in solving local conflicts, but more importantly, in securing the rights of all people. That can be accomplished only if the Service, once established, employs its efforts so that it clearly supports freedom and equality.

Negotiations involving the Service must express the will of the people and of the Federal Government in this country's struggle toward equality for all.

The association supports the proposals in title V which extend the duties, powers, and life of the Civil Rights Commission. The value of that Commission has been great, not only in providing information to the governments, but also in providing information to private agencies and individuals.

We endorse the provisions of both title VI and title VIII. The Federal Government must do everything possible to end or eliminate discrimination in employment in federally assisted programs. Employment must be based on individual abilities, not on race, if we expect to provide both the economic ability and the conditions necessary for all people to participate equally in the society.

Furthermore, federally assisted projects should not be used by, or be open to, only a part of the public, particularly if that portion is determined on the basis of race. Thus we support the provisions to end Federal assistance to programs or projects which discriminate on the basis of race, religion, color, or national origin. We also support the establishment of a Commission on Equal Opportunity.

The commitment of the U.S. National Student Association to the principles of civil rights, to equal opportunity of participation for all in the social, economic, political, and cultural life of the country, and to equal protection under the law is deeply rooted. Our commitment is based on the belief that we can attain a better society, one which all citizens help to make better.

The present acts of discrimination affect members of the association, whether they are white or black. I have mentioned the problem we have often confronted when foreign students in this country have faced discrimination.

The critical responses of other national unions of students, in Africa, Asia, and Latin America, to well-publicized acts of discrimination in this country, both in the North and in the South, is also of concern to us. Those students often are, or soon will be, leaders in the governments of their countries.

The issues surrounding the civil rights problem are deeply rooted and complex.

The Nation's attention is most readily drawn to problems in the South where action is often dramatic and sometimes violent. Ending violence and removing the demonstrations from the streets is not the problem.

This is a national concern, northern as well as southern, and the symptoms of the problems can and will be seen in northern streets, too. For this reason, the association believes that the Federal Government must act quickly and urgently to solve northern social problems and the conditions which have created them.

We, of course, do not believe that the Government can solve all the issues directly and indirectly involved in discrimination. But we do believe that Congress has its role to play and must not shirk from it, if the crisis is to be met. That crisis arises because of a sickness in the Nation's spirit. For no nation, any more than an individual, can say one thing and do another without one day confronting its own hypocrisy. That confrontation is painful, but it is the first step toward the healthy society.

The National Student Association strongly endorses H.R. 7152 as a beginning in this national action and recommends to you our suggestions for amendments to the legislation.

I wish to thank the chairman and members of the committee for this opportunity to present our views to you.

(The attached appendix is as follows:)

APPENDIX

RESOLUTION PASSED BY THE 15TH NATIONAL STUDENT CONGRESS, OHIO STATE UNIVERSITY, AUGUST 1962

THE ROLE OF THE FEDERAL GOVERNMENT IN CIVIL RIGHTS

Fact

The Constitution of the United States clearly imposes Federal responsibility to equal protection of the law. Moreover, the Federal Government is extensively and intimately involved in the fields of education, employment, housing, and urban affairs; and the laws and policies applicable to its programs in these fields necessarily affect equality of opportunity. USNSA is convinced that the major efforts to assure civil rights must be made by private individuals and groups, and by local and State government; but the Federal Government has a heavy obligation as well. While the Government has assumed some leadership, it has not

assumed full responsibility for equality of opportunity and equal protection under the law. The following situations exist:

Area I. Housing.—In 1961, the U.S. Commission on Civil Rights reported "The Federal Government has been without question the major force in the expansion of the housing and home finance industry. These industries profit from the benefits that the Federal Government offers—and on racial grounds deny large numbers of Americans equal housing opportunities. At all levels of the housing and home finance industries—from the builder and lender to the real estate broker, Federal resources are utilized to accentuate this denial."

(A) Executive order: The Commission felt that "nondiscrimination requirements on the part of Federal agencies that regulate or supervise financial institutions would go far to eliminate discrimination in home finance," and stated that "direct action by the President on equality of opportunity was needed," urging "that the President issue an Executive order stating the national objective of equal opportunity in housing and specifically directing all Federal agencies concerned with housing and with home mortgage credit to shape their policies and practices to make the maximum contribution to the achievement of this goal. This Executive order, though recommended by the Commission since 1959, long promised by the President, and strongly urged by organizations and leaders all over the country, has yet to be issued.

(B) Urban renewal: Abuses of urban renewal legislation have been observed in a number of cities. These abuses include: (1) Failure to comply with the workable provisions of such laws; (2) use of this tax-supported device for minority group removal from newly declared choice areas; (3) causing directly or indirectly the establishment of racial and ethnic minority ghetto areas. Such abuses are in violation of the spirit and letter of the laws pertaining thereto. The Civil Rights Commission recommended Executive and congressional action to end these abuses, but such action has not been taken.

Area II. Education.—The U.S. Commission on Civil Rights observed that "the Nation's progress in removing the stultifying effects of segregation in the public elementary and secondary schools is slow indeed."

(A) Desegregation time limit: The Commission recommended that "Congressional specification of a time limit on the making and implementation of plans would remove all doubt as to the duty of school boards and make clear that enforcement of the commands of the Constitution is the concern not only of the judiciary, but of every branch of government." Such action has not been taken.

(B) Federal aid to segregated schools: "Federal funds in support of educational programs are granted to public school systems which operate schools in a manner that denies pupils equal protection of the law on the grounds of race, color, or national origin." Denial of such aid would recognize the efforts of some States to bring the operation of their school systems into compliance with constitutional requirements, and should spur other States to follow the same path. The House Education and Labor Committee approved bill H.R. 11559 which would reduce the Federal aid now available to segregated land-grant colleges. Congress has the power to do the same with aid to secondary and primary schools. In neither case, however, has appropriate legislation been passed.

(C) Federal aid to impacted areas: "Many dependents of military personnel assigned to duty in Southern States have had to attend racially segregated public schools." The House Education and Labor Committee approved a bill, H.R. 10056, that would cut off Federal impacted area school aid from segregated school districts. This bill, however, has not been enacted into law.

Area III. Employment.—General employment: According to the 1961 Commission on Civil Rights, "Although their occupational levels have risen considerably during the past 20 years, Negro workers continue to be concentrated in less skilled jobs. And it is largely because of this concentration in the ranks of the unskilled and semiskilled, the groups most severely affected by both economic layoffs and technological changes, that Negroes are disproportionately represented among the unemployed." This widespread unemployment of Negroes and other minority groups due to discriminatory hiring practices dictates a need for an enforcible Federal Fair Employment Practices Commission law. Such law does not exist.

Federal employment: "Directly or indirectly, Federal funds create employment opportunities for millions in the civilian and military establishments of the Federal Government and in the employment by Government contractors and grant-in-aid recipients."

(A) President's Committee: The Commission recommended in 1961 "that Congress grant statutory authority to the President's Committee on Equal Employment Opportunity or establish a similar agency to encourage and enforce a policy of equal employment opportunity and all Federal employment both civilian and military and all employment created and supported by Government contracts (subcontracts) and Federal grant funds."

(B) Armed Forces: The Commission observed that "although the Armed Forces Reserves are theoretically subject to Executive Order 9981 providing for equality of opportunity in the armed services, there continue to be segregated Reserve units in some States and units in other States which completely exclude Negroes," and recommend that "the President issue an Executive order providing for equality of treatment and opportunity, without segregation or other barriers for all applicants for, or members, of, the Reserve components of the Armed Forces, including the National Guard and student training programs, without regard to race, color, religion, or national origin." Such an Executive order has not been issued.

(C) Labor unions: The Commission noting that "the practices and policies of labor organizations are often vital to equality of employment opportunity and that existing civil rights machinery within the AFL–CIO has not eliminated discriminatory practices and policies of some local unions * * * and that existing Federal law has little impact on the discriminatory practices of labor organizations," recommended that "Congress amend the Labor-Management Reporting and Disclosures Act of 1959 to include in title I thereof a provision that no labor organization shall refuse membership to, segregate or expel any person because of race, color, religion, or national origin." Such action has not been taken by the U.S. Congress.

Area IV. Justice Department.—(A) Federal appointments: Appointments to the Federal judges and Federal marshals have been made because of political expediency rather than on the basis of judiciousness and ability. Individuals who are unwilling to support the Constitution have been appointed to positions of authority.

(B) On action in the Justice Department: Negroes and white students attempting to secure the constitutional right to vote and other rights, are often threatened with physical harm or death. The Justice Department has often refused to protect students, threatened in such instances, and have also refused to intervene in situations where the lives and liberties of students have been endangered as a result of the deliberate neglect, collusion, or active participation of local officials and policemen. Furthermore, what is happening in Albany and other areas of this country warrants immediate action by the Justice Department under sections 241 and 242 of title 18 of the United States Code.

Section 241 provides that it is a criminal offense for two or more persons to conspire "to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any rights or privileges secured to him by the Constitution or laws of the United States, or because of his having so exercised the same."

Section 242 of the United States Code provides that it is a criminal offense for anyone "under color of any law, statute, ordinance, regulation, or custom," to willfully subject "any inhabitant of any State, territory or district to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States."

Principle

USNSA reaffirms its belief in the principle of "the student in the total community" training. As students and citizens, we are concerned about social and economic inequality and the improvement of humanity. All individuals must have the opportunity to develop their talents so that they may lead full and creative lives and thereby contribute to the well-being of the whole society.

The government of a free people has the objective to achieve a maximum realization of equal opportunity for all. It is the duty of a free society to be concerned with upholding both the letter and spirit of the law. USNSA believes the Federal Government must, along with students and other individuals, assume its responsibilities for equal opportunities and equal protection of the law.

Declaration

USNSA is in accord with the positive actions of Federal Government in providing the constitutional guarantees of equal protection under the law for all citizens. We cannot, however, be satisfied with income measures and inaction. We deplore the instituitions and the conditions that deny full citizenship to Negroes and other minority groups. The full freedom of each American must be insured and protected by the Government of all the people.

USNSA urges the three branches of the Federal Government to exercise their powers and work to make equality a reality. Accordingly, USNSA urges the following:

1. Congressional action: Time limits on desegregation of public schools, withdrawal of aid from segregated school districts, establishment of a Federal Fair Employment Practices Commission with enforcement power, statutory authority for the Presidential Committee on Equal Opportunity, prohibition of discrimination in labor unions, and cessation of abuses of the urban renewal law.

2. That the President use all the power and influence at his disposal to persuade the Congress to take the above actions.

3. Presidential action by Executive order: Prohibiting discrimination in federally assisted housing, ending the abuses under the urban renewal laws, providing for the end of racial discrimination in the Armed Forces Reserve.

4. Presidential insistence on (*a*) more impartial appointments to the positions of Federal judge and the Federal marshal, (*b*) more immediate and more adequate protection of those involved in critical civil rights activity.

5. Immediate action by the Justice Department against those individuals who oppress, threaten, or intimidate any citizen in the free exercise of his constitutional rights.

Mr. MANRING. I would like to introduce Dennis Yeager from the University of New Orleans, who has spent a considerable amount of time traveling and visiting with schools and students in the South, approximately 5 months of the past school year.

The United States National Student Association, a confederation of student bodies represented through democratically elected student governments from 390 colleges and universities with a total enrollment of over 1,200,000 students, has long opposed discrimination and segregation. Ever since our founding convention in 1947, the association has propounded the beliefs which, in part, inspired its creation: The necessity that all people, because of their inherent dignity as individuals, be guaranteed equal rights and possibilities for primary, secondary, and higher education regardless of sex, race, religion, political belief, or economic circumstance. Since that time, as a testimony to these convictions, we have insisted on holding only integrated meetings whether in the North or the South; we have actively attempted to end discrimination, particularly since February 1960, in the field of public accommodations; we have assisted financially with the desegregation of the University of Alabama and other colleges; we have conducted voter registration and education campaigns and worked with other organizations to improve educational opportunities for children of minority groups.

Civil rights of all people regardless of race have been a prime concern. They are the very fabric of democracy, the essence of that which distinguishes our society from others which have little regard for the individual.

Each year the association holds a national student congress which is the policymaking body of the association. Over 1,000 students attend that meeting every year. I am enclosing with this statement the resolution passed by that body regarding the Federal Government and civil rights.

My remarks are predicated on the belief that governments, local, State, and Federal, must be active participants in securing and protecting civil rights for all people. I wish to make clear that we do not come here today as lawyers but rather as a group which wishes to make both specific and general comments regarding the proposed legislation. These remarks are, for the most part, based on our personal experiences. The United States National Student Association wishes to support H.R. 7152 as a minimal effort the Federal Government must undertake to insure equal opportunity, equal rights, and equal protection of the law.

We support fully the proposal in title I regarding voting rights. We would like to suggest that there are possible places in the bill which might be amended or changed to speed that protection, particularly where such indications require, for instance, in the first section, the first part of the section on page 4 in line 9, the word "25" be changed to $5." This is referring to the time in which literacy tests and other registration forms will have to be returned by the registrars. We feel that 5 days is a sufficient amount of time and would insure speedy action in case the applicant is turned down.

There are other such cases, but I would like to move on, as you have mentioned, on into the next title, title II of the proposed legislation has been thus far the most controversial.

Mr. KASTENMEIER. Let me interrupt. Referring to a point made by Mr. Smith earlier, or Mr. Higgs, as to how soon the courts shall decide the matter following the hearing within 10 days. You stated on page 3 that "It shall be heard and decided within 10 days." You go a little bit further than Mr. Higgs.

Mr. MANRING. I think you are going to raise the same point that the chairman raised.

Mr. KASTENMEIER. Apparently you feel that justice is delayed and justice is denied. I actually agree with you on that. I think the implementation of the 1960 voting bill, civil rights bill, was a joke. The bill produced very little, most particularly because of just lack of such language, tough as it may appear to be, but without it, as far as implementation in the South, it was completely ineffectual.

I am sorry, go ahead.

Title II of the proposed legislation has been thus far the most controversial part of the legislation. It is difficult for me to understand why. Certainly the power of the Congress to regulate interstate commerce has been extended far beyond the legislation asked here. The Federal Trade Commission Act of 1914 includes in section 5 the following:

> Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce are hereby declared unlawful.

Certainly discrimination solely on the basis of race is unfair and deceptive. Nor does the association believe that this legislation is a new and unwarranted encroachment on the rights of property, for those property rights also are built upon a degree of responsibility. That responsibility requires a recognition and respect for human values and human dignity. In many cases it demands their utilization on a basis of equality for all people.

There has been considerable talk recently of including a "Mrs. Murphy clause" in the legislation, that is, a clause which would exempt

small business from provisions which prohibit discrimination. The United States National Student Association cannot agree to such a clause. President Kennedy has correctly pointed to the moral issues involved in civil rights. Are we then to say it is morally wrong to discriminate unless you do less than $20,000 of business a year? The moral imperatives of the issues are just as clear for the small operator as for the large.

Since students travel perhaps more than any other group of people in America, this legislation is of particular interest to the National Student Association. We suggest that the insults that members of the Negro race endure should and must be eliminated. The present practices of discrimination are a particular hardship for foreign students studying in this country, and to those visiting here in delegations from national unions of students or other youth organizations in their countries. Each year NSA brings a number of foreign student delegations from Africa and Asia to this country. It is embarrassing, both to NSA and to America, to have these students discriminated against at a hotel, motel, theater, or restaurant. Nothing drives an African student to the radical socialist or Communist viewpoint more quickly than discrimination personally experienced. How is the American student or the foreign student to know if the restaurant or motel is closed to him or to his friend? How is he to know if a hotel or theater does less than the amount of business necessary to be exempted by a restrictive "Mrs. Murphy clause," if one should be added to this legislation?

Mr. CELLER. Will you summarize rather than read? The hour is getting late.

Mr. MANRING. I would like to read this section fully and be shorter on the others, if I could.

We cannot publicly denounce discrimination against Africans in Bulgaria and Buddhists in South Vietnam and then not do everything possible to eliminate discrimination in our own country. In neighborhoods adjacent to some of the largest and most renowned colleges and universities of this country we can today find dozens of "Mrs. Murphys" whose house is closed to Africans and Negro Americans purely because of their skin color. Often it is difficult for the foreign student to find a place to live. It is the small boardinghouse, the house of Mrs. Murphy, which is closed to him. No American history or problems of democracy course can undo the damage done to the spirit of the young man who hears the words "colored not wanted here."

The National Student Association strongly supports section 204, title II, which empowers the Attorney General to initiate legal action whenever possible; but such redress should also be decided speedily; 10 days, instead of the present 30 days, for the Community Relations Service which the present proposal suggests, seems to us to be sufficient time to determine whether useful negotiation can solve the situation.

In those cases which the Community Service Association is called into action, it will be clear that the Federal Government supports integration and desegregation and equality. It seems to me that less time for negotiation will be necessary than in the present case of Cambridge, Danville, or Birmingham, where there is no legislation, and the Federal Government is merely acting as a mediator.

Mr. CELLER. I will have to ask you to summarize.

Mr. MANRING. We support the financial proposals of this bill which would allow for aiding schools that have attempted to desegregate. We would like to state that desegregation is not similar to integration. James Meredith said he was the most segregated person in the world after he enrolled at Mississippi University.

I think that Federal assistance can often aid students, personnel administrators, and other people who are planning programs to integrate the student into the social life of the campus, rather than just desegregation that takes place under the present court action.

We also feel very strongly that the present legislation should be amended to call for a specific time limit to end desegregation. We would propose that all school boards in school districts where segregation occurs should be required to submit to the officer, to the Commissioner of Education by May 30, 1964, a plan which details and outlines proposals that will begin in the fall for desegregation and should also include proposals which will lead to complete integration as quicky as possible.

We support the portions of the bill which suggest that the executive officers have the authority to end financial, Federal financial assistance to projects and programs which discriminate.

We note, however, that this does not call for an ending of that practice. We feel that the proposal in this bill is certainly moderate and we would propose going much further than that.

We would like to note that the commitment of the National Student Association to the principles of civil rights and to equal opportuniy involved is very deeply rooted. Our commitment is based on the ability to maintain a better society, one which all citizens help to make better.

I mentioned earlier the problems which the associations in the country face from discrimination against foreign students in this country. I would also like to mention that we meet constantly demands and urging of foreign students and other national unions of students who are not presently in this country, for our action and the Federal Goverment's action to end discrimination in the United States.

We received just today three telegrams, one from New Zealand, one from Denmark, and one from France, all urging that the United States National Student Association do as much as possible to end discrimination in this country and each one of those telegrams also urge that the Federal Government and the Congress enact legislation which is among the proposals for civil rights legislation which this committee is hearing testimony on now.

I am sure that we will receive many more telegrams from those students and with the chairman's permission we would like to send to the committee, when those telegrams arrive, if and when they do, those proposals.

Mr. KASTENMEIER. Your statement is really based on a position of your organization as taken at the last congress, nearly a year ago; is that correct.

Mr. MANRING. That is correct.

Mr. KASTENMEIER. When you took those positions a year ago, was there much dissent to the resolution pertaining to civil rights?

Mr. MANRING. There was a little dissent. We have a good deal of controversy in our congresses. The debate is full and usually quite lengthy on major issues. The one issue which seems to be at controversy in the country as a whole, civil rights, has little controversial nature in our congress.

Students I think overwhelmingly support strong and urgent action by the Federal Government, in all branches of the Government to end discrimination in this country.

Mr. KASTENMEIER. You have Mr. Yeager sitting next to you from Loyola, New Orleans. Does that pretty well describe the situation in New Orleans, in terms of student sentiment at Loyola?

Mr. YEAGER. Two things are true in this case, when you talk of the predominantly white colleges in the South. The student organizations likely to be affiliated with us tend also to be involved in civil rights activity and to be very concerned about it. This included Loyola University until about a year ago.

I would also think that it is true that in the South, in general, the attitude among the white college students—and this is based on my experience—it is not documented, but I have visited 107 southern colleges this year and there is a more moderate approach among the white southern students than among their elders in the community.

Mr. KASTENMEIER. Loyola is integrated, I take it?

Mr. YEAGER. Barely; it is desegregated.

Mr. MANRING. Although the University of Alabama is not with the association but for the last 2 years we have worked with the student leaders there and attempted before June 1 to provide for an opening in integration.

Mr. KASTENMEIER. Thank you.

Mr. MANRING. We wish to thank the chairman and the committee members for this opportunity to introduce our remarks and our opinions.

Mr. CELLER. Thank you, sir; I think it is very creditable that your association has taken such a keen interest in this very important legislation.

Mr. MANRING. Thank you.

Mr. CELLER. Any other data that you want to submit we will receive for the record.

I place in the record the statement of Congressman James C. Healey, of New York.

(The statement of Congressman James C. Healey is as follows:)

STATEMENT OF HON. JAMES C. HEALEY, A REPRESENTATIVE IN CONGRESS, STATE OF NEW YORK

Mr. HEALEY. Mr. Chairman, I am grateful for this opportunity to present to you and members of your distinguished committee my views on H.R. 7152, your omnibus civil rights bill and my own bill, H.R. 7224, containing the President's civil rights proposals. As you know, my bill, H.R. 7224, is identical to your bill, Mr. Chairman. I am here to testify in favor of these proposals and to urge approval by your committee.

As you know, I was one of the sponsors of the anti-poll-tax legislation passed in the 87th Congress, which when approved by three-fourths of the State legislatures, will become the 24th amendment to the Constitution.

You also have before your committee my bill, H.R. 2095, to eliminate unreasonable literacy requirements for voting; and my bill, H.R. 6639, to extend the Civil Rights Commission and to broaden the scope of its duties. These proposals are both incorporated in our omnibus civil rights bill.

Mr. Chairman, 100 years ago Abraham Lincoln issued the Emancipation Proclamation assuring freedom and equality to all Americans. One hundred years later, some of our people are still deprived of these rights. Across our Nation we are seeing evidence of impatience of some of our American citizens who are victims of discrimination. And the rest of the world watches while we preach to them about freedom.

There should be no partisan politics here; we must support our President. Congress must enact legislation to lay the guidelines for solutions to the various phases of this problem. Failure to do so will weaken the fabric of this Nation at a time when it needs its full strength.

It is my hope that 1963 will go down in annals of memory as the year in which the U.S. legislative conscience came to grips with that perennial splotch on American morality—racial discrimination—and took the lead in providing substance to the promise of emancipation made a hundred years ago.

Under the aegis of the commerce clause and the 14th and 15th amendments to our Constitution, the U.S. Congress must transform its concern over a troubled and anguished situation into positive remedial action.

What is desperately needed is legislation providing effective, not piecemeal, legal tools with which our citizens who are victims of discrimination will be able to prosecute against the daily abuses that are heaped upon them.

The erupting civil rights crisis has injected a sense of urgency into this session of Congress and our adjournment date should not be set until action is taken on this problem. Congressional inertia in this area of our national life would be tragic. As our President has put it so adroitly:

"In short, the result of continued Federal legislative inaction will be continued, if not increased, racial strife, causing the leadership on both sides to pass from the hands of responsible and reasonable men to purveyors of hate and violence, endangering domestic tranquility, retarding our Nation's economic and social progress, and weakening the respect with which the rest of the world regards us."

The President's proposals, which we have presented in our bills, Mr. Chairman, are the most sweeping of any President on civil rights since the emancipation. His program incorporated in our omnibus bill, is an admirable attempt to remove the barriers which some of our citizens have faced the past 100 years—barriers which still stand in the way of enjoying full citizenship which every American is entitled to and which is guaranteed in his birthright.

There are those who regard the President's proposals as too much, too soon, as too ambitious an undertaking, especially in terms of success. I think not. They offer the Congress a set of solutions that should be acceptable to all men and women of good will. They are not designed because of mere economic, social, or diplomatic considerations. They were designed out of the knowledge that to insure the blessings of liberty to all is the primary prerequisite in a democracy, in a government, of and by, and for the people.

Our basic commitments as a nation and a people, our conscience, our sense of decency and human dignity, demand that we try to eliminate discrimination due to race, color, religion. To eliminate it is (1) not to practice it, and (2) not to tolerate it on the part of others. If we are successful in eliminating discrimination in our great country, other countries will look to us for having given substance to the dream of freedom and equality. If we do not, then we have lost our dignity and leadership both at home and abroad.

Our civil rights bill demands urgent and effective action by Congress to assure justice and equality for all of our citizens. The struggle is not that of the Negro alone. No American should be denied his basic rights to work, eat, vote, to learn, and to live where he chooses. A century after the Emancipation Proclamation, no American should have to demonstrate for his right to admission to a dining room, a school, or a theater.

Legislative relief is needed in the areas of voting, education, employment, and public accommodations. It has been in these spheres of activities that the American Negro's struggle for full equality has been a frustrating one.

Legislation cannot change a person's prejudices. If color discrimination were to disappear overnight, the Negro's low economic status would still handicap him. But legislation can work to eliminate conditions that handicap the Negro. And this is where we have a responsibility in the U.S. Congress.

Limitation of the exercise of that right to vote according to race serves no other purpose than to put into doubt the rendition of justice to the Negro citizen and the protection of his rights. A government not electorally responsible to one segment of our national citizenry, seriously jeopardizes the very essence of our representative democracy and the political life of the Nation as a whole.

Under the provisions of our civil rights bill, Mr. Chairman, voting protection in Federal elections would be strengthened by providing for the appointment of temporary voting referees, and by speeding up voting suits. For States having the literacy test, a presumption of qualification to vote would be created by "the completion of the sixth grade by any applicant." The constitutionality of such a provision is beyond reproach; Congress has within its purview of constitutional powers the power to regulate the manner of holding Federal elections.

Mr. Chairman, with regard to the elimination of unreasonable literacy requirements for voting, I would like to quote from my testimony before your committee in the 87th Congress: "It is a known fact that unreasonable literacy tests have been used unjustly to deny the right to vote. Education is a reliable gage of literacy, but how much education? At what point should the standard be set? My bill establishes the minimum line at the completion of the sixth grade in schools * * * this is a reasonable demarcation point, and I believe the most effective device is the one in my bill. It consists of establishing an objective standard by which an individual's literacy may be judged. This eliminates the intrusion of bias or prejudice * * * it requires the determination of fact, rather than a judgment or an interpretation."

Title I under our omnibus civil rights proposal would further require that if a literacy test is used as a qualification for voting in Federal elections, it shall be written and the applicant shall be furnished, upon request, with a certified copy of the test and the answers he has given.

The Civil Rights Act of 1957, provided for the Attorney General's power to bring civil action in the Federal courts where there are reasonable grounds to believe discrimination was being practiced at the polls. A 1963 civil rights act should enlarge upon this and empower the Attorney General to initiate civil proceedings when asked to do so by a complainant financially unable to sue to "further the orderly progress of desegregation in public education." This provision would go a long way in ridding the path of progress of mala fide desegregation. It would be more in keeping with the proposition articulated by the highest tribunal of the land, that integration via the "all deliberate speed" formula doesn't mean that it should take forever. President Kennedy observed in his TV-radio talk to the Nation: "Too many Negro children entering segregated grade schools at the time the Supreme Court handed down its decision 9 years ago will enter segregated high schools this fall having suffered a loss which can never be restored."

A second look at some of the language in the 1954 decision of *Brown* v. *Board of Education* serves as a reminder of the urgent need for this particular provision. The Supreme Court said that attendant with segregation as practiced in public schools there runs the pernicious likelihood of saturating the Negro child psychology with a "feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." Constituting a denial of equality of opportunity to learn, the maintenance of segregated schoolhouses was held to be a violation of the guarantee of the "equal protection of the laws" in the 14th amendment.

Title II of our bill proscribes discrimination in public establishments such as hotels and motels engaged in furnishing lodging for guests traveling interstate: movie theaters and other public places of entertainment which present forms of amusement which move in interstate commerce traffic; and restaurants and stores that extend food services, facilities, and the like, the substantial portion of which has moved in interstate commerce, for sale or hire to a substantial degree of interstate travelers. Arbitrary practices guided by racist considerations in this area create nothing but unjust hardships and inconveniences for the Negro citizen. He is forced to stay at hotels of inferior quality, and travel great distances to obtain any kind of satisfactory accommodations or food service. He is limited in his complete enjoyment of the free flow of commerce. I feel that when a private owner appeals to the public for patronage, he has no right to draw the color line.

Discrimination in the field of public accommodations should find no quarter of sympathy or tolerance in our national legislature. As it contributes to an artificial restriction of interstate commerce, it can best be removed by congressional action invoked under the commerce clause. In addition, legislative action can be justified by the equal protection clause of the 14th amendment: as these particular vehicles of private enterprise are licensed by the appropriate State authorities to engage in their particular activity, discriminatory practices found therein take on the character of State action and therefore fall within the limits of the 14th amendment.

Today Americans travel widely; millions travel each year, from place to place, State to State, and are often subjected to discrimination. Organizations—fraternal and professional—holding conventions face racial embarrassment. In our increasingly urbanized society, brought closer together by modern communications and transportation, Federal economic and social legislation—unthinkable possibly in the 18th century—has become essential today. These provide a legal basis in the clause of the Constitution giving Congress power "to regulate commerce * * * among the several States."

Critics of the public accommodations section level the charge that legislation of this kind would amount to an unconstitutional hindrance to property rights. The soundness of this argument is tenuous, to say the least, for when was the right to property considered to be absolute? President Kennedy answered his critics by saying that: "The argument that such measures constitute an unconstitutional interference with property rights has consistently been rejected by the courts in upholding laws on zoning, collective bargaining, minimum wages, smoke control, and countless other measures destined to make certain that the use of private property is consistent with the public inerest * * * indeed, there is an age-old saying that 'property has its duties as well as its rights'; no property owner who holds those premises for the purpose of serving at a profit the American public at large can claim any inherent right to exclude a part of that public on grounds of race or color."

The commerce clause, in the light of today's social and economic structure, demands a uniform national "rules of access to public accommodations."

Mr. Chairman, a further provision of the bill—title IV—provides for the establishment of a community relations service, the duties of which would be to work with regional, State and local biracial committees to alleviate racial tension. The value of such a service cannot be emphasized enough. Lacking the power of subpena, it would advise and assist local officials in improving the communication and cooperation between the races. By so doing, the service would go a long way in helping to preclude recurrences of racial crises.

I have already mentioned the Civil Rights Commission; title V will extend and broaden its powers. With regard to title VI, our Federal Government provides financial assistance or backing for many programs and activities administered by local and State governments, and by private enterprises. As a Member of the U.S. Congress, it is my privilege and responsibility to vote on these proposals and I feel the activities and benefits of such programs should be available to eligible recipients without regard to race or color. This should also apply to the employment practices of the organizations involved, public or private. Title VII authorizes the President to establish a Commission on Equal Employment Opportunity, to prevent discrimination against employees or applicants for employment because of race, color, religion, or national origin, by Government contractors and subcontractors, and by contractors and subcontractors participating in programs or activities in which direct or indirect financial assistance is provided by the Federal Government.

Unemployment falls with special cruelty on minority groups, and creates an atmosphere of resentment and unrest; the results are delinquency, vandalism, disease, slums, and the high cost of providing public welfare and of combating crime. I support the President's requests for more vocational education and training for our illiterate and unskilled. It is programs such as the manpower development and training program which assist in reducing unemployment.

Mr. Chairman, our President has spoken out; he has followed through on his promises and commitments. He has called on us here in Congress to enact sound and effective legislation to provide justice and equality for all Americans. We have never been faced with such a challenge in terms of moral integrity. We should not hesitate, but act swiftly, to take the battle for civil rights out of the streets, and enact legislation which will eliminate the necessity for segments of our citizenry to march in groups to demand equality.

The primary reason racial discrimination in America must be ended is not because of a clause in our Constitution, or as we sometimes hear, because of Communist challenge, but because racial prejudice and discrimination are fundamentally wrong. Our Judeo-Christian heritage, our sense of how man should treat his brother, our democratic ethics—our basic commitments as a nation and a people—should make us want to eliminate a practice not compatible with the great ideals to which our democratic society is dedicated.

Mr. Chairman, I urge prompt and favorable action by the Judiciary Committee, and pledge my support when the civil rights bill comes to the floor of the House of Representatives.

Mr. CELLER. Our last witness is Mr. John J. Sexton, president of the Young Democratic Club in the District of Columbia.

Mr. Sexton, I hope you will indulge us. We have been at this all day, and we are getting weary too.

STATEMENT OF JOHN J. SEXTON, PRESIDENT, YOUNG DEMOCRATIC CLUB OF THE DISTRICT OF COLUMBIA

Mr. SEXTON. In view of the lateness of the hour, I will very briefly summarize my written statement.

I am appearing on behalf of the 850 members of the Young Democratic Club of the District of Columbia to urge your support of H.R. 7152.

The statement discusses each of the provisions. With respect to title VI, we believe that it is anomalous for the Federal Government on the one hand to furnish funds which are used discriminatorily and then on the other hand for the Federal Government to spend further Federal funds in an attempt to prevent discrimination.

We think that those who accept the benefits of Federal funds should not be able to spend them in a discriminatory manner. Federal funds should not be allowed to have a "white only" label attached to them.

With respect to title II, the public accommodations provision, we would oppose any limitation which would say, in effect, that big business may not discriminate but that little business may discriminate.

Both Mrs. Murphy and the Murphy Corp. of America are subject to the Constitution.

With respect to the constitutional issues that have been raised about the legislation, I would like to make one point which is one of the several points made in the statement and that is that the decision by the Supreme Court in 1883 in *The Civil Rights* cases was based in part upon the fact that the statutes there involved were directed solely to individual acts which the Court noted "were unsupported by State authority in the shape of laws, customs, or judicial or legislative proceedings."

We suggest that the attempts by local and State governments in recent years to carry on discrimination and to help discrimination may have created sufficient State action in this area to furnish a constitutional basis for this statute even on the theory of the majority of the Supreme Court in *The Civil Rights* cases.

It is an interesting historical footnote that the views of Mr. Justice Harlan, dissenting in *Plessy* v. *Ferguson* (1896) became the law of the land in *Brown* v. *Board of Education* (1954) and that he also dissented in *The Civil Rights* cases.

Title II has been opposed by some upon the basis of an alleged (but mythical) right of a businessman to run his place as he pleases and do as he pleases. We say "mythical" because such a right plainly does not exist. The Government, in the public interest, limits the right of a businessman to run his business in many ways: Maximum hours, minimum wages, health and safety requirements, licensing requirements, and so on.

Legislation of this kind is simply one more example of legislation to restrict some in the interest of maximized freedom under law for all.

In the statement we have made two major points:

First that the proposed legislation is needed because local officials have not enforced the Constitution and existing laws.

There has been some opposition to this legislation on the ground that it is unwarranted Federal interference with local and State matters, but it seems to us that the need for the legislation would not have arisen if local and State officials had been willing to uphold the Constitution and to obey the orders of the Federal courts.

Second the restrictions which will be put, the limitation which will be put on some citizens to require them to afford equal rights to all seem to us to be necessary in order to grant equal freedom to all.

When a draft notice is sent to a citizen telling him to come into the Army and perhaps go out and get killed for his country, there is no "white only" sign on the draft notice and no "white only" sign on military graves where these men are buried and there should not be any "white only" signs on the businesses whose freedom these men protect.

The Young Democratic Club of the District of Columbia strongly supports enactment, in full, of H.R. 7152.

Thank you for the opportunity to present our views.

Mr. CELLER. We will put your statement in the record, or any other data that you care to submit.

(The prepared statement of John J. Sexton is as follows:)

STATEMENT OF JOHN J. SEXTON, PRESIDENT, YOUNG DEMOCRATIC CLUB OF THE DISTRICT OF COLUMBIA, RE H.R. 7152

My name is John J. Sexton. I am president of the Young Democratic Club of the District of Columbia. I appreciate the opportunity to appear today on behalf of the 850 members of the Young Democratic Club of the District of Columbia to testify in favor of H.R. 7152, the Civil Rights Act of 1963.

One hundred years after the Emancipation Proclamation, and 9 years after the Supreme Court held unconstitutional compulsory segregation in public schools, the United States, in 1963, is faced with a civil rights crisis, a crisis arising from one basic cause—the refusal by some Americans to treat other Americans as equal human beings. We have come a long way since 1863 and since 1954, but we cannot simply look at how far we have come but we must keep in mind how far we still have to go.

The events of the last year have made clear that existing legislation is not adequate to guarantee equal rights to all Americans. The lawless actions of State and local officials in denying Negro Americans their constitutional rights has helped to create a situation in which additional Federal legislation is needed to enforce constitutionally protected rights. The Young Democratic Club of the District of Columbia urges enactment of H.R. 7152 which we believe is a giant step forward toward the equal rights to which all Americans are entitled.

I. TITLE VI—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Title VI provides that no Federal law providing financial assistance shall be interpreted as requiring such assistance to be furnished if beneficiaries of the assistance are discriminated against.

It seems to us anomalous for the U.S. Government, on the one hand, to furnish funds which are used discriminatorily and, on the other hand, for the Federal Government to spend further Federal funds in an attempt to prevent discrimination. Those who accept the benefits of Federal funds should not be able to expend those funds in a discriminatory manner. Federal funds should not be allowed to have attached to them a "white only" label. Title VI is needed to make it clear that the Federal Government will not subsidize discrimination.

II. TITLE II—INJUNCTIVE RELIEF AGAINST DISCRIMINATION IN PUBLIC ACCOMMODATIONS

Title II provides injunctive relief against discrimination in public accommodations, at the suit of an individual, or in some cases, the Attorney General.

Many businessmen express a personal desire not to discriminate but say that they are afraid to treat all customers equally because they fear they will lose business to competitors. Title II would put all business affecting interstate commerce on an equal nondiscriminatory footing. The burdens on the free flow of interstate commerce resulting from discrimination would be relieved. The efforts of local authorities to impose segregation by police enforcement of unconstitutional laws, and ordinances would be checked.

We oppose any legislative limitation to title II which would say in effect that big business may not discriminate but that little business may discriminate. Both Mrs. Murphy and the Murphy Corp. of America are subject to the Constitution. If there is to be any limit on the scope of title II (e.g., because of inability to act on all complaints) we suggest that the Attorney General can set such limits by publishing standards he will use in determining when he will initiate action, just as, for example, the National Labor Relations Board has done in specifying certain cases as to which the Board does not take jurisdiction.

Questions of the constitutionality of title II have been raised, based upon *The Civil Rights* Cases, in which the Supreme Court, in 1883, held the Civil Rights Act of 1875 not to be constitutionally authorized by the 13th or 14th amendment. In the first place, it would appear that title II is constitutionally authorized by the commerce clause. Second, a constitution is not interpreted in a vacuum. The meaning and scope of a constitutional provision in 1883 is not necessarily its meaning and scope in 1963. Thus, for example, while the Supreme Court, in 1869 declared that "issuing a policy of insurance is not a transaction of commerce" (*Paul* v. *Virginia*, 8 Wall. 168, 183), by 1944 the insurance business had grown to the point where the Supreme Court held that Federal legislation regulating insurance was within the ambit of the commerce clause. *United States* v. *Southeastern Underwriters Assn.*, 322 U.S. 533. Similarly, in the area of civil rights, the nature and scope of State action designed to perpetuate and encourage segregation has expanded sharply since 1883. Indeed, the Supreme Court holding in *The Civil Rights* cases is merely that the 14th amendment does not reach individual acts "unsupported by State authority in the shape of laws, customs, or judicial or executive proceedings." Recent years have demonstrated substantial efforts by State officials to encourage or at least to support discrimination. Such State action may well have created constitutional support for title II, under the 13th or 14th amendment, even under the theory of the 1883 decision. It is an interesting historical footnote that the views of Mr. Justice Harlan, dissenting, in *Plessy* v. *Ferguson* (1896) became the law of the land in *Brown* v. *Board of Education* (1954). It may be that his lone dissent in *The Civil Rights* cases (1883) will have a similar history.

Title II has been opposed by some upon the basis of an alleged (but mythical) right of a businessman to run his business as he pleases. We say "mythical" because such a right plainly does not exist. The Government, in the public interest, limits the right of a businessman to run his business in many ways: maximum hours, minimum wages, health and safety requirements, licensing requirements, and so on. All rights, including doing business, have counterpart responsibilities. When the Government calls upon a citizen to serve in the Armed Forces it does not limit this burden of citizenship to whites only. Similarly, the benefits of living in America should not be limited to whites only. An American who is required to give years of service and perhaps his life for his country should be entitled to equal rights in public accommodations. The businessman who obtains many benefits from the Government, starting with a license to operate and including police protection, should not complain if his bundle of rights and responsibilities includes a duty not to discriminate against other Americans.

III. OTHER PROVISIONS

Title I provides additional protection for the right to vote, one of the basic rights of Americans. These provisions have been made necessary by the efforts of local officials to deprive Negroes of the right to vote.

Title III provides additional authority in aid of desegregation of public education. These provisions have been made necessary by efforts to evade the law of the land as enunciated by the Supreme Court in the school desegregation cases.

Title IV establishes a Community Relations Service, title V extends and strengthens the Commission on Equal Employment Opportunity. These two commissions have proven their worth by past actions. The Community Relations Service would provide helpful assistance to localities in solving discrimination problems.

While the Young Democratic Club of the District of Columbia endorses each of the titles of H.R. 7152, we prefer the enactment of all parts of the bill as a single package to enactment of some parts separately. A giant step, which the total bill embodies, is needed, not merely a series of little steps.

This statement has emphasized two points: (1) The proposed legislation is needed, in part, because local officials have not enforced the Constitution and existing law; (2) the additional duties which will be imposed by statute are simply an example of restrictions which the law imposes so that the freedom of everyone is greater.

(1) H.R. 7152 has been greeted with outcries about State rights and claims that this legislaiton embodies excessive Federal interference in matters which are the responsibility of local governments. Here, as in many other instances of Federal legislation, precisely the opposite is true. If local officials had properly performed their obligations this legislation might not have been necessary. It is largely the refusal of local officials to enforce the Constitution of the United States, including the decisions of the Supreme Court and orders of Federal courts, which has produced the current civil rights crisis. The demonstrators have turned to the streets because they had no real recourse with local officials or at the ballot box. The demonstrations are simply exercises in the rights of free speech, free assembly, and petition for redress of grievances. They are an effect of the current crisis, not a cause. The cause is essentially the insistence of some of our citizens—including, regretfully, government officials—in discriminating, even though such discrimination by government action is both unconstitutional and morally and ethically indefensible.

(2) The white businessmen who operate their businesses relatively freely today are able to do so, in part, because all Americans have together defended our freedom. Negro Americans are entitled to their fair share of this freedom. When the citizens of the United States, including these businessmen, acting through their Government, issued the call to draft men to defend the freedom of all there was no "white only" sign on the draft notice. There are no "white only" signs on the graves all over the world where lie those who died to defend our freedom. There should be no "white only" signs on the businesses whose freedom those men died to protect.

The Young Democratic Club of the District of Columbia strongly supports enactment, in full, of H.R. 7152. Thank you for the opportunity to express our views.

Mr. CELLER. This concludes the hearing today and we will meet tomorrow morning at 10 o'clock.

(Whereupon, at 4 p.m., the subcommittee was recessed, to reconvene at 10 a.m., Thursday, July 18, 1963.)

CIVIL RIGHTS

THURSDAY, JULY 18, 1963

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 5 OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to adjournment, at 10 a.m., in room 346, Cannon Building, Hon. Emanuel Celler (chairman of the subcommittee), presiding.

Present: Representatives Celler, Rogers, Toll, Kastenmeier, McCulloch, Meader, Cramer, and Rodino.

Also present: Representatives Lindsay and Corman.

Staff members present: William R. Foley, general counsel, and William H. Copenhaver, associate counsel.

The CHAIRMAN. We will please come to order. Our first witness today is a distinguished lawyer and vice chairman of the Americans for Democratic Action, Mr. Joseph L. Rauh. Mr. Rauh, you may proceed.

STATEMENT OF JOSEPH L. RAUH, VICE CHAIRMAN, AMERICANS FOR DEMOCRATIC ACTION

Mr. RAUH. Thank you, Mr. Chairman.

Mr. Chairman, members of the committee, my name is Joseph L. Rauh, Jr. I am appearing today on behalf of Americans for Democratic Action. I have with me the legislative representative of the ADA, Mr. David Cohen.

Mr. Chairman, our position can be very simply stated. We favor H.R. 7152 with all the vigor at our command. If we have any reservation, it is that we are for civil rights legislation, only more so.

We would urge upon your committee the strengthening of this bill in the respect of adding fair employment practices—adding a title that is relatively similar to that which came out of the Labor and Education Committee. We would favor strengthening and broadening the part III provisions and we would favor adding provisions for the immediate desegregation of the schools.

This does not mean because we would go further that we do not believe that this bill is of tremendous importance. This bill is vital and necessary in America, and we strongly support it.

Mr. Chairman, I believe I could be most helpful to the committee, not by running through the bill which I am sure many persons, many witnesses have done, but by discussing the constitutional aspects of the public accommodations title. It does seem to us that the public accommodations title of your bill, title II, is far and away

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the most significant part of the bill. Taking title II out of this bill would be like taking corned beef out of corned beef and cabbage. The public accommodations section is the significant part of the bill. It is the part that will stop the bitter feeling in the marches today. It is the part that will get America on the road to law and order. It was this part that the President, I am sure, relied on, and the Attorney General, too, when they said that they want to take this fight off the streets and into the legislative halls and the courts.

I would just like to refer, immodestly, if I must, to my own involvement on the constitutional side of this issue. I guess I am one of the few lawyers of recent times who has asked the Supreme Court to overrule the *Civil Rights* cases.

If the chairman pleases, last year in the sit-in cases the question arose as to whether we should argue, in addition to the *Shelley* v. *Kraemer* point, that these 1,883 cases were no longer the law. We did make such an argument in case No. 26, *Griffin* v. *Maryland*, in the Supreme Court last October. That is the so-called *Glen Echo* case, and I would like to file a copy of that brief with counsel.

Mr. FOLEY. For the record?

Mr. RAUH. For the record.

It is elementary that there are two bases for the public accommodations title. What may not be quite so elementary is what has occurred to me as the history that surrounds these two bases, by this I mean the political history.

As I was thinking about it in preparing my thoughts for this testimony, I have sort of a feeling that the 14th amendment belongs to the Republicans and the commerce clause belongs to the Democrats. That is not as superficial as it may appear at first reading. After all, the 14th amendment was adopted by a Republican Congress after the Civil War, and there is no question that in the great history of that party that was a major and magnificent achievement. But if we can say that the 14th amendment belongs to the Republicans, the commerce clause has certainly been vitalized by the Democrats.

Mr. ROGERS. You are talking about the history with it?

Mr. RAUH. Yes, sir.

Mr. ROGERS. I assume you are familiar with the argument that is made how one other State withdrew its ratification of the 14th amendment, that then they made it a condition precedent for the Tennessee one, and two others to ratify it or they wouldn't get back into the Union?

Mr. RAUH. It wouldn't shake my faith, sir, in the proposition I was suggesting that the origins of the 14th amendment lie with the Republican Party. It doesn't shake my faith in that, although I am aware of the 14th amendment and some of the arguments that are being made to suggest its invalidity. I know you are not making it for that purpose.

Mr. ROGERS. No, but as a matter of history, then you say that because the Republicans were in charge after the war and in charge of commerce, that they went ahead and opposed the 14th amendment and you are familiar with the various arguments that they had among themselves as to what should be in it and so forth?

Mr. RAUH. Yes, sir.

Mr. ROGERS. And therefore it is part of the Republicans setup at that area?

Mr. RAUH. I think that is well stated, sir.

Mr. LINDSAY. Will the gentleman yield to me?

Mr. ROGERS. Yes.

Mr. LINDSAY. Since Mr. Rogers has raised the question, that leaves me to ask him whether he, as a very good Democrat, would ever find it in his heart and conscience to support 6720, which is a bill sponsored by the Republicans.

Mr. RAUH. I wonder if my good friend Mr. Lindsay would hold that. I was going to come to that. If you don't mind, sir, I will answer that question before we are through.

I was trying to develop solely one point that I think is well to bring out.

The CHAIRMAN. What are you driving at when you say the public has Democratic and the commerce has Republican connotations?

Mr. RAUH. In some way we are going to have to resolve this difference, and before we get through, I would like to be helpful in that regard.

The CHAIRMAN. Can't we make it a Democratic-Republican bill and take both?

Mr. RAUH. I think I could quit now, sir. [Laughter.] It is always said of a good lawyer that he never argues after the judge has ruled in his favor, so maybe I ought to go home. But if you don't mind, I would like to come out there in a few minutes.

Mr. CRAMER. Mr. Chairman, I suggest that we are all trying to get together and that we make it a Democratic and Republican, east, west, north, south bill.

Mr. RAUH. I think if the Congress would agree with some of the propositions that I would urge maybe that is possible.

Let me just finish the point about the commerce clause. The commerce clause has been vitalized by the Democratic Party. Just as I would yield to the Republicans on the 14th amendment, I think it is true that the Democratic administrations have made of the commerce clause the vital thing that it is now, in the period of the New Deal and the Fair Deal and now the New Frontier.

The commerce clause has come from something that was used to regulate almost nothing to a vehicle for the regulation of the smallest and most apparently intrastate operations one can think of.

The most extreme example that is given today, of course, is the farmer growing the grain for his own consumption and even that has been covered by the commerce clause.

I don't want to belabor this, other than to suggest that there are historical reasons why each party should feel an identification with one of the two theories here and that, as the chairman so wisely put it, let's put them together.

The CHAIRMAN. Let me ask you this, also. I will get another string to my bow, so instead of having two strings, I will have three strings.

I will ask your opinion in connection with the minority report of the old *Civil Rights* case, written by the grandfather of the present Justice Harlan, where he says that the discrimination in those cases, that is, the inability of the Negro to get into a hotel or have transportation is in the nature of a badge of involuntary servitude.

Since the 13th amendment abolished slavery and since these relics of slavery still exist, as far as the treatment of Negroes is concerned, he evidently felt the 13th amendment was violated in that case.

What are your views as applied to that type of instance?

Mr. RAUH. I would accept that. I think it is still a badge of dishonor. I would only suggest, as I was going to develop, that the commerce clause and the 14th amendment are both clear supports and one may not want to add onto them.

I certainly would have no objection. I would also suggest one constitutional power that hasn't been suggested up to now, I believe, since you brought up another possible base, the postal power——

The CHAIRMAN. The what?

Mr. RAUH. The postal power has also been used in the regulation of business. For example, the Public Utility Holding Company Act and Securities and Exchange Act are predicated not only on the commerce clause but also the postal power. In other words, the use of the mails in furtherance of a project which Congress, itself, feels is against the public interest was there barred. So that actually, it seems to me, our problem is one of resolving a great wealth of constitutional bases for what I would feel from these hearings the committee wants to do. There is a real wealth of constitutional support for what we all want to do and the problem is, as you so well put it, putting these things together.

The only question on the 13th amendment and the postal power, I would suggest, is that the commerce clause and the 14th amendment are so much more directly and clearly operative that the Congress may want to consider limiting themselves to those two.

It seems to us that the commerce clause obviously and clearly and without question does cover what you are trying to do and that title II is clearly constitutional on the basis of the commerce clause. In my judgment, however, it is equally clearly constitutional on the basis of the 14th amendment.

The CHAIRMAN. May I ask you to give us your views on the use of the word "substantial"?

Mr. RAUH. I think that was a mistake. I think that the most dangerous thing this committee could do would be to try to draw lines. I think to leave this thing up in the air and to have this fellow covered and that fellow not covered is to invite years of trouble. If I were a Congressman or a draftsman for a Congressman, I would cover everything—I would like to leave Mrs. Murphy aside because I would like to come to that separately—I would cover everything and utilize both powers to do so. The difficulty with the administration bill constitutionally is that it is not clear whether it seeks to go to the limit of the commerce clause. By the use of the word "substantial" one could well suggest that they had not intended to utilize even the total commerce clause power.

Today I don't believe that the word "substantial" is required. There used to be words in the commerce clause history in the old decisions, "direct" and "indirect."

Mr. ROGERS. Or "affecting"?

Mr. RAUH. Or affecting. I think that the commerce clause today would cover everything that is open to the public. I also think that this is true of the 14th amendment.

Mr. CRAMER. Mr. Chairman.

The CHAIRMAN. Yes.

Mr. CRAMER. I was very interested in the President's answers to the questions propounded yesterday about Mrs. Murphy's roominghouse. I see the Post has a Mrs. Murphy comment in it as well as a Mr. Murphy, but the President said it would not apply to Mrs. Murphy's boardinghouse. The question was whether it would have a substantial effect on interstate commerce. I suggest the President is not very familiar with the legislation before us. That is not the test as it relates to roominghouses.

Of course, I think this is further evidence of the confusion that prevails throughout the country as to exactly what the bill does, and the lack of understanding as to how far it does go. Of course I understand that your opinion is that it should go all the way.

The bill as drafted under section 202–A–1 states "Any hotel, motel, or any place engaged in furnishing lodging to transient guests, including guests from other States traveling in interstate commerce." When the Attorney General was here I asked if that meant two or more. The reply was "Yes." So a roominghouse with a de minimis number, two, three, or four persons, traveling in interstate commerce, which Mrs. Murphy in Virginia said she did serve, that many traveling in interstate commerce, would unquestionably come within the purview of the legislation as drafted.

I think the American people are entitled to know what the proposal does and how far its thrust is. As I read it, there is no question but what the ruling says "Hotel, motel, or public place engaged in furnishing lodging to transient guests, including guests from other States or traveling in interstate commerce," it says nothing about a substantial effect on interstate commerce. Would that be your interpretation of it?

Mr. RAUH. Yes, I quite agree with you that as a matter of law the transient guest section of the statute is not limited by the word "substantial." It is the third section later on in that——

Mr. CRAMER. Dealing with retail shops?

Mr. RAUH. That is correct. That is where the word "substantial" is. I don't think there is any legal argument with what you have said. I would have my own way of dealing with it, which I would like to come to, but I accept your interpretation of 201–A–1.

Mr. CRAMER. Do you see any justification of that being the case, and using the various tests? Don't you think it would be very confusing to the people of America to determine whether they are within or out of the bill, to have one guest under the bill and the other customer under "substantial effect."

Mr. RAUH. I am against the word "substantial" and against the text in which it is used. I think it is confusing and has to be clarified. I presume that in the process of refinement in this committee it is going to be clarified.

The CHAIRMAN. Incidentally, we have something in the nature, a National Labor Board Act.

Mr. RAUH. It uses word "affecting."

The CHAIRMAN. Yes. While it is true that the National Labor Board in its regulations—that is just done for convenience and expediency, but the act, itself, is very, very sweeping and it simply pro-

vides that an establishment affected by interstate commerce, anything in the stream of interstate commerce would be covered.

Mr. RAUH. That is correct.

Mr. CRAMER. One question following up on that. There has been some suggestion, and the Attorney General was apparently willing to accept it as a compromise, that a dollar volume approach be written into the legislation.

The CHAIRMAN. He didn't say he would accept it. He said that, that is he didn't feel that he wanted that but if it was the wish of this committee, you would have to accept it. Put it that way.

Mr. CRAMER. I accept that interpretation of his testimony. If I interpreted it differently, I accept the chairman's interpretation.

What is your opinion on it?

Mr. RAUH. I am strongly opposed to a dollar test.

Mr. CRAMER. Why?

Mr. RAUH. Because I believe that both under the commerce clause and under the 14th amendment, to which I was going to come but haven't yet, under both of these I believe you can cover everything that is open to the public. If you can cover everything that is open to the public, I think you should cover everything that is open to the public. A fellow can be just as hungry going into a small lunchroom with a low dollar volume as he can be going into the Waldorf Astoria. I don't see in a restaurant, a bowling alley or a bakery shop any difference between a big one and a little one, if there is authority to cover them.

The CHAIRMAN. There is authority in the States already, some 31 or 32 States have exactly the provisions that you are speaking of, covering everything.

Mr. RAUH. I have always had to smile at Congressmen and Senators who are questionable about this bill, when their own States have the very provisions in their law which are being enacted here for the Nation as a whole. I couldn't agree with you more, sir.

But coming back to the basic constitutional issue——

The CHAIRMAN. One thing else—excuse me. If we would place a dollar volume somewhere, a floor below which the amount of business would not involve embracing within the act above which it would, then I think we are, again, faced with the fact that the Negro economically not wealthy, would be purchasing his services and goods in the smaller establishments, which would not be covered by the act and, therefore, it would be more or less of a hoax as far as the Negro is concerned.

Mr. RAUH. I think that is a very good point. I must say I had not thought of it, but it does seem to me that that is a very strong point against a dollar volume test.

If I may, then, I would like to come back to our proposition, that either under the commerce clause or under the 14th amendment these establishments open to the public, and all of them, can be regulated by the Congress.

Under the 14th amendment, to which I would like to address myself for a moment, if I can, it does seem to me that the State is so involved by license, regulation, and support that a restaurant or other establishment open to the public can be treated as the State for the purposes of the 14th amendment in relation to Negro rights.

I want to make perfectly clear that there are differences of degree in this matter. A restaurant can be the State for the purposes of the 14th amendment in relation to discrimination against Negroes without being the State for any other purpose, because the 14th amendment was passed to give the Negro a different status than he had before.

A broad interpretation of the equal protection clause for that purpose does not require a broad interpretation for every other purpose. I think that this is really the fundamental hurdle over which one has to get in arguing for the breadth of the 14th amendment in relation to Negroes.

In the history of this country there have grown up two 14th amendments. I want to make this point crystal clear because I think it is at the bottom of the whole consideration of the application of the 14th amendment here. The 14th amendment has grown up in two ways, one with respect to Negro rights where the court has interpreted time and again to give every right that has been requested. There is also a second 14th amendment which involves all other matters, corporation rights, rights of indigent defendants, et cetera. In those areas the Court has not gone as far in its interpretation of the 14th amendment. I would most respectfully suggest that if the Congress, acting under section 5 of the 14th amendment, finds that restaurants and other businesses open to the public have sufficient State involvement to give Congress the right to act under section 5, this does not get you into the dilemma that everything else the restaurant does is State action. I think that there is a difference in the Court's attitude toward the 14th amendment on these two problems and I yield for the question.

Mr. ROGERS. I take it that your statement is based upon the theory that the States get into the act when they have a State law regulaing as, oh, to health, or that the city gets into the act by virtue of the city ordinance?

Mr. RAUH. That is part of it, sir, yes.

Mr. ROGERS. You say that that is part of it. Well, now, the thing that we have discussed, what happens in some of the States—and we know some of them do have control—suppose they just repeal all of those laws that relate to license, inspection, and so forth and let every Joe Blow set up any hamburger joint and so forth without complying with any sanitary regulations and things of that nature. Would it then still be under the 14th amendment?

Mr. RAUH. Yes, sir. Because the idea of repealing everything related to this is impossible. You don't repeal your society. Your hypothesis, I respectfully dissent, is impossible. You don't repeal every trespass law. You don't repeal every law of regulation, every wage and hour law, every labor law.

In other words, I cannot visualize a society in which every single governmental relationship with the public accommodation is to be repealed. In effect, you would be repealing society, if you were to try do that.

Mr. ROGERS. Would your argument go so far as to say because a police officer of a city is authorized to maintain peace and order—that that fact that he is supposed to maintain peace and order in eating houses—that that gives it direction within the State to bring it within the 14th amendment?

Mr. RAUH. Not alone, sir. I don't want to appear as an extremist. If you isolate every single point, you can make each one appear insufficient to indicate that it is State action for this purpose. It is the combination. It is the totality of State involvement with a public facility on which I would rely. I must say that this is nothing new. In 1883 Justice Harlan, to whom the chairman referred, said it better than I have said it this morning, if I may quote it, sir.

> In every material sense applicable to the practical enforcement of the 14th amendment, railroad corporations, keepers of inns, and managers of places of public amusement are agents or instrumentalities of the State, because they are charged with duties to the public, and are amenable in respect of their functions and duties, to governmental regulation.

I respectfully suggest that you couldn't repeal all the legislation regulating a public facility without changing the nature of our society.

Mr. ROGERS. In your opinion, the present Supreme Court interpretation of the civil rights law would follow Justice Harlan's dissent of that time?

Mr. RAUH. That was the next item on my agenda, sir, and the answer to your question is "Yes."

Mr. ROGERS. Yes. In other words, when they said that it is an offense to sit down and trespass a case, that my rights have been taken away from me under the Constitution, that that constitutes a good defense as is set forth in the *Green* case because it is a custom in New Orleans that that is a good defense and that you, in turn, think that the present court would go back to the decision of the *Civil Rights Cases* of 1883?

Mr. RAUH. Yes; may I explain why?

I was going to explain, if I might, Mr. Chairman, why I felt, when I asked the court to overrule the *Civil Rights Cases* in the *Glen Echo* case last year, that I was not taking any very radical position.

First, the dissent of Justice Harlan, based on the factors of that day, appears as relevant today as does his dissent in *Plessy* v. *Ferguson.* I do not see any basic difference between the validation of his dissent in *Plessy* v. *Ferguson*, which occurred 9 years ago in the *Brown* case, and the validation of his dissent in this case.

Secondly, there has been, since 1883, a tremendous broadening of the concept of State action under the 14th amendment for purposes of the equal protection clause. You have had private associations holding primaries covered by the 14th amendment. You have had unions covered by the 14th amendment in the *Steele* case. You have had a restaurant in Wilmington covered by the 14th amendment because they had a lease from the Government. You have had a turning away from the idea that State action is a narrow concept to a very broad concept.

Thirdly, you have had a broadening in another field.

In 1883 the idea of regulation of property in the public interest was unusual, limited, and frowned upon by the court.

In the years since 1883, particularly in the *Nebbia* milk case, you have had a whole shift in the concept of property devoted to the public interest. You have today a situation in which there is almost nothing that the Court would throw out, in my judgment, as a regulation of property. This was not true in 1883. The only case in those days that tended in this direction was the *Munn* case, *Munn* v.

Illinois, which, although it had a validity for a period, lost it almost completely. It wasn't until the Court in 1932 went back to the concept of regulation of property in the public interest in the *Nebbia* milk case that this shifted. So my feeling is that the 1883 case is a shell that is only waiting for its obituary notice. It is a shell, because on the one side the Court has taken away the narrow concept of State action and on the other side they have taken away the idea that property may not be regulated in the public interest. If you put those two together, they are the two real supports for the 1883 case, and I could only answer your question in the long-winded way I did. It does seem to me that the 1883 case is waiting for its burial.

Mr. ROGERS. There are many people who in the 20th year, whether the 14th amendment, whether under the commerce clause or not is likely to meet all the tests of a person before the Supreme Court.

Mr. LINDSAY. I like your use of the word "State involvement." To the extent that a State is involved, it seems that you have a 14th amendment involvement.

I wonder if you could tell us exactly what you think the law is at this moment for those who like precision with respect to State involvement. As I understand it, even in the absence of any ordinance but when there exists the spoken word of a mayor or chief of police, State involvement has been found. After all, it is the State police who come in and pitch out peaceful sit-ins in restaurants. Of course, that is the remaining question to be finally answered by the Supreme Court.

As a practical matter, each case in the Supreme Court is a practical decision that has to be made. As you say, there is no abstract way that you could approach this. You would have to examine all the circumstances. Where do you think we stand?

Mr. RAUH. Congressman Lindsay, just first on the words "State involvement," that comes from the *Burton* case, the restaurant case where the State had leased the property. The exact language there was that the 14th amendment applies when "the State in any of its manifestations has been found to have become involved * * *." "State involvement," it seems to me, is simply a shorthand way for what the Court actually said in that case.

Now, as to the question you raise of a sit-in, where there is no city ordinance and no mayor's declaration which the Court said was the same as the city ordinance, this question, of course, is the one that was in the *Glen Echo* case, which the Court didn't pass on and which they put back for reargument in October. I did submit the brief and I have more if anyone is interested.

That raises this question: The State cannot enforce a restrictive covenant. The State cannot use its judicial process to protect the right, under a restrictive covenant, of a white owner who does not want a Negro neighbor.

Therefore, can the State use the police to protect the "right" of a white proprietor who doesn't want any Negro customers? My answer to that is clearly that it cannot do so and that when the Court reaches this, this will be no extension whatever of the restrictive covenant case of *Shelley* and *Kraemer*.

The CHAIRMAN. Didn't they approach that in the *Lombard* case?

Mr. RAUH. Not quite. I will put it this way: They avoided deciding it by saying that there was the equivalent of an ordinance in the *Lombard* case when there does not, to me as a lawyer, appear to have been an equivalent of an ordinance.

In other words, the judges didn't want to go this far at that time. You can either call the judges politicians or statesmen, depending on whether you are being favorable to them or not. I happen to feel that they are statesmen, but they certainly recognize that you cannot go the whole way at once in some of these tough legal areas.

The CHAIRMAN. The courts said:

> As we interpret the New Orleans official statements, the head of the city would not permit them to seek service in restaurants, consequently, the city must be treated exactly as if it had an ordinance prohibiting such conduct.

Mr. ROGERS. Don't you have any comment on the so-called *Green* case, the one that came from my State, where a colored man made application to become a pilot for Trancontinental Airlines and the Commission said he had been discriminated against and the lower court said that that was interstate commerce and that Congress having preempted the field. Then the Supreme Court said, "No, this is not interstate but intrastate."

What are your thoughts in that regard?

Mr. RAUH. My primary thought in that direction is that the *Green* case evidences the Court's regard for Negro rights. There was a serious problem in that case of violation of the commerce clause for a State to regulate an airline. There was a serious problem there. I would say that that case evidences and supports what I was trying to say earlier, that there are two 14th amendments. It isn't invidious to say that the Court is setting up a preferential standard for Negro rights. That is what the 14th amendment was for. I have the same feeling going over into other areas. The Court has somewhat compensated, and I say this most respectfully, for the failure of Congress to act in this area. It is because of that, if I may make this point, it is because of that that I think it is ridiculous to talk about the Court throwing out some law that this Congress will enact on public accommodations.

The Court, far from being a brake on the Congress or our country, has been the engine that has been moving this machinery toward a fairer treatment of the Negro. I really think that the idea that the Supreme Court, after the decisions that it has handed down without legislation, would question seriously the validity of H.R. 7152 or Congressman Lindsay's bill, that is not seriously to be considered.

The Court, in my judgment, is waiting for help in this dreadfully significant area. I think it is going to get it from this Congress. The case you mentioned of the interstate commerce clause application to the State of Colorado, acting in an airline situation, is full evidence of the Court's desire to help resolve these problems of Negro rights.

We could get into the argument of whether the Court is a neutral and passive organization or an active organization in support of the Constitution.

I have read all of the articles back and forth on that. I rather find the argument unimpressive. It seems to me that the Court has carried out the spirit of the 14th amendment as it applies to Negroes and that really is what was happening in the *Colorado* case.

Mr. ROGERS. May I follow through and get your reaction to—we have a number of States which deal with the segregation problem, and it is even in our city constitution, and we have a State statute.

Now, if Congress here adopts one of these theories and it becomes a law of the Federal Government, what happens to the State statutes?

Mr. RAUH. There is a provision for that in the bill before your committee, sir. In section 205(b) of H.R. 7152:

> This title shall not preclude any individual or any State or local agency from pursuing any remedy that may be available under any Federal or State law, including any State statute or ordinance requiring nondiscrimination in public establishments or accommodations.

It seems to me that that is clearly a savings clause.

Mr. ROGERS. That is the *Steve Nelson* case in reverse because we passed the Smith Act, and I think we covered the same thing, but when it got to the Supreme Court they said, "Well, now, wait a minute. The sedition laws of the State of Pennsylvania, they don't apply because Congress has preempted."

Now how do you think that the Supreme Court would follow your suggestion in this case and not in the *Smith* case?

Mr. RAUH. Oh, yes. I am quite confident, even apart from the *Colorado* case which goes much farther than this, and the Court would follow your suggestion. I have no doubt that this savings clause would be honored and that in effect you have saved not only your law of the State of Colorado but the laws of all the States that chairman mentioned, the 31 or 32 States that have taken jurisdiction, and I think this clause clearly saves all of those.

The CHAIRMAN. I think it would be a good idea to at this point put in the record the names of the States that expressly prohibited discrimination on account of race or color at places of public accommodation. They are Alaska, California, Colorado, Connecticut, District of Columbia, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Vermont, Washington, Wisconsin, and Wyoming.

Now to capitulate, as it were, your point of view, I gather that you would want to have this title to apply to all services and all establishments, regardless of size, that you feel that the history of the country and the numbers of decisions of the Supreme Court, which represented a change from the old civil rights cases. As an impetus to that thought, which would be given by a passage of an act by Congress, undoubtedly, you are very firm in your conviction and beyond peradventure of a doubt would cause the Supreme Court to reverse the old civil rights case decided in 1883 and declare this bill enacted into the law of the Constitution on the ground that it is within the purview of the 14th amendment.

Mr. RAUH. I would only make one amendment, if I may be permitted to do so, to your summation of my feelings. I would say—may I shift and put it just this way? I believe the statute should cover everything. You stated that exactly as I feel. I think that where the administration made its mistake was in putting in the limitations to the commerce clause. I think you should use both bases to support covering everything, as you suggested, both the 14th amendment and the commerce clause.

When you said I spoke so confidently that the Court would overrule the 1883 decision, I do speak confidently if they have to. However, as you are aware, Congressman Celler, as a very distinguished attorney, the Court always avoids overruling old cases as long as it has some other way of deciding the case. It is, therefore, possible that they will never reach the civil rights cases. I am only confident that they are going to overrule that case if it is ever reached.

The CHAIRMAN. You mentioned *Plessy* v. *Ferguson*, and you indicated there was an overruling there.

Mr. RAUH. They had to overrule it because of the fact that there was no other way of upholding integrating schooling. They might not have to overrule the 1883 case here by putting the public accommodations title under the commerce clause. Therefore, if they put it under the commerce clause, they would then have one of these hifalluting sentences about, "It now becomes unnecessary to consider whether the 1883 case is still law."

The CHAIRMAN. Do you accuse the Supreme Court of being hifaluting?

Mr. RAUH. I must say as a lawyer who takes cases there and after you have worked 5 years on a case and you have a nice broad proposition you want decided and you win on some narrow ground, that the indictment wasn't perfect or something, you get the feeling that what is said about what we are not deciding is hifaluting. [Laughter.]

With 5 years of effort going down the drain, you sometimes get that feeling, whether you should have it or not.

Mr. LINDSAY. How much is left now of the 1883 cases? All this talk about reversing it, it seems to me that it has been at least 50 percent reversed now.

Mr. RAUH. I agree with that, Congressman Lindsay. That is what I really meant when I said it was already a shell. Whether it has been reversed, it has been cut away on both sides; it has been cut away on State involvement and on property right, cut away on both sides. There is only a kernel left, and I don't think that can stand alone.

Mr. ROGERS. The Congress never did repeal those civil rights laws?

Mr. RAUH. That is a very good question.

Mr. ROGERS. Why didn't they go ahead this time and hook onto it?

Mr. RAUH. That is a very good point that the 1875 law has never been repealed. If some day the 1883 decision is reversed, somebody will be arguing in some court that the 1875 law is still the law of the land. If there is some penalty in that law or some privilege in that law that is not in yours, they will be arguing that that penalty or that privilege is again the law. The 1875 law has not only not been repealed, some of the codifications since 1883 have included it.

Mr. ROGERS. We don't provide for powers——

Mr. RAUH. Only injunctive.

Mr. ROGERS. You feel if they keep the 1875 statute on the books, that they may take and interpret this into a penalty clause or amendment to it in some manner?

Mr. RAUH. I don't think they would say that your bill is an amendment to it, because I think most people do not assume that the 1875 law would be revalidated by the reversal of the 1883 decision.

All I was suggesting, in answer to your suggestion, is that that argument will be made some day, as if and when the 1883 decision is overruled.

Mr. CORMAN. I am apprehensive about the 14th amendment approach, if that were the only one in the bill, for this reason, I think it invites States to debate it by negating their control of specific kinds of business. It would not be improbable. They would stop regulating motels and hotels in some of the States.

Would you concede that if the sovereign State of Mississippi, for instance, that no subdivision of that State, itself, would impose any license or regulation on hotels and motels, then you would be completely out from under the 14th amendment, would you not?

Mr. RAUH. If they took back all of society's regulation of business enterprises, I might be.

Mr. CORMAN. No, just the business of regulating it as a public place of business. I am not saying that they would abandon the regulation of signing laws, but those things apply to private homes, too. So you won't think that this is ridiculous I would call to your attention that in that State a substantial part of the tax revenue is engaged from a tax on the sale of liquor, which is illegal to sell in that State, so this is not completely improbable, I think, and it is the reason that I would be most hopeful that we could put something in addition to the 14th, if we use that as our primary base. What would be the result?

Mr. RAUH. I am not suggesting that you use either as your primary base. I was suggesting—and if my remarks have not indicated it I have not been a good advocate this morning—I am suggesting that everything be covered and that Congress make it clear it is relying equally on both of these constitutional bases.

The reason I went into the history that each party really has a proprietary interest in one of the two theories was that that seems to be the best reason for putting them together. I certainly share your feeling that to leave out the commerce clause would be a bad mistake, and if my remarks have been so interpreted, I didn't intend that.

When I say "covering everything," I would like to say a word about Mrs. Murphy. The real problem of Mrs. Murphy doesn't seem to me to be one of interstate commerce. I agree with Congressman Cramer on that point. The real problem with Mrs. Murphy is that she is not a public institution. I feel that this is probably your way out of the Mrs. Murphy problem: What is there in this country that we prize as much as any other right? It is the right in our own home to do as we see fit. Those of us who have been in the civil rights movement have also been fighting for civil liberties, for the right of privacy, for the right to be let alone.

Now, I think that Mrs. Murphy, if I understand Senator Aiken who threw her into the arena, Mrs. Murphy is a lady who takes in a few roomers in her own home. I believe that the Mrs. Murphy problem should be resolved by statutory language which makes clear that taking a few roomers into one's home is not a public accommodation in the normal sense.

I don't see that that is any precedent for drawing a line. I think where Senator Aiken did a disservice in this discussion was in implying that Mrs. Murphy was also a restaurant, a motel, and a small anything.

I don't believe that there should be a line between big and small. I think the Mrs. Murphy's problem is a separate one that should be handled on her right of privacy in her home to take in the few roomers that she wants.

I certainly understand the feeling of people—I not only understand it, I share it—that there is a right in one's own residence which must be protected. I would respectfully suggest that there is language available in the part that Congressman Cramer read me about motels, hotels, lodging, which would make clear that the home with a few roomers wasn't covered, not because it is small, because I don't think that is the test, but because it is her home.

Mr. ROGERS. Yesterday we had Mr. Meany up here testifying and he, in effect, said that the moment you engaged in any public enterprise, so to speak, or offer services, that you automatically take down this privacy that you believe in and have been protected by.

You would limit it to that it is a private home and the sign says, "Tourists. Stay here all night and breakfast," and so forth, that that, within itself, would not come within his meaning of engaged in business to the point that they are inviting the whole world, so to speak, to take advantage of their accommodations. Is that it?

Mr. RAUH. I think that that is properly stated. I think that the home is just somewhat different.

I would respectfully suggest that this proposal resolves a serious problem. I think Mrs. Murphy has been used against this bill. I think Mrs. Murphy has been set up by people who are opposed to this bill. I was really trying in a helpful way to give an answer to the Mrs. Murphy problem that doesn't set a precedent for a removal of all the other small enterprises which I so strongly urge be covered.

Mr. ROGERS. I trust that you understand I am trying to get the answer, because I assure you that if this ever gets before the House, those who are supporting the bill will be asked these questions. We want to be able to answer those questions. We want to be able to answer them, so I appreciate your statement.

Mr. CRAMER. May I ask a question along those lines?

The CHAIRMAN. Do you yield?

Mr. ROGERS. Yes.

Mr. CRAMER. No. 1; I wanted to read the President's remarks in the record, to substantiate my statement that he cited the Mrs. Murphy case in reply to a question of whether or not her operations would have a subsantial impact on interstate commerce, and you agreed that that was not the issue, whether two or more guests traveling in interstate commerce stayed at a guest house.

Mr. President, do you think that Mrs. Murphy should have to take into her home a lodger she doesn't want, regardless of her reason or would you accept a change of the civil rights bill to except small boarding houses like Mrs. Murphy?

Answer. The question, it seems to me, the answer would be, Mrs. May Craig, whether Mrs. Murphy had a substantial impact on interstate commerce.

Of course, as I commented before, apparently the President had not read the bill, because that is not the test. The test is whether two or more people traveling in interstate commerce stayed there.

Now, how can you tell whether a guesthouse, under your proposal, would come within your proposed exemption because after all it is her home. When is it charged with the greater degree of public involvement than merely her home? Suppose you have 10 rooms open to the public and she occupies 1? Suppose you have four open to the public and she occupies one? Suppose it has been a guesthouse for 50 years? Who is going to make the decision and how in the world can

you ever write a definition into this to exclude what you suggest should be excluded? Mrs. Murphy lives there, and rents a few rooms as a business. How can you differentiate? How can you possibly define it?

Mr. RAUH. I don't share your difficulty, sir. I think that Mr. Foley has been faced with lots harder drafting problems than that one. I would simply say that the bill doesn't include guesthouses in which the proprietor lives and which has no more than five guests. I just picked that number out of the hat. If I had a house that used to be a gigantic affair—some lady's place up in New York State, one of these big places, Mrs. So-and-So's place—obviously, that is a major business enterprise. That is a major business operation. But I don't see why you couldn't exclude transient guesthouses where the owner is the operator of the transient guesthouse and where there are only five or less roomers.

Mr. MCCULLOCH. Mr. Chairman, will the gentleman yield?

Mr. CRAMER. Yes.

Mr. MCCULLOCH. What the witness is saying is positive evidence of how difficult the problem is. Some of the bills that used the word "substantial." Well, we had a definition by the Attorney General before the committee, and I think he said that "substantial" meant more than minimum.

Mr. CRAMER. "De minimis."

Mr. MCCULLOCH. Now, I am retired and I am going to build a house which is my mansion, in which I live all the time and being in good health of body, I decide that I am going to have two or three or four rooms to let out to you or anybody else that I wish to let them out to, whether you are traveling in intrastate or interstate commerce; whether your automobile tag bears New York or Ohio. Are you going to exclude that? I am retired, but I want that. You may call it a motel, but it is my place of abode, and I am going to have 2, 4, 5, 10 people in it. Am I going to be covered?

Mr. RAUH. I don't care whether you say five or six, but I agree with your essential point, Congressman McCulloch, that the present draft of the administration, with the use of the word "substantial" in one place and, as Congressman Cramer pointed out, a different test in another place, is a mistake.

I am suggesting that you cover everything that is open to the public with one exception. Because the man or lady lives in the house and because there are only a few transient rooms, there should be an exception, not based on size but on the privacy of the home.

I am suggesting that this gets you around those who are seeking to use the Mrs. Murphy gambit as a "red herring."

Mr. MCCULLOCH. Let me interrupt. I will use Mr. Murphy. I understand that in New York, and occasionally Ohio, we had restaurants in which the proprietor, Mr. Murphy lives. Maybe he served breakfast to 2, 4, 5, 8 or 10. Are you going to exclude the restaurant above which Mr. Murphy lives? And we have a little delicatessen store 10 blocks down from me. Mrs. Jones lives above the delicatessen and she only wants to serve Scotch people, but maybe doesn't want to serve somebody else. Are you going to exclude her by reason of the fact that she lives above the delicatessen?

Mr. RAUH. No, sir.

Mr. McCULLOCH. She serves the public.

Mr. RAUH. I am not excluding her. I was limiting exclusion to the one place that appears to have been utilized against the major action that this committee is going to take.

I certainly wouldn't exclude the restaurant or the delicatessen under those circumstances.

Mr. McCULLOCH. But you would where a man or women lives and whether it is 2, 4, 5 or 10 roomers if the house has outgrown the family and there is a bedroom in addition from time to time?

Mr. RAUH. If I ever had the good fortune to be elected to Congress, that would be my position, yes.

Mr. LINDSAY. I assume you would include in that exclusion the farm couple that built four or five cabins in the rear and call themselves a motel? They put a sign out on the road and say "Cabins."

Mr. RAUH. No, I don't think I would. I think it would have to be in the nature of a home with privacy involved.

Mr. McCULLOCH. Let me continue that a step further then. If this farm couple had this big rambling farmhouse and admitted 2, 4, 6, 8 or 10 people for a day or a week to participate in the pleasures of a farm for rent, would you exclude them?

Mr. RAUH. I would say that the question would be whether the transient guest proprietor lived on those particular premises, so that there was a right of privacy.

Mr. McCULLOCH. Under the same roof, you mean?

Mr. RAUH. Yes. I was answering Congressman Lindsay because I felt that he had gone beyond the right of privacy when you set up a motel in a different part of the farm. I recognize that there will be problems, but I think they are going to be very minuscule compared with the difficulties in going beyond this limited exception.

Has there not been sufficient feeling on the Mrs. Murphy point that something, some exception may be required? If that is so, as I personally, reading the press, feel it is, I think this is a better way of solving the problem than drawing some dollar volume or other line that will have no relation to the problem. That was really all I was trying to do.

Mr. McCULLOCH. One further comment. I raised a couple of these questions because of their difficulty, speaking only for myself.

This is off the record.

(Discussion off the record.)

Mr. FOLEY. Recently, Connecticut enacted a fair housing statute with an exemption of a structure where the owner occupied the premises himself, although other parts of it were rented out. That is the basis. That is analogous to what you are saying here, that if you have owner occupancy plus other advantages open to the public, that is a possible basis for an exemption here?

Mr. RAUH. Precisely, Mr. Foley. I would suggest that all the housing ordinances have this provision and the proposed housing ordinance for the District of Columbia has exactly the exception you indicate. It is probably that that made me make the suggestion.

Mr. CRAMER. I would suggest that Mrs. Murphy is more a symbol of the guardian angel of property rights of the small businessman than simply Mrs. Murphy with a boarding house. So I think your discussion of Mrs. Murphy, as such, perhaps misses the point and

merely seeking to protect Mrs. Murphy, doesn't protect the other small businessmen from having the Federal Government tell them who their customers can or cannot be.

I think Mrs. Murphy epitomizes all the small family type establishments who feel they have the right to choose the customers with whom they do business.

Mr. RAUH. I think she does appear to epitomize it and it was because of this that I made the suggestion that I don't feel she should be permitted to epitomize small business. I don't think small business is epitomized by Mrs. Murphy. I was trying to have the exclusion of her guesthouse on the ground of the right of privacy in her own home; that wouldn't carry over to real business operations. I was trying to be helpful to those of the committee who I think would like to make as small an exception as possible. I was trying to suggest a rationale for as small an exemption as possible, which would stand up as a principle.

Mr. CRAMER. That fits into your philosophy that everybody ought to be covered by an interstate commerce clause, regardless of the impact they have on interstate commerce but there are a lot of people in America who disagree with that view, who feel that there should be some fairly substantial impact on interstate commerce or affect on interstate commerce before permitting interference by the Federal Government. That is the fundamental issue in this question. Our position is that there are a lot of people in America who don't think that the interstate commerce clause was intended to have a thrust in that respect and to cover everybody in this country, as it relates to this subject matter.

Mr. RAUH. I take it you are aware of the case where they had covered the farmer who grew the grain to eat it? I don't know if you could go much farther under the commerce clause than that case.

Mr. CRAMER. It is a question of whether you are protecting the public commerce or whether it is the 14th amendment.

On page 18, in connection with the preservation of State statutes on the same subject matter, which was described as the *Nelson* decision in reverse, then it would be possible, would it not, for a person to be subject in those States that have public accommodation laws—and usually they have damages as a remedy, $500 or $200, and also in Federal courts.

The CHAIRMAN. What page?

Mr. CRAMER. Page 18, 205-b, of your bill. A person would be subject to suits in both courts, with the suit in the Federal court not barring the State suit for damages.

So in the States that do have these statutes, one could be sued both in the State court and the Federal court for injunctive relief; isn't that right?

Mr. RAUH. No. I think not and for a different reason which occurred to me while you were speaking.

If you will look at page 17, section (d), before the Attorney General can sue, he has to notify the appropriate State and local officials and upon request afford them a reasonable time to act under such a State or local law or regulation before he institutes an action. I am not quite clear, exactly how this would operate in your situation, but there is an effort in section (d) to avoid the overlapping of these two

approaches. I rather doubt that the Attorney General would bring his suit if he thought that there was going to be the overlapping you suggest, particularly in view of the sentence in the bill which makes clear that where there is a State law, Congress wants the State law to operate first.

Possibly that could be clarified, but there is a real effort in this bill to solve the very problem you raise, of not having conflicts here between the two jurisdictions.

Mr. CRAMER. But in this proposal, we would be giving the individual the absolute right to sue. The individual would have the right to sue, as well as through the Attorney General. An individual could bring suit any time he wanted to without even talking to the Attorney General.

Mr. RAUH. That is correct.

Mr. CRAMER. And also sue in the State court.

Mr. RAUH. No. I think you are wrong for this reason: While it is true that an individual can sue without talking to the Attorney General, if he does talk to the Attorney General, he has to say that he is unable to sue. The Attorney General can only sue on his behalf in circumstances where he indicates that he is unable to sue.

I am looking for that provision, if you will give me a moment. If you will look on page 16 you will find in section 204 the circumstances—Congressman Lindsay, if you are leaving, I would just like to answer your question that you put at the beginning.

Mr. LINDSAY. I want to apologize. I have a radio engagement.

Mr. RAUH. You asked whether a good Democrat could ever support H.R. 6720. I appreciate your courtesy and I didn't want you to leave without my answering your question. I think H.R. 6720 is an excellent bill. My criticism of that bill would be that it does not rely, also, on the commerce clause, just as my criticism of the administration bill is that it relies too much on the commerce clause. I would say that the right bill is a combination of H.R. 6720 and H.R. 7152.

Mr. LINDSAY. Thank you very much. I apologize for having to leave.

Mr. RAUH. That is all right. I didn't want you to feel, as a Democrat, I was unwilling to answer the question whether a Democrat could support a Republican bill.

Mr. LINDSAY. I think you have done a fine job in your testimony.

Mr. RAUH. Thank you, sir.

On page 16, section 204, it is clear that the Attorney General can only sue if the person aggrieved is unable to initiate and maintain appropriate legal proceedings himself.

In other words, the Attorney General would never be suing in a circumstance where the individual could sue, because the Attorney General can only sue on the request of an individual who states that he can't sue. So I do not think your case of conflict is possible.

Mr. CRAMER. But you still avoid the hypothetical that I put and that is where the individual sues. Now, there may be some argument, some basis for your argument, although I don't wholly concur with you that if the Attorney General sues, the party would then be denied the right of a remedy under the State statutes. But when the individual sues, it has nothing to do with the Attorney General bringing suit.

Mr. RAUH. Look at 204(a).

Mr. CRAMER. I am looking right at it.

Mr. RAUH. It says:

The Attorney General can sue if he certifies that he has received a written——

Mr. CRAMER. I understand that, but I am talking about the individual suing.

Mr. RAUH. Under both Federal and State law.

Mr. CRAMER. Line 10, the suit may be instituted by the person aggrieved or the Attorney General.

Mr. RAUH. Yes.

Mr. CRAMER. He can also sue in the State court for damages?

Mr. RAUH. No, I would say——

Mr. CRAMER. Under the State statute.

Mr. RAUH. I would certainly have no objection to clarifying the section 205 (b) to make clear that there would have to be an election of judicial——

The CHAIRMAN. We have cases where violation is of both Federal and State statutes and permission is given to sue.

Mr. RAUH. Yes, I think you should have the election. I was only suggesting an answer to Congressman Cramer. You might not want him to bring both suits. He ought to have the election to sue either under this——

The CHAIRMAN. Why should there necessarily be an election? In all probability, if a suit started in the State courts, it is not likely to start in the Federal court, and vice versa.

Mr. MEADER. He could sue one after the other. He could lose his case in the State and file under the Federal.

Mr. MCCULLOCH. He might seek different remedies.

Mr. CRAMER. He wants the State remedy because it puts dollars in his pocket. Five hundred dollars is the customary amount set out. Under the Federal proposal being considered, he can only get injunctive release.

Mr. RAUH. Where I was confused, Congressman Cramer, was that I thought your initial question related to having both the Attorney General and the aggrieved person sue. I don't think that that is possible. I do agree that the way the bill is presently drafted he could sue in both jurisdictions. There is a good deal to what Congressman Celler says, that there are instances—I am sure we can find them—where one can sue in both places, under State and Federal antitrust laws, for example.

I am not certain whether that precedent is valid here. I, myself, do not feel that this question would come up very often, but for myself I wouldn't feel very badly about the idea that one couldn't sue in both jurisdictions.

Mr. CRAMER. I just cite this as an example of the way the bills are presently drafted and the extent to which a small businessman could be harrassed by a complainant, not only in this State but the Federal court.

Mr. RAUH. I would accept the idea that he could be sued in both. I question the harrassment.

Mr. CRAMER. That is all.

Mr. MEADER. Mr. Chairman, may I ask a question?

The CHAIRMAN. Yes.

Mr. MEADER. Mr. Rauh, we had Secretary Celebrezze here the other day. There were some questions raised about title 3 and the phrase "racial imbalance,"—"racial imbalance in public school systems." Starting with section 303 on page 19, the Celler bill, you see the words "problems occassioned by desegregation or racial imbalance," line 6, page 20.

Mr. RAUH. Yes, I do, sir.

Mr. MEADER. Throughout that section there is a reference to the phrase "racial imbalance."

Now, I am not sure that we got a clear statement from the Secretary as to what racial imbalance was. I suggested the definition that racial imbalance in public schools was a situation where the proportion of Negro students to white students in a school did not comport with the ratio of Negroes to whites in the general population of a given area.

Do you have any comments on the definition of "racial imbalance"?

Mr. RAUH. No, sir. I had the same question in my mind as to what that phrase actually meant. I just glanced back at the Attorney General's testimony before your committee to see if he had referred to it and he did not. I do not know the answer to your question. I was somewhat surprised by the phrase. I am not certain what it adds to the word "desegregation." I am not certain whether they were thinking of things like northern areas, where there is no segregation, as such, but where the courts—Judge Kaufman in New Rochelle and other situations of that kind—where the courts have been raising problems of racial imbalance apart from active discrimination at the time. But I am afraid I am not able to be of assistance to the committee on those words; the question had occurred to me when I saw them and I think I had a mental note to try and find out what they meant and haven't done it.

Mr. MEADER. I might suggest that Secretary Celebrezze charged that some school districts consciously and intentionally drew their boundaries in such a fashion as to exclude Negro populations from that school district. Therefore, you had a segregated school because the population, itself, was segregated.

I would like to call your attention—and the reason for this question of racial imbalance, the meaning of it is important, is because title VI, in less than one page, gives very sweeping powers to withhold grants of aid in all Federal grants-in-aid programs. I believe the Secretary testified that in his agency alone there were $3.7 billion of funds annually going to areas on 128 Federal programs.

You will note that on page 35, line 6, the words "discriminated against" on the question of race, religion, and national origin is used. I wonder if it would be your opinion that if racial imbalance, occasioned by the school district drawing boundaries in such a fashion as to exclude Negro populations from the school district would constitute discrimination under the phrase that I have just called your attention to on line 6, page 35?

Mr. RAUH. Sir, I don't know what they meant, as I said before, by the words "racial imbalance." If I put your interpretation on it—which I take it is that "racial imbalance" means to deliberate drawing of a line around the school so that you accomplish a certain balance at that school for the purpose either of keeping Negroes out or in—then I would say that that was covered. I would say that that

would be covered by the word "segregation." I don't think they needed the word "imbalance" to do what you said, if I am correct in my interpretation of your position.

In other words, I think if they had a school and there are whites on this side and Negroes on the other and they drew the line radiating only one way out of the school, that is a violation of the *Brown* case and you don't need the words "racial imbalance." I am just not clear what racial imbalance is. I would say where the whites are on one side and Negroes on the other and they don't draw any sort of a circle, and they radiate out only one way to eliminate the colored children, that is a question under the *Brown* case.

Mr. MEADER. Let me follow along the point I am leading to. I am discussing these phrases, such as racial imbalance to determine whether or not that constitutes discrimination.

The title VI gives discretionary authority to anyone administering a Federal grant aid program, not just HEW but Government-wide, to grant or withhold funds.

Mr. RAUH. Which was that, sir?

Mr. MEADER. Title VI. It is less than one page long.

Mr. RAUH. I have that. I thought you were going back to the school title. I am sorry.

Mr. MEADER. I referred to the racial imbalance in the school title because some of us thought that a condition of racial imbalance in schools might constitute discrimination as it is referred to on page 35, line 6. The point is this: If racial imbalance in school districts constitutes discrimination, then if racial discrimination is to be determined by the area defined, within which there is a proportion of white and Negro population and a disproportion of Negro to white students, then how can title VI be effectuated without the Federal Administrator making a determination of what is the proper area?

In other words, let's take my hometown of Ann Arbor, Mich. Let's say we have a school district which is 95 percent white. This is not the case. We have never had a segregated school in Michigan, but if the line were drawn differently and it took in another section, the ratio would be, say, 50–50. That determination of the school district was made under Michigan law by local officials elected by the people.

I am suggesting that in the effectuation of the grant-in-aid program, the Secretary of Health, Education, and Welfare, in granting the allowance of educational funds or impacted funds or some other grants of aid, would of necessity predetermine the proper boundary lines of that school district and the weapon that he would use to enforce his determination would be withholding Federal funds. Is this illogical?

Mr. RAUH. No, sir, I do not think it is. I would like to say that I think the question in here is——

The CHAIRMAN. I think you ought to give that a little more time before you present an opinion on that, because there are lots to be said on both sides.

Mr. RAUH. I was going to say something on both sides. I was going to be careful.

I would want to say first that the question in here in title VI is separate from the question of racial imbalance in title III. You would have the problem in title VI which you present, whether you had the

words "racial imbalance" or not. I think if we get that understanding as to the problem here, then I would like to give my answer as to what the situation is with regard to discrimination.

In other words, I think the drawing of a line deliberately to exclude Negroes from integrated schooling is a violation of the *Brown* case.

You don't need the word "imbalance"; you get it from the words "discriminated against."

I think the Secretary would be required, not to draw lines as you suggest, but to determine whether lines were drawn for a clearly discriminatory purpose. That is what I meant, Mr. Chairman.

I would think that you would be correct, Congressman Meader, but not from the point of view of the Secretary drawing lines. I don't think the Secretary of Health, Education, and Welfare says what the right line is, but simply whether there is a discriminatory line. To make my case easy, suppose the mayor says, "I just told those school board fellows to draw the line so they had Negroes on one side and whites on the other." I would say that that is obviously a violation of the *Brown* decision and that that problem is inherent in title VI. But let me say this, in addition to title VI, I think that problem we have in America today, apart from title VI. I don't look on title VI as giving the President new powers. I think the President has powers under the Constitution to withhold funds that are being unconstitutionally spent.

Mr. McCULLOCH. Do you think from what the President has said that he thinks he has authority now?

Mr. RAUH. Well, sir, you have me. I think the President has more power than the President thinks.

The CHAIRMAN. Mr. Rauh, it strikes me that this provision of title VI offers wide discretion. There is no question about it. Those who want to give that kind of discretion will vote for title VI. Those who don't want to give that kind of discretion will vote against title VI, but I don't see how under the circumstances you can hedge that title around with so many conditions that might vitiate the very purpose of title VI.

You have a wholesale variety of cases; all manners and kinds of cases are going to crop up. You can't envision them in advance. You just therefore give the widest kind of discretion.

Mr. Celebreeze, who was here, said there may be absolute discrimination. His judgment is that there is discrimination, but he said it might be unfair and impractical to go into a situation like that.

For example, if he would summarily—summarily is the word I use in cutting off funds, he would be hurting a great many innocent people. A lot of students in a particular school or college that are not involved in the discrimination. Their education is interrupted. Therefore, if you are going to do this with absolute provision, you are going to tie the hands of the administration which, in my opinion, should have this kind of discretion.

Under the Hill-Burton Act, which involves grants to hospitals and the like, if you summarily go in there and cut off funds without for example giving them an opportunity to change conditions, there, again, you are going to create tremendous havoc. You wouldn't want to close the hospital. Then you are doing injury not only to the whites but as well to the colored people.

In my humble opinion, I don't see how you can get away from giving a wide variation of discretion if you want to accept the formula of touching the pocket nerve of various States or subdivisions of States, which do actually and deliberately discriminate. That is the sum and substance of this.

As I view it—am I correct in that interpretation?

Mr. RAUH. I concur, entirely, with the statements you have made. I look upon title VI as an affirmation by Congress of support to the President in cutting off funds. Those circumstances where there is damage will be far less than the gain. This is a delegation of wide discretion that is necessary, and I agree completly with your statement.

I would have made it myself, if I could have said it as well.

The CHAIRMAN. There is another factor there. The entities that might be affected if these funds might be cut off, wouldn't they still have recourse to the courts to review the decision of the section of Health, Welfare, and Education? They would have a right to go into a court and determine whether he acted arbitrarily or capriciously.

Mr. RAUH. That raises some very difficult problems about the right of——

The CHAIRMAN. In my personal opinion they have the right to go to court.

Mr. RAUH. In my opinion, too—I share that. I wanted just to give the cautionary indications that there are some circumstances in which efforts have been made to enjoin expenditures—I refer, of course, to *Massachusetts* v. *Mellon* and *Frothingham* v. *Mellon*, where these problems arose.

However, I think the circumstance where a State is denied funds that it thinks it is constitutionally entitled to, may be distinguished from those cases. I think they would have a right to sue in the circumstances.

Mr. MEADER. I thought the chairman's statement about court review of withholding funds seems inconsistent with his statement that we shouldn't provide court review, because of the interminable length of time it takes to litigate a case.

The CHAIRMAN. No, I said if you are going to put into title VI, yourself, some sort of a review, not necessarily a court review, some commission, something or other, it might bog this whole program down into delays, dilatory tactics, and what have you, and you will never get out of it.

Mr. MEADER. I am suggesting that if there is to be court review of an administrative decision to grant or withhold funds, I know a county in Michigan which would like to take advantage of such review since Mr. Celebrezze has determined not to give Hill-Burton funds to the two hospitals in Monroe.

The CHAIRMAN. I am going to ask counsel to do this, to check and see whether or not under these circumstances there would be the right of review in the courts, not only your case in Michigan again, but even if we passed title VI, that any party or subdivision could go to a court.

I think it would be well to clear that up, don't you think so?

Mr. MCCULLOCH. I am very glad that the chairman has said what he has said, because, if I remember the testimony of Secretary Cele-

brezze correctly, it was his opinion that there was no authority for review in the courts or otherwise.

I would like to get this unmistakably clear in the record, Mr. Rauh, because I think it is so important in the matter of principle.

Might I conclude from your statement that you think that a Secretary or an Administrator should have the right to determine whether there was a violation of law in the matter of discrimination by a State or a political subdivision and that decision being final and not subject to review by either judicial or administrative review?

I would be glad to have you answer that, and then you can elaborate upon it, because this is a matter of principle and I would like to say, Mr. Chairman, this is going to be one of the important factors in whether this legislation is enacted in this session of Congress.

I am pressing in a friendly way for an answer and then you can explain it, so that we will have it for the record, because it is going to be carefully used and oft quoted.

Mr. RAUH. As a lawyer, I know the advantages of getting a yes or no answer out of a witness, sir. May I just ask this one clarification—and I will answer your question yes or no. Were you referring to the situation under the statute or to the point that I made that I thought the President at the present time had certain constitutional——

Mr. MCCULLOCH. I am referring to the statute. I am referring to the proposal which would unmistakably give the Chief Executive or his aids authority which the President, apparently from his statement, now doubts or does not believe he has.

Mr. RAUH. My first answer would be "Yes," if the President authorized that action.

Mr. MCCULLOCH. And might I inquire what you mean by authorization? Do you mean a general authorization to the President, whoever the President may be, or to his newly appointed Secretary of Health, Education, and Welfare to make this factual determination and issue his order in all fields or in each particular case that arises?

Mr. RAUH. In my opinion, under this statute, the President would have authority to do it either way.

Mr. MCCULLOCH. But that wasn't my question. Do you believe that he should have that authority without his decision being reviewable, either judicially or administratively, and if you want time to think about that I can well understand your reasons. I am pressing it because of the importance of this principle.

Mr. RAUH. I am happy to discuss this. It is a difficult subject, but I think, if I might, I would like to refer to something Congressman Meader said to help clarify this. I believe you used the words that "there was no right of review, whether he either granted or withheld funds." I think you treated those two cases as one and I most respectfully suggest that those are different situations.

Mr. MCCULLOCH. You may limit your answer to my question to that specific case, where the Administrator or Secretary reviews the facts and issues the order to withhold the distribution of funds to the State or any political subdivision thereof which would otherwise have been entitled to the funds.

Mr. RAUH. In my judgment as a lawyer, being asked a question of this significance without having a previous chance to think it through, in my judgment there would be a case or controversy cognizable in the Federal courts on the withholding of these funds.

Mr. McCULLOCH. All right. Let me interrupt you there. In view of that opinion—and I am not trying to cut you away from any explanation—assuming that your off-the-cuff opinion of law is correct, then we have the answer. But, if there isn't authority now to so proceed, do you believe that a single individual should have that authority without his decision being subject to review, either judicial or administrative?

Mr. RAUH. On the withholding of the funds?

Mr. McCULLOCH. The withholding of the funds.

Mr. RAUH. My general reaction is in favor of court review in this type of situation. On the granting of funds I feel differently. It was the language that Congressman Meader used that reminded me there was a difference in the problem in *Massachusetts* v. *Mellon* and the problem that Congressman McCulloch is now posing to me.

If funds are granted illegally, it has long been precedent that someone else can't raise that point. In other words, a taxpayer can't raise the illegal expenditures. That is exactly *Massachusetts* v. *Mellon*, that a taxpayer can not raise illegal expenditures.

If the Secretary decided to give money to Mississippi and I tried to stop that or someone in Mississippi tried to stop it, I don't see where there is an adequate interest under the Supreme Court decision to prevent that expenditure. Where, however, funds are withheld, it seems to me that the one from whom they are withheld has a sufficient legal interest to test out whether they were properly withheld under the statute or the Constitution.

Mr. McCULLOCH. Let me interrupt you again because I just don't get quite where we are getting to. You said that you believed that there is now authority. I am saying—and I may not differ with you, although the Secretary of Health, Education, and Welfare did—I am saying that if you are wrong and a man decides the facts, himself, and withholds the funds, do you think his decision should be final and not reviewable either in court or by an administrative review?

Mr. RAUH. I certainly am against any administrative review of a Cabinet officer. Cabinet officers are pretty high fellows around this city. I don't see how we can set anything up above a Cabinet officer, so that I would oppose, it seems to me, administratively a——

Mr. McCULLOCH. Let's go to the issue——

Mr. RAUH. That is where I have much more sympathy for your position, Congressman McCulloch. If a person, a school district or another person, is denied rights which they believe they have either under the statute of the Congress or the Constitution, I believe they now have a right to bring an action. If they don't, I believe they should have it.

Mr. McCULLOCH. That is exactly the way I wanted you to answer it, one way or another. I don't mean that I wanted you to agree with me. I wanted you on the record.

Now, I was, of course, impressed by the chairman's presentation of why there would not be an abuse of this authority. Among other things he said, which was so compelling, that there would be so many persons injured that that very fact would deter the decision by the Cabinet member or by the Administrator.

Again, I am sorry to belabor this so much, but this is a case that happened in my own State of Ohio.

Back in 1935 or 1936, immediately after or soon after the social security legislation was enacted, when there was a Democrat President and a Democrat Governor and a Democrat secretary of public welfare in Ohio. the Social Security Administrator promulgated rules and regulations and, among other things, as I recall, said that there should be no caseworker authorized to determine whether a person was a needy person unless that caseworker had been graduated by an accredited university with a major in social welfare or that had a prescribed number of years of experience in that field.

We have some counties in Ohio and did at that time where there were only 10,000 or 12,000 or 14,000 people and they had no one with those qualifications and the Democratic Governor said:

I am going to appoint the caseworkers, or direct my director of public welfare to select caseworkers who can do the job if they are otherwise qualified.

The Social Security Administrator was a very determined man and he said you are going to follow my rules and the order was issued withholding the funds from the State of Ohio for this entire period. It was a good deal of money at that time. We have not received the money to this day. There was no review, either judicial or otherwise. We did have the Congress review it and I am very happy to say that the same honorable and kindhearted chairman was instrumental in passing the legislation, but it was vetoed by the Governor.

I could tell you a more interesting story that involved the Secretary of Labor only last year where 17 millions of dollars was involved in the State of Ohio. So, if I say to you that there is an important principle involved, and if I pursue it too long, I am talking about inordinate authority that can be executed by one man.

There are reviews of decisions of Cabinet members in Ohio, wherein we have administrative review of Cabinet members' decisions in Ohio. The tax administrator in Ohio and the administrator of the Bureau of Unemployment Compensation sometimes have their decisions reviewed, honest men though they be, when a decision of theirs is not strictly in accordance with what some aggrieved people think they should be. There is not a right of judicial review, but an administrative review. Although the case may involve the earning of one's daily bread or being paid by reason of being unemployed and unable to earn it, there has been no great delay. And at the risk of boasting, which I don't think I am, I don't think there is a better administration of unemployment compensation any place in the Nation than in Ohio.

In view of the difficulty of the questions propounded to you and in the interest of not taking you by surprise in a difficult field, I would be very glad to have you brief this question because, again, in my opinion this could be the one question upon which civil rights legislation would turn in this session of Congress.

Mr. RAUH. I certainly think it is terribly important.

The CHAIRMAN. Will you present a brief on that question?

Mr. RAUH. I will be happy to, sir. It is a question that has been much discussed over the last years. For example, some people feel if Federal funds are voted to parochial schools, for example, there is no way to test the legality of it. That, I think, is true in that circumstance, because there the funds are granted.

The distinction that I am drawing is that where Federal funds are expended, I do not see who has the interest to raise the legality of that expenditure. But where Federal funds are withheld, it seems to me that the entity from which they are withheld has the legal interest to raise the question in court.

This, it seems to me, is a question of: Does a person have a sufficient legal interest to raise the issue of legality of either the expenditure or the withholding? On the expenditure, I think there is no one who has it. On the withholding, it seems to me that the person from whom it is withheld has a sufficient interest.

The CHAIRMAN. In one place there is a controversy and in the other place there is not a controversy.

Mr. RAUH. I think that is correct and I will be glad to brief this.

Mr. MEADER. Mr. Chairman, I think there should be a footnote on that. I think the General Accounting Office could disallow payments and the Attorney General could institute suits to recover funds wrongfully paid out.

Mr. RAUH. There is a possibility of that but it has not occurred. There is no circumstance under which *Massachusetts* v. *Mellon* has been gotten around. I am not an expert on the General Accounting Office, which is kind of a strange animal halfway between the Congress and the White House.

Mr. CORMAN. Mr. Rauh, it seems to me that title VI gives discretion, but that discretion is not given until after racial discrimination is established. It is not within the discretion of the Secretary to decide whether it exists or not. It must exist and then his discretion is whether to pay out funds or not.

Mr. RAUH. Congressman Corman, it would appear to me——

Mr. CORMAN. He must make a decision that exists but that fact, I think, is certainly reviewable by a Federal court, by the aggrieved party from whom funds are withheld.

Mr. RAUH. Yes, sir.

Mr. CORMAN. And I think that that would be a de novo decision for the court to make. The Secretary would make that decision at his peril.

The thing that I think the Secretary was asking was that we not require him to cutoff funds. That was the point at which he wanted discretion, was to be able to pay out the funds even when racial discrimination existed, if the specific facts warranted it.

The other thing—and I may have misunderstood you—but under title VI it would be my understanding that you would cutoff funds only as to a specific program, not as to a State. For instance, if a State discriminated in schools but not in highways, he would have discretion as to cutting off the funds to schools but no discretion as to cutting off the funds to highways.

Mr. RAUH. I so interpret it; yes, sir.

Mr. MCCULLOCH. Will the gentlemen yield?

Mr. CORMAN. Yes.

Mr. MCCULLOCH. I make this comment. You know if we establish the principle here, it will enforce the march toward more and more centralization of government in Washington. It will only be another step until it is withholding funds for the State department of highways and any other activity of government.

I belabor this point because of the great importance of the principle involved and, again, to use the figure used by my colleague, Mr. Meader, in the Department of Health, Education, and Welfare in the fiscal year of 1963, the Secretary told us that he had under his authority the distribution of $3.7 billion. I might say, Mr. Chairman, as much as the State of Ohio wanted a review of the question concerning unemployment compensation by the Department of Labor, that wasn't the way we got our relief.

The CHAIRMAN. The Chair wants to announce that we have three important witnesses after Mr. Rauh and we have to apportion our time.

The Chair was in here until 6 o'clock last night and it is not easy to conduct these hearings for so long a period day in and day out, and we, too, get weary. Not of you, Mr. Rauh, because your statement is very, very illuminating and very, very helpful. I do not mean to cut you off.

Mr. MEADER. Could I ask one question. It won't take more than a minute.

The CHAIRMAN. Surely.

Mr. MEADER. I want to draw your attention to title IV, on page 26 of the bill, section 401, which established a Community Relations Service. It is very brief:

> There is hereby established a Community Relations Service (hereinafter referred to as the "Service"), which shall be headed by a Director who shall be appointed by the President. The Director shall receive compensation at a rate of $20,000 per year. The Director is authorized to appoint such additional officers and employees as he deems necessary to carry out the purposes of this title.

My objection is not to the words that are there but to the words that are not there. I point out the omission to provide a limited term of office.

Mr. RAUH. I would assume that that would be the interpretation as it stands.

Mr. MEADER. Second, the absence of a requirement that the Director be approved by the Senate.

The third is in the last sentence, the absence of any reference to the civil service and classification laws for the persons that the Director would appoint.

I just want to ask your comments on those omissions.

Mr. RAUH. I don't think it is of great significance whether the Director has a term or not, because he would serve at the pleasure of the President. There will sometimes be changes in Presidents.

I think, on the confirmation point, that generally persons of this high rank are confirmed by the Senate.

Mr. MEADER. Civil Rights Commission members are conferred on by the Senate.

Mr. RAUH. Yes, but not the Director. Maybe I am not correct.

Mr. FOLEY. The Director also.

Mr. RAUH. Well this position certainly is analogous to the Director of the Civil Rights Commission. If he is confirmed, I don't see much distinction between the Director of the Civil Rights Commission and this gentleman.

Mr. MEADER. And the effect of the confirmation of the Senate go hand in hand. Most all officials appointed for a term at a high level, confirmed by the Senate, do have a term.

Mr. RAUH. I certainly think the fate of this bill should not hinge on the term. I see no reason against it. My own interpretation of the last sentence might be a little different than yours. I don't think you get an exclusion from normal civil service procedures because of that language.

Mr. MEADER. If he deems necessary.

Mr. RAUH. I rather doubt that you would get an exclusion on that.

Mr. MEADER. Do you think that we should?

Mr. RAUH. No, I don't see that this is any different than any other agency. Obviously some of the people should be excluded at a higher level the way they are in other agencies of Government. I don't have any particular feeling on this.

I do have a strong feeling on a different point and that is I would beseech you not to put in an additional administrative remedy in title VI. The more I have thought about it, the more I am convinced that there is a judicial remedy and that that should be relied on. An administrative remedy above a Cabinet member has the risk of becoming a real bureaucratic monstrosity. I would strongly urge that the language be left as the chairman has indicated with broad discretion and that those who have their funds withheld will have their remedy in the court, if, in fact, they have one.

As Congressman Corman pointed out, the decision on discrimination is really the only factual decision the Secretary is going to make. I would assume that the Secretary is going to be mighty careful in finding discrimination where they don't really have it. I think it is more likely to be the other way—that he is going to say, "There is a little discrimination here, but I don't want to hurt all of those nice people who are not doing it and therefore I am going to give the funds."

Mr. MCCULLOCH. Mr. Chairman, I would like to interrupt there by saying that it is even difficult for some courts in the calm of their executive chambers to determine whether or not there is discrimination. Of course, we are all prone to be good, especially if we are of Cabinet rank, but particularly in view of just what you have said, Mr. Rauh, I will look forward with interest to the memorandum which you are going to submit to us on the law on this question.

Mr. Chairman, I want to say that the witness has been, in my opinion, a most helpful and constructive one.

The CHAIRMAN. I want to say in that connection, the witness has been most eminently fair and logical and has expressed himself in the finest traditions of the legal profession. Thank you very much.

Mr. RAUH. Thank you, Mr. Chairman, and members of the committee.

The CHAIRMAN. Our next witness is Mrs. Margaret B. Dolan, American Nurses' Association, Inc. Mrs. Dolan.

Mrs. DOLAN. Mr. Chairman and members of the committee, I am Mrs. Margaret B. Dolan, president of the American Nurses' Association and professor at the School of Public Health, University of North Carolina.

I have a prepared statement which I would like to read for the record.

STATEMENT BY MRS. MARGARET B. DOLAN, PRESIDENT, AMERICAN NURSES' ASSOCIATION

The American Nurses' Association is the organization of about 170,000 registered professional nurses, with constituent associations in 54 States and territories, including Puerto Rico and the District of Columbia. The bylaws of the ANA include a nondiscriminatory provision within the statement of purpose of the organization in article I, section 2, which reads:

The purpose of the American Nurses' Association shall be to foster high standards of nursing practice, promote the welfare of nurses to the end that all people may have better nursing care. These purposes shall be unrestricted by consideration of nationality, race, creed, or color.

Ever since the national association was founded, in 1896, it has offered membership to all qualified professional nurses, regardless of race, color, creed, or national origin. This has not always been true of some of the State associations. However, since January 1962, membership has been open to all qualified professional nurses in the 54 constituent associations.

Since 1946 conscious and increased effort has been made by ANA to eliminate racial and ethnic segregation and discrimination in nursing. By 1950 sufficient impact had been made so that ANA by mutual agreement absorbed the functions of the National Association of Colored Graduate Nurses, thus assuring the Negro nurse of acceptance and recognition within the professional association. The National Association of Colored Graduate Nurses was dissolved at this time.

In April 1954 the ANA board of directors, on recommendation of the committee on intergroup relations, adopted a policy specifically authorizing the ANA to support civil rights legislation. Subsequently, the following statement of principles to guide ANA action was approved by the board of directors in 1956:

1. A favorable climate of Federal and State law is essential to the achievement of the long-term goals of the intergroup relations program of the American Nurses' Association. The association should promote and support legislation designed to provide a climate in which discriminatory practices affecting nurses, nursing, and health may be eliminated.
2. All qualified applicants, regardless of race, creed, color, or national origin, should have the same opportunities for sound educational preparation for nursing. Tax funds for the support of nursing education should not be used to initiate or perpetuate discriminatory practices.
3. Legal restrictions to the full utilization of nursing personnel which are based on race should be eliminated.
4. Legal restrictions to the unsegregated use of public accommodations should also be eliminated.
5. Health and welfare programs supported by tax funds should promote and protect the physical, mental, and social well-being of all citizens regardless of race, creed, color, or national origin.

Since 1946 the objectives and goals of the association have been stated in a platform adopted by the house of delegates. One plank which appeared in that first platform and in all subsequent platforms states that the association—

will encourage all members, unrestricted by consideration of nationality, race, creed, or color, to participate fully in association activities and to work for full access to employment and educational opportunities for nurses.

The association itself has a role in the continuing education of its members through conducting conferences, meetings, and conventions. Conventions are held biennially and are open to all members. At these conventions, major business of the association is conducted by an integrated house of delegates who represent each jurisdiction. Here the policy decisions are made. Educational programs are held that are designed to assist the nurse in her practice. Attendance at these conventions is generally about 10,000.

In 1948 the ANA board of directors established the policy that there be no discrimination as to race, creed, or color in accommodations obtained for ANA meetings. Because we have this position, we do not schedule conventions or conferences in cities where all of our membership cannot enjoy the same rights to accommodations—in hotels, restaurants, and transportation facilities. From the practical and economic point of view, the city which has segregated facilities, thereby denying like accommodations to all, loses financially since the purchasing power of 10,000 people is considerable.

In addition to the biennial convention, the association conducts many smaller conferences, institutes, and workshops in various parts of the country. These meetings may focus on a specific clinical area such as psychiatric nursing practice or the nursing care of patients with cardiac disease or on specific concerns of the nurse, such as economic and general welfare, and legislation.

An area that has segregated facilities presents a hardship for all nurses, not just to those who belong to a minority group. Some nurse members are faced with the prospect of always going outside their own region to attend meetings and to participate in the affairs of the association. However, in spite of this problem there has never been any effort by a group within ANA to bring about a change in the association's position.

The only criterion for employment of American Nurses' Association staff is the qualification for the position. Staff implements the programs of the association and provides consultant services, either through correspondence or in person, to the constituent State associations. In some instances, highly qualified staff members, with special knowledge and skills, are not available to serve the total membership in person because of restrictions in the use of public accommodations. The American Nurses' Association cannot send some of its staff members to some communities because segregation practices exist.

Our constituent State nurses' associations have attempted to achieve progress and secure facilities where all can be accommodated, through seeking the cooperation of owners and managers of community facilities. This is not always possible, even granting the good intent of management, because of restrictive State laws. In other areas no amount of effort will secure facilities in which the State associations can meet since there are no public buildings available. Some of our State associations have arranged meetings in Federal buildings such as an armory where everyone can sit down together. In some instances, only limited effort has been made in recent years to hold integrated meetings because of fear of local censure.

We wish to express our concern over the fact that the proposal to end discrimination in public accommodations may not apply to the hospital industry.

Yet hospitals are built and operated for the public good. Admission of patients should be based on need. Employment of staff within the hospital should be determined solely on the basis of qualifications. Maintenance of separate facilities within a community seriously dilutes the number of qualified staff available for employment. In nursing, we are especially concerned about the shortage of professional nurses, who are responsible for meeting nursing care needs and for the direction and supervision of less well prepared personnel in nursing service. At this time, the ratio of professional nurses to population is lowest in regions which have the largest number of segregated hospitals.[1]

A study of several hospitals that undertok integration of staff shows that two basic factors, the nature of the hospital as an institution and the nurse's role in the hospital, work to the advantage of integration. Characteristics of nursing and of the hospital as an institution that facilitate integration are—

Emphasis on other than racial criteria in definitions of the "preferred type" of nurse.

The humanitarian ethos of nursing and its expression in nursing organizations.

The occupational status system of the hospital which overrides other types of status divisions.

The emphasis on professional role relations and recognitioin of authority.

The nature of the nurse-patient relationship.

A reprint from the American Journal of Nursing describing this study is attached to this statement for further information.

The ANA code of ethics, adopted in 1950, states that professional status in nursing is maintained and enriched by the willingness of the individual practitioner to accept and fulfill obligations to society, coworkers, and the profession of nursing. The code for professional nurses contains additional guides to the individual nurse in fulfilling her obligations. These are:

The nurse provides services based on human need, with respect for human dignity, unrestricted by considerations of nationality, race, creed, color, or status; and

The nurse as a citizen understands and upholds the laws and performs the duties of citizenship; as a professional person the nurse has particular responsibility to work with other citizens and health professions in promoting efforts to meet health needs of the public.

Integration within the association has been accomplished through the voluntary effort of the nursing profession. We believe that all Americans should enjoy the same political and civil rights and recognize that, in some instances, these can be secured only through legislative action. The association has chosen to support civil rights legislation that would have a favorable effect on nurses, nursing, and health, and the provision of health services. We urge this committee to take favorable action on this proposed civil rights legislation.

There are several pieces of printed material attached to each statement supplied to the committee members and which we thought might be of interest to you.

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[1] "Facts About Nursing," 1963 edition, American Nurses' Association; "Toward Quality in Nursing," Surgeon General, USPHS, Consultant Group on Nursing.

Thank you for this opportunity to present our views on this committee's legislation.

The CHAIRMAN. Are these documents that you have attached to your statement to be filed with the committee?

Mrs. DOLAN. Yes.

The CHAIRMAN. I want to thank you very much for a very fine presentation, and I will make this one comment: I hope that the American Medical Association will take at least a couple of leaves out of your book, as you announce it here with reference to desegregation.

Mrs. DOLAN. Thank you.

The CHAIRMAN. We are very grateful for your coming. I am sorry we had to keep you so long before you testified.

Mrs. DOLAN. Thank you very much.

The CHAIRMAN. We will now adjourn—is Mr. Kunstler here?

Mr. KUNSTLER. Yes.

The CHAIRMAN. Will that take long?

Mr. KUNSTLER. I guess that is up to you.

The CHAIRMAN. It is either now or later in the afternoon.

Mr. KUNSTLER. Which would you prefer?

The CHAIRMAN. Later in the afternoon.

We will now adjourn until 2 o'clock.

(Whereupon, at 12:30 p.m., a recess was taken, to be reconvened at 2 p.m., on the same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

We will now hear from Mr. William M. Kunstler, 511 Fifth Avenue, New York.

STATEMENT OF WILLIAM M. KUNSTLER

Mr. KUNSTLER. Thank you, Mr. Chairman. I have prepared a statement which I am not going to read. I am sure all prepared papers go in the record anyway, so I see no reason for repeating those words.

The CHAIRMAN. The statement is not long, so why not read it?

Mr. KUNSTLER. All right, I will be glad to do that. First, I would like to indicate that although I am here as an individual, I am special counsel to a number of people who are extremely interested in the bill.

They are listed on my statement. I will read them to you: Dr. Martin Luther King, Jr., the Southern Christian Leadership Conference, the Congress of Racial Equality, and the Gandhi Society for Human Rights, Inc.; general counsel, Rye-Port Chester (N.Y.) Branch, NAACP; cooperating attorney for the American Civil Liberties Union; and professor of law at New York Law School and Pace College. In addition I am admitted to the bars of most Southern States and practice very extensively in the South, as well as being admitted to the bar of the District of Columbia and the State of New York.

It is my firm belief that all segregation in private facilities open to the general public is unconstitutional and that the Congress has the power to enact legislation to eradicate it. I base this conclusion on

the broad sweep of the 13th and 14th amendments to the U.S. Constitution rather than exclusively on the interstate commerce clause.

I am fully cognizant that, in the *Civil Rights* cases of 1883, a more restrictive approach to this thesis was taken by the U.S. Supreme Court. But that decision is no more law today than the Court's 1896 decision in *Plessy* v. *Ferguson*, upholding the "separate but equal" concept as a justification for segregation on privately owned railroads.

The first Mr. Justice Harlan dissented in *Plessy* v. *Ferguson*. His dissent is now the law of the land.

The CHAIRMAN. What would his grandson do if the case came up as you indicated?

Mr. KUNSTLER. I am not sure. I think, myself, he would at this stage of the game follow his grandfather, though I am not quite as certain of that as I would be of the first Mr. Justice Harlan.

He also dissented in the *Civil Rights* cases. That dissent is no less the law today. In the latter cases, he stated, in words that are as true now as they were exactly 80 years ago:

> The supreme law of the land has decreed that no authority shall be exercised in this country on the basis of discrimination, in respect of civil rights, against freemen and citizens, because of their race, color, or previous condition of servitude. To that decree—for the due enforcement of which, by appropriate legislation, Congress has been invested with express power—everyone must bow, whatever may have been, and whatever now are, his individual views as to the wisdom or policy, either of the recent changes in the fundamental law, or of the legislation which has been enacted to give them effect.

The CHAIRMAN. Counsel just called my attention to it, that Mr. Justice Harlan in writing that dissent, who wrote that dissent was the only southern member on the then Supreme Court. All of the other members were from the North.

Mr. KUNSTLER. I might indicate a very interesting thing about that. In doing some research on a new book of mine I found that Mr. Justice Harlan was a contributor to an organization known as the Committee in New Orleans, a Creole group which sponsored Mr. Harlan. He contributed $50 in 1881 when that was formed in New Orleans. It was formed by Negro-Creoles who were disturbed about the Jim Crow legislation of the 1890 Louisiana Legislature. And Mr. John Wisdom, who found the old record book in New Orleans, I found that he contributed $50 in 1891 and the inquiry is whether he should have disqualified himself in *Plessy* v. *Ferguson*.

The 13th amendment abolished slavery and all of its badges and indicia. It is now beyond cavil that racial discrimination is perhaps the most degrading and frustrating remnant of the slave system. Congress was given a mandate under the 13th amendment to enact all appropriate legislation to eliminate every vestige of slavery. The 13th amendment is direct in its application to every individual, every private business, and every public institution. There is ample authority under this amendment to enact legislation to eliminate segregation in all private businesses which serve the public. A man remains a slave when he is subjected to the degradation of racial segregation and discrimination in his daily life.

Mr. KASTENMEIER. Do you construe that the 13th amendment is applicable insofar as if a citizen doesn't have fully equal rights in the sense he is still subject to slavery?

Mr. KUNSTLER. He still has one of the badges of slavery. I was very much surprised, Congressman Kastenmeieer, that the bill did not rest also on the 13th amendment, because the 13th amendment doesn't require State action. It is in a sense a self-executing amendment. I wondered why in framing the bill, although the 14th was mentioned in the commerce clause why the 13th wasn't included, because it seemed to me—and I must indicate to you that I wrote this memorandum of mine in Baltimore, Md., yesterday after we had been arguing all day the Danville cases before Chief Judge Sobeloff of the Fourth Circuit, the removal cases which I will get to in a moment. It has become increasingly apparent to me in the several years I have roamed around the South that the very aspects of slavery that are still retained are these discriminatory factors.

I believe, myself, that the Reconstruction Congress would have considered some of the things that our Negro citizens go through, a badge of slavery.

Mr. KASTENMEIER. Is there anything in the law in recent times in terms of the definition of slavery or conditions of servitude which would be broad enough, liberal enough in terms of its scope, is it a definition that would give you reason to suspect that the 13th amendment might be applicable?

Mr. KUNSTLER. I was thinking somewhat of the statement by Mr. Justice Bradley who wrote the majority opinion in the civil rights cases and part of which I have quoted—it is a very famous quote—it is stated at the bottom of page 3 of my memorandum. He was talking of the 13th amendment:

> It has a reflection character also, establishing and decreeing universal civil and political freedom throughout the United States.

I would be willing to accept that definition as being wholly capable of sustaining any civil rights legislation, certainly concentrating on the public accommodation statement, because I agree with Mr. Rauh when he used his corned beef section. This, to me, is the most important. Maybe I am a little subjective about this, but most of my cases have been in that vein, either in transportation, sit-in cases and so on, and they have been in the public accommodation sphere.

Mr. KASTENMEIER. Of course, this is a general question and it has to do with our own views and perhaps with those people you have represented in the past, but in terms of priorities, do you place as high a priority—that is, a selective priority on public accommodations as opposed to other sections, voting or schools?

Mr. KUNSTLER. I place the highest priority on the public accommodations because I think this is the daily drag of discrimination, it comes about in the lunch counters, the department stores, formally in transportation, in all the daily life aspects of a Negro's life in the Deep South, and, indeed, in fringe areas of the South, as well.

I think this is what is causing, in effect, most of the unrest today. You don't find really great demonstrations going on against being prevented from voting. You do find some, of course, but that doesn't in essence affect the daily life of the Negro in the South. It is the everyday reminder of the slave status to which I am referring in this 13th amendment argument, this everyday living that I think is most onerous.

There are places in the South—I am thinking now of Jackson and others in Mississippi, where a Negro goes from birth to death without ever leaving the black world. He is segregated into it. He is born at the hands of a black midwife. He goes to a segregated school. He then goes into—and the only time he would cross the white man's path in many instances is when he works for them, usually in a domestic or manual capacity.

He goes to a Negro church on Sundays, and he is finally buried at the hands of a Negro minister and Negro hearse and cemetery at the end of his life. I think this is the badge of slavery.

Mr. Justice Bradley, while overturning the civil rights case, still said that the 13th amendment is supposed to do certain things.

Mr. KASTENMEIER. I put the question of priority to you in the context of an earlier question some years back as to which ought to come first, education and voting rights, where you put great emphasis and in terms of what follows second more easily. Do you want the group educated on an equal basis so that they can therefore qualify more readily for voting or does political power through voting make education more easily obtainable and incidentally housing and public accommodations? In that context, do you still feel in that type of debate, public accommodations has highest priority?

Mr. KUNSTLER. This is a hard question to answer, like saying which would you rather look at, a leg or an arm. If you had two wishes, what do you want, money or something else? I am speaking from a practical matter and not as an ideal situation. As a practical matter, while I don't make any claim to speaking for Negroes and doing anything except to try to understand, but from my own observation I would think that these everyday things cause the most trouble. I agree if everyone got universally the same education and job opportunity was the same, maybe they too, would disappear but I am talking of the burr under the cow's tail. I think that is basically what the Negro runs into, day in and day out. I don't think it is being denied the vote. He tries that once and he gets rebuffed or they close the books as they did in Hines County the other day in Mississippi, but every day to go through this—the only way I can explain it or classify it is the badge or indicia of slavery. He is a slave in these many respects.

If you compare 1860 and the condition of a Negro on a Mississippi plantation and the Negro today, you see certain differences. Today, he makes money. Then, he labored for nothing. Today, he isn't at the everyday whim of a plantation boss with his wife split up and children sold and so on, but with the money he makes today, he can only spend it a certain way. He can't go into the hotel he could afford in Jackson, because it is an all white hotel, or he can't go into the shop or get his hair cut at the barbershop or stop at the motel, so he can't spend the money that is put into his pockets in the way he might want to; and secondly, when he can spend it and where he can spend it, he may be forced to use the restroom in the basement or go in through the back door. Therefore, I think it is a condition of slavery. I think the 13th amendment justifies. I thought Chairman Celler mentioned the 13th amendment in Mr. Rauh's testimony. I heard it somewhere during this morning's session, and then it seemed to disappear. In following the testimony before the committee since it started, I haven't seen or heard too much about the 13th amendment being used but it doesn't

require State action. You don't have to go through that proof of State action and it doesn't require interstate commerce. I don't see why it couldn't be included in the bill along with the 14th. If you are going to go to the Supreme Court with this bill, I can't see why it shouldn't have three legs of a tripod. Two don't stand too well on a tripod and three might. You can never anticipate what the Court will go off on.

Now for the 14th amendment. Mr. Justice Harlan in the civil rights cases held that any business which serves the public and discriminates by race is exercising State action within the meaning of the 14th amendment. The U.S. Supreme Court now recognizes this fact of contemporary life in certain States of our country. There is no reason to doubt that a court which struck down *Plessy* v. *Ferguson* would today sustain antisegregation legislation based upon the broad sweep of the 14th amendment.

If I might depart, I don't think Joe Rauh went far enough when asked the question what the Supreme Court would do today with the civil rights cases. I think that the Supreme Court has in effect destroyed the civil rights cases, that there isn't even a shell left, because *Brown* v. *The School Board* destroyed *Plessy* v. *Ferguson* and *Plessy* v. *Ferguson* was a Jim Crow discrimination in a private owned intrastate railroad——the Louisiana Railroad that ran between New Orleans and Covington, La.

Now, if you destroy the Jim Crow segregated railroad in a case in 1954, which seemed to me that you have, in effect, resuscitated the dissent of Mr. Justice Harlan and destroyed the civil rights cases, because that is in effect all they did, too. They attempted to eliminate discrimination in certain public accommodations. *Plessy* v. *Ferguson* sustained the right of the State to do just the opposite and *Brown* v. *The School Board* destroyed *Plessy* v. *Ferguson*, not just as it applied to schools or public schools, but, if I remember Mr. Justice Harlan's language, he said, "*Plessy* v. *Ferguson* is expressly overruled."

I think it would be overruled for all of its ramifications. I don't think that the argument on the civil rights cases is any more than a semantic today. I don't think it has any substance whatsoever, and I think it is a shibboleth at this point.

A public accommodation statute based on the 13th and 14th amendments is, I believe, both constitutional and more directly responsive to the needs of the situation than the administration's bill.

First of all, it does not require a tortuous case-by-case determination of the existence of an interstate commerce factor in every case such as plagued the early administration of the National Labor Relations Act.

Secondly, those facilities, such as lunch counters in Danville, Va., recreational areas in Baltimore, Md., barbershops in Savannah, Ga., and beaches in Biloxi, Miss., which are a part of everyday living, would be difficult if not impossible to label as being involved in interstate commerce.

Finally, the 13th and 14th amendments express the solemn moral commitment of this Nation to the proposition that the former slave and his dependents shall be truly free. Any hesitation by Congress to enforce these amendments would be a betrayal of the high promises often repeated by all of us and as yet so woefully unfulfilled.

But it (the 13th amendment) has a reflex character also—

Stated Mr. Justice Bradley, who wrote the majority opinion in the Civil Rights cases—

establishing and decreeing universal civil and political freedom throughout the United States.

In an area where one further minute's delay jeopardizes our national integrity, we have run out of time.

In coming here I didn't want to go into a deep discussion of the law because I had imagined, and after listening to Joe Rauh, the law had been quite successfully explained and discussed. I was concerned with the 13th amendment aspect. Mr. Rauh covered the 14th amendment this morning.

Mr. CHAIRMAN. In response to my question when I asked about the 13th amendment, he thought that we could ground the bill also on the 13th amendment.

Mr. KUNSTLER. I heard it mentioned. I just wanted to elaborate on it some more.

I think it is strong in the 14th amendment, because it merely requires if a man doesn't achieve civil rights, the former slave doesn't achieve his full civil rights, then he is still bearing the badge of slavery. In other words, from 1865 to the present time the fight has been to remove the badges of slavery away from the Negro.

The CHAIRMAN. When you use the word "badge," you correlate it with the statement of Mr. Justice Harlan because he uses that expression.

Mr. KUNSTLER. Yes, I took the phrase, I think he says "badges and indicia," and I took the words from him. I look upon the civil rights fight as kind of an uphill struggle. It went way up during the Reconstruction legislation, and then sank down steadily as the Supreme Court of the United States, bite by bite, I think—and there were some good-sized bites—whittled away the freedom and brought the badges back on, the Jim Crow legislation, and so on. Now we are coming up the hill again. I think, agreeing with Mr. Rauh, led by the Supreme Court, coming up the hill and retracting lost ground.

The establishment of the Reconstruction legislation was a high point in essence, then we went from that high point and now we are coming up again, not by legislation so much but more, I think, by judicial decision.

I think this act has a chance to redo what they tried to do in the 1875 act and to at least, whatever you are grounded on, at least to get the public accommodations which are the most senstitive areas and I tried to indicate to Congressman Kastenmeier, back on the control as far as civil rights are concerned.

Mr. KASTENMEIER. Do you think that legislation should be written in such a way as to virtually encourage a case before the court in which, if possible, as Joe Rauh stated, the Court ordinarily would not be amenable to expressly overruling former cases, he would avoid it, at least in his view? Do you think that this ought to be attempted in that sense or encouraged?

Mr. KUNSTLER. You have two in already. If you write the third into the bill, the 13th amendment, then I guess you are in a position with the Supreme Court, if it decides that this is within the commerce power, the commerce-clause power, would avoid ruling on the 13th and 14th amendments. If it can't decide that, if it decides that this

is not a substantial or whatever word they want to use—let's take Mrs. Murphy's boarding house and they decide that that is not in—and that is where the test case comes—that it is not in interstate commerce, then they would have to rely and go back to the 13th and 14th amendments.

What Joe indicated, as every lawyer knows, is that they will avoid the constitutional grounds if they can get around it some other way, but if they are presented with the three aspects, I don't know how they can avoid it, because the attack will be on the constitutional grounds. The attack that this is not covered by the 13th or 14th and the commerce clause.

I don't see how they can avoid it in this case. I don't think they have to do much encouraging. I think already minds are at work as to how this bill comes out.

Mr. FOLEY. Do you know of any case where the argument is grounded on the 13th amendment?

Mr. KUNSTLER. No; I do not. I only know that it is mentioned by Justice Bradley in the *Civil Rights* case, but he didn't use it to sustain anything.

Mr. FOLEY. No, but I am talking about any recent case since the 1883 decision.

Mr. KUNSTLER. I don't know of any. I just researched the other portion of the law to try to find the 13th amendment being used.

The 13th amendment as I understand it has always been interpreted as a self-executing thing. It frees the slave, in effect. I don't know if the words—I can't remember the words "Congress shall enact any laws which are necessary to carry out this provision." I don't know if that appears at the end of the 13th amendment. It does at the end of the 14th amendment.

Mr. FOLEY. That is the implementation.

Mr. KUNSTLER. I don't think there is an implementation clause, you might check this but I don't know—on the 13th amendment. I would hope that there was but I don't know that there is.

Mr. FOLEY. Yes. Section 2:

Shall have the power to enforce this article by appropriate legislation.

Mr. KUNSTLER. Then my position becomes stronger on the use of the 13th amendment, but I don't know of any case.

Mr. FOLEY. The first sentence the language is so clear. Section 1:

Neither slavery nor involuntary servitude, except as a punishment of a crime whereof the party shall have been held duly convicted, shall exist within the United States or any place subject to their jurisdiction.

The CHAIRMAN. Yes, but the whole is equal to the sum of its parts and involuntary servitude involves discrimination, ostracism, prejudice, denial of rights and if any of those indicia of involuntary service appear, I think the 13 would be operable.

Mr. KUNSTLER. This is my point. If you took the old, slave status and made a list and said "The slave has the following attribution: X, Y, Z." Then if you say—well, first he was owned by someone, he was a chattel. Appropriate legislation was enacted that got rid of his slavery.

The CHAIRMAN. He didn't say total slavery, he didn't say total involuntary servitude. He said "involuntary servitude."

The word "indicia" and the word "badge" was used by Mr. Justice Harlan.

Mr. KUNSTLER. He is the father of those terms and to me it makes sense, that the whole purpose of the 13th amendment was to rid everyone of those indicia. If a man today, with money in his pocket, can't to into the Hotel Bankhead and get a room in Birmingham because he is a Negro, he is still a slave or has that attribute of being a slave, that he cannot do what everybody else in the country can do.

Mr. FOLEY. As recently as 6 months ago there was a conviction in Connecticut. That was the only implementation that Congress ever enacted, as far as I know, to implement the 13th amendment according to section 2 of the criminal statute.

Mr. KUNSTLER. If that is so, I don't see what difference it makes.

Mr. FOLEY. Do you think that the Congress could enact a criminal statute that says if a hotel bars a person he shall be convicted?

Mr. KUNSTLER. We have a great many criminal statutes that are right down that line. We have statutes that say if two or more conspire to interfere with the civil rights of another. I think this is in 1895 of title 42. You have a criminal sanction for that. You have both civil sanctions and criminal sanctions.

Mr. FOLEY. That is all right. I am not questioning that. That is the 14th amendment. I am not questioning that, just like we have a lot on the 15th amendment, but I am talking about the 13th amendment.

Mr. KUNSTLER. I don't know of any but the peonage situation, but that—I don't think that need be a controlling factor.

Mr. FOLEY. I am merely bringing this out as to the problem because we have over many years the history of dissenting opinions from the *Civil Rights* case in 1883 to the present day, but never anybody, not a single case has ever been grounded, as far as you and I know, on the 13th amendment as regarding discrimination and public accommodation.

Mr. KUNSTLER. I agree with you but I take it that you are in effect disagreeing—you are agreeing with me that this doesn't preclude—

Mr. FOLEY. Oh, yes. Don't misunderstand at all, but it makes it very difficult to write a statute to justify this. That is the question I have.

Mr. KUNSTLER. If you wrote the 13th amendment into this statute all you are really doing is setting up, I think, just another possibility of sustaining the statute.

Mr. FOLEY. I agree with you 100 percent.

Mr. KUNSTLER. Maybe the Supreme Court will say "This is all crazy" some day but I have a feeling that these are novel times and novel things that are needed because I am going to propose something else which I think is equally novel and which I can't sustain with a case.

The CHAIRMAN. Mr. Counselor, we have another witness. I am going to ask you to be brief from now on out.

Mr. KUNSTLER. I just have one more point anyway, Chairman Celler. It is this: It is not in my prepared remarks but I would like to state that I am now involved in attempting to remove to the Federal courts—and I am urging that this consideration be given for this bill of removing to the Federal courts under section 1443 of title 28,

105 cases from the corporation court of the city of Danville, Va. Section 1443 is the civil rights removal statute which grew out of the Reconstruction Acts in 1866. In 1875 an express right of review was written into the statute, that you could review a Federal judge's determination to remand the cases back to the State court.

In 1883 or—yes, 1883, you had a repeal of this review statute with a savings clause, indicating that this right would be sustained and then subsequently, 1940, I believe, the statute was rewritten again and the savings clause was not included. Also back in 1904 it was not included. I am urging this committee to consider reinstituting the appeal provision in 1443. It is actually contained now with the lack of appeal from a remand as in 1447 as of title 28.

Chief Judge Sobeloff of the fourth circuit has scheduled an appeal by me, my clients from the remand of Judge Mickey in Virginia, these 105 cases, for the full bench of the Fourth Circuit for November 23 of this year.

We are trying to convince him, and we think that we have the law, that there is still a right of appeal. As Mr. Foley knows, the right of appeal is for the Government. If they lose on a remand they can appeal to the Supreme Court, but if the Negro loses, he is stuck. There is no appeal. There hasn't been a successful removal in the South as far as I know, except some jury cases a long time ago. The statute is on the books. I have spoken to John Lindsay about this statute on an airplane ride about a year ago, I have spoken to several Members of Congress about it. It is section 1447. It says: "No appeal from a remand." The district judges in the South are refusing to accept these removals. We hope that our appeal will get through with the fourth circuit. In any event, it will go to the Supreme Court anyway, whatever happens there, but the appeal is now listed on the docket of the fourth circuit.

However, we are struggling with the law in this situation. If the repeal or if the right of appeal were reinstituted back into the statute we wouldn't have this struggle, and I warrant that a great many of the criminal prosecutions that trespasses the breaches of the peace, that plague the citizens and so on would disappear if these cases started in the Federal court.

Just to conclude, the freedom rider case—I tried the first freedom rider case in Jackson, Miss., in I believe August of 1961. That is almost 2 years ago. That case has not even cleared the Supreme Court of Mississippi yet, so by the time it gets to the Supreme Court of the United States it will probably be 3 and 4 years after the event. We remove those cases to the Federal courts shortly after the arrests occur. We removed selected ones, five of them, and Judge Cox remanded them immediately back to the State court.

Had we stayed in the Federal court, one, I think a lot of the arrests would have stopped, but we would have been up in Washington long before now, at least by now in the October term, I am sure, and I urge you to consider the putting back in the statute where it was at one time. It was intended by the Reconstruction Congress putting back into this statute the right of appeal from a remand to the State court from the local district court. I think it is an extremely important thing. The Government has intervened. The Department of Justice has intervened in our Danville, Va., cases with a very strong brief and

we hope they stay with us as we go up through the fourth circuit this September, but I think it is an important point and one that doesn't appear either in Mr. Lindsay's bill or in the administration bill.

I think since you are touching the same type of statute that the Reconstruction Congress had that it should be included.

Mr. CORMAN. I would think if Congress cut out part of the bill at this time that it would be taken as saying, so far as Congress is concerned, that we do not consider segregation in public accommodations as discrimination.

The other thing is that the obvious movement among so many people still has some confidence in getting their problems solved through the Congress and if they failed this will be saying to them that you have no recourse other than boycott or whatever kind of lawful demonstration you can conduct. It seems to me that it would result in acceleration of this kind of self-help that the Negro is using at the moment. Is that a fair conclusion?

Mr. KUNSTLER. I think that is a very fair appraisal. We have watched it in Birmingham, Albany, Danville, and so on and I think if it does not get through this Congress this summer, then I think it is going to be a kind of street-by-street operation in city by city, one movement after another. I think in the long run this is going to be a very debilitating experience for the country. Right now hopes are high. Dr. King spoke very highly for the bill in Danville, Va., 5 or 6 days ago, I think just before your legislative representative left town and missed his speech.

The CHAIRMAN. I think the idea you suggest about courts is a good idea, but I wonder whether or not it would be wise to put it, since it is so highly controversial, into a bill of this character? It might be the reason why we would have to pull an awful load if we had it in a bill.

Mr. KUNSTLER. You mean the removal aspect?

The CHAIRMAN. Whether we shouldn't consider it separately, separate and distinct from the legislation.

Mr. KUNSTLER. I can see the difficulties of putting it in at this time.

The CHAIRMAN. It is extremely difficult because that would give rise to tremendous controversy. We have enough controversy.

Mr. KUNSTLER. I would agree with you on that and I would say this: If it isn't in the bill, it ought to be considered at least separately. I think it is an extremely important point. It may become academic, depending on what the fourth circuit does.

Mr. FOLEY. At that time—I think perhaps it would have been better to treat the amendment of 1447 as a separate issue from the question of civil rights. I think we would stand a better chance of seeing the law enacted along the lines we are discussing here as opposed to the judicial question of procedure, rather than put it into a civil rights structure.

Mr. KUNSTLER. I would like permission to submit to you the briefs that we filed and that the Government filed in the Danville removal cases. They do go back through the history of the bill, itself, and of the removal of the appeal statute, for your own edification, whatever use you want to put it to.

Mr. FOLEY. When is that case going to be heard?

Mr. KUNSTLER. I understand in Baltimore—no, I am not sure—on September 23 before the nine judges. Judge Sobeloff has set it down for the first case of the term.

The CHAIRMAN. Thank you very much, Kunstler.

Mr. KUNSTLER. Thank you, Mr. Chairman.

The CHAIRMAN. It would be interesting if you would care to submit us a brief on this question of removal.

Mr. KUNSTLER. I am going to submit you the briefs that are already in existence both by the Government and the plaintiff's attorneys.

Mr. KASTENMEIER. As an addenda, might I say that I appreciate what the witness has said and I would like to express a mild dissent from the chairman or counsel's views on the need for something on removal being in this bill. I still have hopes that at least this committee will consider it and that we can do something about it and I appreciate the discussion on it of the witness.

Mr. LINDSAY. You have done a good job, excellent job, very helpful and very constructive.

Mr. KUNSTLER. Thank you very much.

The CHAIRMAN. I want to say that we undoubtedly would consider this proposal. I did not make the statement that I would not consider it. I certainly would consider it.

Mr. KASTENMEIER. My dissent goes procedurally to the motion that it should be introduced separately and keep separate civil rights matters all as did the public defender bill. It is only if it gets into a civil rights bill that it has any chance of survival I am convinced. Of course, I am talking about tactics. For this reason I hope the committee hasn't given up on this and some other nations; namely, that which was repeated by Mr. Kunstler as to what Mr. Rauh said this morning in connection with having both the 14th amendment approach and the commerce clause approach.

I think we can compromise the bill with Democrats and Republicans alike upward as well as downward, I would hope. This is an example of what we might do in that respect. Thank you.

Mr. KUNSTLER. You haven't forgotten my 13th amendment.

Thank you, Mr. Chairman.

The CHAIRMAN. The next witness is Mr. Edgar S. Kalb, manager of the Beverly Beach Club on Chesapeake Bay in Anne Arundel County, Md.

STATEMENT OF EDGAR S. KALB, MANAGER, BEVERLY BEACH CLUB

Mr. KALB. Mr. Chairman, members of the committee, I am Mr. Kalb.

I have a prepared statement which, with the chairman's permission, I will not read, but will explain.

The CHAIRMAN. We will accept your statement for the record.

Mr. KALB. Mr. Chairman, and gentlemen of the committee, I come before you, I suppose, as a special pleader. I anticipate that legislation will be enacted and in anticipation of the legislation being enacted, I feel that it is proper that I bring before the committee a special situation which would develop under the act as prepared at present.

In presenting my statement, I have predicated it upon the act being determined valid under the commerce clause rather than the 14th

amendment. It is inconceivable to me that with the large and extensive history of cases upholding the 14th amendment in its present interpretation that there would be a reversal.

As far as the 13th amendment, I find no basis whatsoever in my thinking to support legislation of this character. Therefore, I have based my whole argument upon its validity, if valid at all, being based upon the commerce clause of the Constitution.

The scope and purpose of this statement is to present evidence to the committee, to show that the provisions of title 11 of H.R. 7152 should not be made applicable to privately owned and privately operated bathing beaches, which beaches are located in States in which the State, Federal Government, or any county or municipal corporation, or other tax-supported body, operates or maintains any beach or beaches, which are open to the use of all persons.

That is the basis of my request for exception, that where the State furnishes public facilities, that private industry should be permitted to furnish comparable facilities for those persons who do not wish to patronize the public facilities.

The CHAIRMAN. Has the State of Maryland a prohibition against discrimination in places of public accommodations, privately owned?

Mr. KALB. I am glad you brought that up, Mr. Chairman. You read into the record, if I recall correctly, this morning a list of States in which the State had enacted public accommodation legislation.

If I recall correctly, you included Maryland in that.

The Maryland statute is not as broad as you possibly may have thought when you wrote that into the statute.

The Maryland statute, sir, first of all, is not statewide. It is limited to, I think, 12 counties. The statute is limited to hotels and motels and further limited by the fact that it is not applicable to any area in a hotel in which the sale of alcoholic beverages constitutes the major portion of business done. It is a very limited statute.

The CHAIRMAN. Does it cover Anne Arundel County?

Mr. KALB. Yes. It does not cover bathing beaches. I am speaking strictly from the viewpoint of bathing beaches.

Mr. FOLEY. Public accommodations, according to Maryland, are quoted this way, for the purpose of this subtitle—

a place of public accommodation means any hotel, restaurant, any motel or an establishment commonly known or recognized as regularly engaged in the business of providing sleeping accommodations or serving food or both for a consideration and which is open to the public, except that premise or portion of the premises primarily devoted to the sale of alcoholic beverages and generally described as bars, taverns or cocktail lounges are not places of public accommodation for the purposes of this subtitle.

Mr. KALB. That is correct. In other words, the statute is practically a recognition of the common law that is in effect in Maryland, the old inkeeper's right. It is extended to restaurant and motels and then limited to a particular number of counties. Approximately 50 percent of the State is covered.

I did not come here to go into this question, sir, I want to stick to my beach proposition. A referendum has been circulated and the required number of signatures have been secured to hold the law in abeyance subject to a referendum. That, however, is subject to a court decision as to the validity of the signatures.

The Secretary of State has questioned the validity of the signatures. There is an open question today whether the law is in effect or not. To my mind it is in effect. The people who have circulated the petitions feel that the petitions under the constitutional provisions, have stopped the running of the statute. I don't agree with that.

I think it is in effect at the present time.

Mr. COPENHAVER. If these beaches are marked "private" as you have indicated in your statement, why wouldn't they be excluded from H.R. 7152 under section 202(b) on page 15 where it says the provision of this title shall not apply to a bona fide private club or other establishment not open to the public.

Do you mean to indicate that the word "establishment" cannot cover a private beach?

Mr. KALB. No, I don't think so. Perhaps I should go on reading and develop my thesis.

Mr. COPENHAVER. Could you answer that question?

Mr. KALB. Yes, sir, it will not; because I think the provisions of 202(a)(3), as encompassed in (i) and (ii) are broad enough to include beaches.

Mr. COPENHAVER. Yes, but under subsection (b) of section 202, on page 15, was not the intention there to remove any bona fide private club or other establishment?

Mr. KALB. All right, sir, I will have to take my statement out of context. If you will turn to page 5 of my statement, subject 6.

The CHAIRMAN. Is your establishment that you speak of a private club?

Mr. KALB. That is what I don't know and you can't find out in this bill. I discussed this particular section right here. Here is my discussion:

I am now speaking of my statement, page 5:

What is a bona fide club? Are the so-called key clubs incorporated in the act?

I don't know.

Mr. FOLEY. How are you incorporated?

Mr. KALB. We are not incorporated. We are a partnership.

Mr. FOLEY. You have laws in Maryland regarding private clubs, do you not?

Mr. KALB. I am not familiar with any laws governing private clubs.

The CHAIRMAN. May I, for example, put it to you this way? You operate this as a partnership. If I just come off the highway and I apply for admission to your bathing beach, can I pay the admission and be served?

Mr. KALB. If you are a person acceptable to us, you may.

The CHAIRMAN. If we are what?

Mr. KALB. If you as an individual are acceptable to us, you may.

The CHAIRMAN. What do you mean by that "acceptable"?

Mr. KALB. Well, we do not permit all races to enter the beach.

The CHAIRMAN. If I were a Negro?

Mr. KALB. You would not be acceptable.

The CHAIRMAN. If I were a white man then I could come?

Mr. KALB. Yes.

Mr. FOLEY. You don't have any membership?

Mr. KALB. No. No members, no, sir.

Mr. FOLEY. That is not a private club.

Mr. KALB. That is what I am trying to say, this is applicable to us. That is what I am getting at. I am not asking for exceptions on the basis that we are a club. The basis of my exception is that the State is furnishing comparable and public facilities and that the people who do not wish to participate or patronize these public facilities should not be denied the right to enter private facilities that furnish those which they want.

The CHAIRMAN. Why do you limit it just to a private beach? Why shouldn't it be applicable to any kind of an establishment, a hotel or motel or anything else?

Mr. KALB. Because the State doesn't furnish comparable facilities.

Mr. FOLEY. Then you agree, Mr. Kalb, that since the State is not in the restaurant business, that restaurants should not discriminate?

Mr. KALB. I do not say that the bill should not apply to restaurants. I am limiting my statement to beaches only.

Mr. FOLEY. To facilitate where the State operates in competition wih private ownership?

Mr. KALB. That is right. In other words, my position is this: The State of Maryland furnishes public schools where everyone may go. If I, as a parent do not want to send my child to a public school, I should be permitted to send him to a private school of my choice and the State should not prohibit that type of school from operating. That is my position.

Mr. FOLEY. You can, under a ruling of the Supreme Court.

Mr. KALB. O.K. That is as to education. I am drawing a parallel between that and the public beaches in Maryland.

The city of Baltimore operates public beaches in Maryland. In my own county, by taxpayers' money, and if you, as a person desiring to go to a beach do not care to go to that public beach, you should not be denied, under any theory of equity, the right to go to a private beach of your choosing. That private beach should not be prevented from operating.

The CHAIRMAN. Suppose you had a private beach and the State does not operate a public beach?

Mr. KALB. The amendment which I have requested the committee to place on the bill covers that. This is what I am asking the committee to incorporate in the bill as an amendment, page 7, amendment No. 1:

> The provisions of this Act shall not apply to a privately owned and privately operated bathing beach, nor to any facility contained within the boundaries of any such privately owned and privately operated bathing beach, which beach is located within any State or in any county of any State, in which the State or county—

There is a misprint in here—

> the State, any municipal corporation, the Government of the United States, or any department or agency thereof, or any other public authority maintains, operates or makes available to the general public without discrimination as to race, color, or creed, the facilities, services, privileges, advantages, or accommodations of such publicly operated or publicly owned bathing beach.

The CHAIRMAN. I understand that. Your position is that when a political division operates a private beach, then your beach should not come under the statute?

Mr. KALB. That is right.

The CHAIRMAN. Since there is competition between a public and private beach?

Mr. KALB. Not necessarily on the basis of competition, but that public facilities are available to the public at State expense.

The CHAIRMAN. I am supposing a case where the State does not operate a public beach and the subdivision of the State does not operate a public beach, you operate a private beach. Should you be exempt from the statute then?

Mr. KALB. This amendment which I have suggested would not apply. That particular beach would fall into the category suggested by Mr. Foley of the restaurant.

The CHAIRMAN. In other words, you are asking exemption on the ground that you operate in Maryland and that you have your capital invested there, that you have operated there for a great many years, it is a family owned operation and therefore, since Maryland affords an opportunity to its people to bathe at a public beach, that you should have a right to conduct your private beach in any way you see fit?

Mr. KALB. That is a fair statement.

The CHAIRMAN. Why limit it to the beaches? How about the swimming pools?

Mr. KALB. Well, sir, I believe a man ought to stick to his own business. I don't operate a swimming pool.

It may be equally applicable.

Mr. FOLEY. I can't see any difference between a beach and a swimming pool.

Mr. KALB. I think if the swimming pool people had the right interest, they would be here asking for the same consideration.

Mr. COPENHAVER. Do I understand that you are differentiating between public and private in this regard: A public beach does not charge an admission fee and a private beach does?

Mr. KALB. No, sir, that is not correct.

Mr. COPENHAVER. The reason I ask is because I don't really see how your beach differs from a normal, public beach. It is open to the public.

Mr. KALB. The public beach does charge admission. The State of Maryland charges admission to its beach. I don't think that that is the determining factor. The factor is that it is tax supported. It is tax-supported facility, owned by the public authority. That is the distinction between the two.

The CHAIRMAN. Does Maryland discriminate in its public beaches?

Mr. KALB. No, sir.

The CHAIRMAN. Why do you want to exclude Negroes from your beach?

Mr. KALB. Mr. Chairman, there are people in this world who think differently than other people think. Call it bias, if you will. A man has a right to be biased, if he wishes, providing he foots the bill for his own bias and he doesn't ask the State to foot the bill for his bias.

The CHAIRMAN. Of course, the Supreme Court says in the case of the schools you can't be biased.

Mr. KALB. You are talking about public schools. The Supreme Court does not prohibit me from opening a private school for blue-eyed people or green-eyed people or whatever I want.

The CHAIRMAN. Do you ride in the same train or coach or bus with a Negro?

Mr. KALB. That is a quasi-public facility. I think there is a distinction to be drawn in that, sir.

The CHAIRMAN. Do you go to a church which permits Negroes?

Mr. KALB. It is a matter of my choice. If I would care to I would go. If I didn't care to, I would not go.

The CHAIRMAN. Do you go to a church with Negroes?

Mr. KALB. No, sir, I don't.

The CHAIRMAN. Does your church exclude Negroes?

Mr. KALB. No, sir, it does not and I have stopped contributing to the particular church.

Mr. COPENHAVER. You see, Mr. Kalb, what somewhat disturbs me, if we take your example by way of analogy, every private hotel and private restaurant——

Mr. KALB. Oh, no. I do not get the analogy there.

Mr. COPENHAVER. Contrary to an impression given here, I believe that the State of Maryland may operate restaurants.

Mr. KALB. No, sir.

Mr. COPENHAVER. I am thinking of *Burton* v. *Wilmington Parking Authority* where the city of Wilmington leased property to a private restaurant, and the Supreme Court held that that is vested with a public image.

Mr. KALB. I have no difficulty in following that rule because that is State-owned property and that is evasion to get around the law. I am not talking about State-owned property.

Mr. COPENHAVER. No, but try to follow through by way of analogy. You seem to be saying, well, if the State does operate restaurants, then private restaurants may be also able to exclude whoever they desire on the same analogy as your beach proposal.

You can see where this could lead to.

Mr. KALB. That does not follow my theory at all because on page 1 I cite the fact that the facilities duly furnished by the State are more than equal to the facilities furnished by private persons.

Now, if the State of Maryland went into the restaurant business on a large scale and undertook to furnish public facilities, ample for all the people, then you might have a basis for what you are saying, but the distinction is that the facilities furnished must be adequate.

Mr. COPENHAVER. Well then, may I assume that if the public beaches in Maryland become overcrowded, they have a perfect right and you agree with their right to condemn your beach?

Mr. KALB. I would have no objection to incorporating in the suggested amendment that the facilities furnished to the State shall be adequate for public accommodation. I think that that would be reasonable.

Mr. FOLEY. How far from low watermark do you own property at the ocean?

Mr. KALB. We own between the high and low water, the median line is our ownership, subject, however, to our common law right of extending our property through riparian rights out into the water.

Mr. FOLEY. So if the Negro wants to swim 2 feet on your property, he can swim?

Mr. KALB. Except that in our particular place we have exercised our riparian rights and have enclosed our area with adequate protective facilities.

The CHAIRMAN. Protective?

Mr. KALB. Yes.

Let me be perfectly frank; not initially to keep out the unwanted guest.

Mr. FOLEY. What is the purpose?

Mr. KALB. To keep the greatest pests we have in the Chesapeake Bay, the sea nettle, out of the area. In other words, we have it adequately enclosed.

Mr. FOLEY. How long has that enclosure been there?

Mr. KALB. Since about 1928.

Mr. FOLEY. When you acquired title?

Mr. KALB. We acquired the property in 1925.

The CHAIRMAN. Suppose a Negro swims quite a ways out and then comes into your beach. What do you do?

Mr. KALB. If he comes on shore he is a trespasser. He would be asked to leave.

The CHAIRMAN. Do you employ Negroes in your establishment?

Mr. KALB. We have approximately 35 of them employed; yes, sir.

The CHAIRMAN. How many?

Mr. KALB. Thirty-five.

The CHAIRMAN. Oh, 35 Negroes?

Mr. KALB. Yes.

The CHAIRMAN. What kind of assignments have they got?

Mr. KALB. They do work.

The CHAIRMAN. Menial work?

Mr. KALB. Not necessarily. They work in various types of work around the place. Some of them work in containing the sea nettles, some in cleaning up.

The CHAIRMAN. In other words, the Negroes can work there, but they can't enjoy the pleasures of the establishment?

Mr. KALB. I think that is a proper right, sir, of a private place.

Mr. FOLEY. Do you have any restaurant facilities on your property?

Mr. KALB. Inside the area, yes, sir, but you may not get to those restaurant facilities unless you have been admitted to the grounds.

The CHAIRMAN. Do the Negroes who are employed on your premises eat in your establishments, too?

Mr. KALB. We have a room where all persons eat.

The CHAIRMAN. Commissary?

Mr. KALB. No. They bring their lunches. They do not eat with the patrons.

The CHAIRMAN. They eat the same food as the patrons eat?

Mr. KALB. We only have one floor, the ground floor, sir.

Mr. CORMAN. I wanted to ask if you operate under a license from the State.

Mr. KALB. No, sir; the State of Maryland does not require a license to operate a bathing beach. We, of necessity, must have licenses for the facilities which we operate inside of our area.

Mr. FOLEY. That is a restaurant?

Mr. KALB. Yes.

Mr. FOLEY. Do you have a liquor license?

Mr. KALB. No liquor allowed, just beer.

Mr. FOLEY. Do you have a license for that?

Mr. KALB. That is right. However, where the beer is sold is one-half a mile away from the entrance.

The CHAIRMAN. Do you have lifeguards?

Mr. KALB. Yes, sir.

The CHAIRMAN. Are they Red Cross lifeguards?

Mr. KALB. We have no law in Maryland stating what qualification he must have. We require senior lifeguard certificates before we employ them.

The CHAIRMAN. Is your partnership formed under the partnership law of the State?

Mr. KALB. Yes, sir.

Mr. COPENHAVER. Mr. Kalb, if there took place a wade-in in your private beach, would you seek the assistance of the local police force to help you to remove them?

Mr. KALB. Well, sir, I think the common law gives us the right to physically eject them. If we were unable to do so—and had disorder—we would call in the police to make arrests on charges of disorderly conduct.

The CHAIRMAN. I can see your point of view, which is the point of view of the usual, for want of a better term, segregation list, who feel that Negroes should not enter into your beach and enjoy the pleasures of your beach and therefore you keep them out.

You ask us to exempt you from the operation of this statute. That is the sum and substance.

Mr. KALB. On the basis of the fact that the State furnishes public facilities.

To my mind, sir, if you place in the scales of justice the demand or right of a Negro for equal accommodation, for social equality, and you place on the other side of that scale my desire not to socialize with particular men, I fail to find one iota of difference that would outweigh one side from the other.

I think my rights are equal to his rights.

I do not think that he has any preponderance or any greater weight to his demand than I have to sustain mine.

The CHAIRMAN. Do you agree "We shall love thy neighbor as thyself?"

Mr. KALB. Loving your neighbor is fine. You can still love a man. I don't hate these people, but I think I have a right to socialize with those persons who are compatible to my desires.

The CHAIRMAN. One of the other prophets said: "Proclaim liberty throughout the land to all the inhabitants thereof."

Do you feel that the Negro because of the color of his skin is not entitled to liberty?

Mr. KALB. The answer to your question is this: Under the law in Maryland there isn't a single distinction between the rights under the law of the white man and the rights under the law of the colored man in Maryland.

What you are now talking about is something different than equality under the law. You are talking about my right to determine my own socializations.

The CHAIRMAN. Ah, but you are in a place of public accommodation. You hold your premises out for the purpose of inducing people to enter your premises, pay you a fee so that you can make profit, but you say, "No, we will only take a certain class; namely, white people. We don't take colored people." That is not according to the Negro equal rights.

The white man has a right to go on your premises because it is a place of public accommodation and you say the Negro has not the right?

Mr. KALB. I was looking for a card which I may have put among my papers.

At the entrance to the premises there is a sign approximately 3 feet by 3 feet—I do not have it.

I wanted to read it exactly and on that sign in large letters, 3 to 4 inches in height is the following statement—I am quoting from memory. I may not have the exact phraseology:

"No invitation is extended to the public, either expressly or impliedly to enter or to visit this beach"—naming the beach.

Admission is by invitation only.

The CHAIRMAN. What does that mean?

Mr. KALB. By invitation of the management only.

In other words, the notice is served to anyone coming to that door that there does not exist a right in that person to demand admission, that the admission is limited solely to those whom we ask to come in.

The CHAIRMAN. If I am a stranger, a white man, I come in, do you interrogate me as to where I was born?

Mr. KALB. No, sir.

The CHAIRMAN. How old am I and what is my financial status?

You don't do that?

Mr. KALB. Quite frankly you would have no trouble at all in entering.

The CHAIRMAN. If questions are asked on the membership blank for a club?

Mr. KALB. I would say if you were many shades darker than I was, we would hesitate to let you come in.

Mr. CORMAN. It seems to me that you are selfish, to segregate yourself, but you don't want to worry about anybody else.

Let me give you a hypothetical question.

If the State of Mississippi decides they want to continue to segregate their hotels and restaurants, under your suggestion all they would need to do is to establish one restaurant in one hotel in Jackson, paid for at public expense which would be open to everybody and then then balance of their hotels they can segregate.

Mr. KALB. I would not say that they were furnishing public facilities. I think they were evading furnishing public facilities.

It means that they should furnish them and be available to the public. I have stated that I have not the slightest objection to writing in the words "adequate facilities."

Mr. CORMAN. Let's assume they are adequate in the city of Jackson.

Mr. KALB. Then I certainly do think so, yes.

I think if I did not want to go into a hotel that had mixed patronage, that was a publicly owned hotel, that I certainly should have the right to go in a privately operated place that furnished and solicited only those that I chose to associate with.

Mr. CORMAN. Shouldn't you have a white drinking fountain? One white and one colored?

Mr. KALB. If I don't want to drink at a public fountain, I can go to a private place. I don't have to drink at that fountain. That is the very thesis.

You are trying to tell us that everybody must come in the place. That is what we are objecting to.

You are destroying our right of choice.

The CHAIRMAN. Mr. Kalb, have you rejected from admission any ambassador or counselor or agent of any government?

Mr. KALB. Well, I guess that had to come up. There has been quite a lot of newspaper notoriety relative to that.

Frankly, I don't think it is a part of this hearing. I am not going to back away from it. I am going to give you the entire story.

Yes, sir. Very recently we sent notices, so far as I am able to determine, to every embassy and to every legation in the Washington area.

I hoped I had put one of those in here. I may not have. I don't know.

Mr. Chairman, may I present this to you?

The CHAIRMAN. Yes, sir, sure.

Is this confidential?

Mr. KALB. No, sir.

The CHAIRMAN. Do you want me to read it?

Mr. KALB. You may read it or I will read it.

Any way you want to.

The CHAIRMAN. This is on the letterhead of the Beverly Beach Club, Chesapeake Bay, Mayo, Md. [Reads:]

To whom it may concern:

This is to advise you that it is the established policy of the Beverly Beach Club to refuse admission to any person who possesses or claims to possess diplomatic immunity from arrest and to all persons accompanying any such person; to avoid unpleasant incidents it is requested that the persons possessing diplomatic immunity from arrest be advised not to seek admission to a private beach club or the Beverly Beach Club.

It is signed "Edgar S. Kalb," and is accompanied by a card.

Mr. KALB. The words "under notice" is the wording of the sign at our entrance.

The CHAIRMAN. Was the purpose of this notice, which was couched in rather strange language, given to prevent those ambassadors or chargé d'affaires or the consular agents who happen to be Negroes from entering the club?

Mr. KALB. I made the statement to the chairman that this was sent to every embassy and legation.

The CHAIRMAN. What does it mean?

Does it mean if the British Ambassador came in you would accept him, but an ambassador from the President of Tanganyika you would deny?

Mr. KALB. Our instructions to our gatemen are as follows: Any automobile attempting to enter the grounds that has a diplomatic tag on it shall be turned away.

The CHAIRMAN. Why?

Mr. KALB. Now we are coming to it. This is the culmination of a series of incidents that have occurred on our properties.

I am not going to detail all of them. They go back quite a long ways. I will detail a few.

A boy approximately 17 years of age attempted to buy beer. The clerk refused to sell him beer. A few minutes later the clerk called our attention to the fact that the boy had beer. I went over to the boy and asked him where he got the beer and a man of approximately 45 years old walked up—we are talking about white people, Mr. Chairman—walked up and said, "I gave it to him."

The clerk said, "The law says that you may not give beer to that boy. You are violating the law."

The man pulled out a card showing that he had diplomatic immunity from arrest.

A second incident: I received a call to come over to Triton Beach, that two automobiles were blocking the entrance. I went over. There were two cars. The traffic was completely blocked. I asked the gateman what the trouble was. He said the two cars pulled in, asked the cost of admission, and said, "We are going to pay by check."

The gateman said, "We don't accept checks," He asked them to move and they would not. And they pulled out a card showing diplomatic freedom from arrest.

They had diplomatic tags on the car. I took the numbers. After a great deal of disorder I succeeded in getting the two cars out of the entrance. I sent the tag numbers to the State Department. After 2 or 3 weeks I got a letter from the State Department and the State Department stated they were very sorry we had had this trouble with these people; however, our Government did not wish to carry the matter further, because they wished to remain on friendly relations with these particular people.

Another incident that we had: A large number of women came to one of our guards and said that there was a young woman on the beach, under a blanket, disrobing, changing into her bathing suit. The guard went over to the young woman. She had her street clothes lying under the blanket. She was then in the bathing suit. He ordered her off the beach. She pulled out a card. She had diplomatic immunity from arrest.

Another man from a north European country came to her assistance and upbraided our guards for ordering her off the place; he had diplomatic immunity from arrest.

The latest incident occurred in the latter part of June.

A man stopped at the gate to come in. He did not have diplomatic tags on his car. He had with him a woman who he said was South American Indian. The gateman said they could not come in. Instead of turning around—and if he had anything to say, take it up with the proper authorities—he disregarded the gateman's orders and drove into the beach and created quite a disturbance.

I was called and I went over to see the persons in the car to see if something could be worked out to stop it.

The person that the gateman had objected to, they had placed over her a knit garment of either purple or blue. I don't remember the color exactly. I could not see her. Someone pointed me out to the man and he came over in a very arrogant manner and said, "I demand an apology of you," and I said "Get out of this place, you are trespassing."

A great deal of argument took place. He wanted my identity. I showed it to him. He said "I am going to report you to the State Department."

I said, "Go ahead."

Instead of waiting for him to report the incident, I presented the incident to the State Department. It has been close to 4 weeks and I have never had an answer from the State Department.

Two days later, I was told, after the man left the resort area, he went to the residential area of the beach and stopped at a real estate office and there began telling his troubles to people who had nothing to do with it. Before two reliable witnesses he made this statement: "That if he had had a gun, he would have shot the gateman and he would have shot me."

I then proceeded on the basis of that, to have this statement mimeographed. I had just about had all I wanted. If he had shot me, sir, I would have been in the ground and he would have been deported from this country. That is all that would have happened to him.

The CHAIRMAN. Who was that man?

Mr. KALB. I am coming to that part. I told you I wrote the State Department. I got no answer from the State Department. In the meantime, I had had this mimeographed, had it lying in an envelope, and had about decided not to mail it. It laid there for a matter of 8 days. On June 30, this year, there was an article in the Washington Post dealing with the treatment of diplomats at beaches in Maryland, and in this article there was a statement made that Mr. Pedro San Juan, who is the representative of the State Department for Special Services, I think is correct, had a well-documented file of incidents relating to foreign diplomats in Maryland beaches, including the stoning, and I now have to name my beach, including the stoning of a foreign diplomat at Beverly Beach in the summer of 1962. That was no more, sir, than a malicious lie emanating from a representative of the U.S. State Department.

I immediately wrote a letter to the State Department. I cited the article. I requested an apology from the State Department for the statement of its agent, and requested an official retraction. I mailed a copy of the letter to the State Department and to the Washington Post. The Washington Post called me up the next day to verify that the letter was mine, and said that they had gotten in touch with Mr. Pedro San Juan, and he had retracted the statement, and said that it happened in the year 1961 at some Maryland beach, not designating ours.

When I saw that article, sir, I mailed those out to the various embassies. I don't want these people. I don't have to have them. The Federal Government has recently been devised a piece of property—a man died and devised a piece of property of 265 acres to the Federal Government, about 6 miles from our property. If the Government wants these foreign diplomats to have a place, let them develop that as a place for them. I don't want them. I don't want my life threatened.

The CHAIRMAN. Let us suppose that all department stores, all hotels, all motels, all supermarkets, all places of business adopted the same attitude that you do, so that diplomats couldn't purchase any goods, they had immunity from arrest, couldn't purchase any services,

couldn't partake of any insurance, what happen to the Capital of Washington?

Mr. KALB. I would say that if any store had difficulty with a diplomat, they would be well within their rights of doing so.

The CHAIRMAN. How can we conduct foreign relations if the diplomats don't get services or goods in Washington?

Mr. KALB. I don't think the rights of the American citizens have to be sacrificed for the welfare of the foreign diplomats.

The CHAIRMAN. That is an answer.

Let me ask you another question. Are there any other restrictions that you have that would bar people because of race or color?

Mr. KALB. No, sir.

The CHAIRMAN. Are there any restrictions that would bar people because of their religion?

Mr. KALB. No, sir.

The CHAIRMAN. If the Ambassador from Great Britain attempted to enter your premises, would he be barred?

Mr. KALB. Under their present rule; yes, sir.

The CHAIRMAN. Suppose the resident of—I was at a luncheon yesterday at the White House given by the President of the United States to President Nyerere of Tanganyika. He was a black man, very intelligent, very articulate. If the President of Tanganyika applied to your premises, although he was admitted to the White House, you would deny him admission?

Mr. KALB. That is correct.

The CHAIRMAN. Despite the fact that the President gave him every conceivable honor at a luncheon?

Mr. KALB. That is correct, sir.

The CHAIRMAN. Do you think that is right?

Mr. KALB. That is my right as an American citizen. You might not agree with it, sir, but that is my right.

Mr. FOLEY. Do you draw any other distinction on admission except color?

Mr. KALB. No, sir. Well, let me qualify that. If a man were apparently under the influence of liquor, or anything of that kind, a disorderly character, they would not come in. Ours is a family beach and we are very careful that no one comes in that would be——

The CHAIRMAN. Suppose somebody were a brown skin like an Indian.

Mr. KALB. We have barred Indians.

Mr. FOLEY. An American?

Mr. KALB. Yes.

The CHAIRMAN. I don't mean American, East Indians, you bar them?

Mr. KALB. Yes.

The CHAIRMAN. You bar orientals?

Mr. KALB. Yes, sir.

The CHAIRMAN. In other words, they have to have a white skin?

Mr. KALB. They should be no darker than me. Let us put it that way.

Mr. CORMAN. Do you find people who get in legally but suppose the color of their skin changes with the sun?

Mr. KALB. Occasionally we have had this to happen. People have come in and they have had someone who was not acceptable to us in the car. They have hidden that person in some way and once they get in, we do not eject them.

Mr. CORMAN. It is based on color of pigment, not necessarily race or ancestor, but color of pigment?

Mr. KALB. Yes.

Mr. CORMAN. Then a fellow with a good tan——

Mr. KALB. We bar a black Caucasian.

Mr. KASTENMEIER. Have you ever, 15 or 20 years ago, barred, for example, Jewish people?

Mr. KALB. When we bought our place, there was a restrictive covenant in the deed at that time, under which—our place was originally a subdivision, and we were required to do that. That is wiped out many long years ago.

Mr. KASTENMEIER. But this has nothing to do with——

Mr. KALB. That was a real estate subdivision. There is no restriction of that character based on religion in the resort area.

Mr. COPENHAVER. You have owned the property since 1925; is that correct?

Mr. KALB. That is correct.

Mr. COPENHAVER. Since 1925 have you ever applied for or received any assistance from the State of Maryland or the Federal Government to restore your beach or to improve your beach?

Mr. KALB. No, sir. In the year 1932 there was a hurricane. The hurricane practically pushed us to the wall. We secured our own private assistance. At no time has the Federal Government given us any assistance for improvements. We have seawalls and jetties all completely privately constructed. You are possibly referring—I imagine you are referring to an Anne Arundel County law, whereby Anne Arundel County constructs seawalls at various places. Under that law you must deed the first 10 feet of land of the adjoining waterfront to the county. They can give an easement, but we have no such thing as that.

The CHAIRMAN. Mr. Kalb, to show our tolerance, we shall place in the record your intolerant statement.

Mr. KALB. Thank you, sir.

The CHAIRMAN. I appreciate your candor. You have been very honest in your answers, and, of course, as I am personally concerned I am entirely in disaccord with your views, but that is all right.

Well, as I say, put your entire statement in the record.

(The material above referred to is as follows:)

STATEMENT OF EDGAR S. KALB OF MAYO, MARYLAND

(1) Scope of statement.

(*a*) The scope and purpose of this statement is to present evidence to the committee, to show that the provisions of title II of H.R. 7152 should not be made applicable to privately owned and privately operated bathing beaches, which beaches are located in States in which the State, Federal Government, or any county or municipal corporation, or other tax-supported body, operates or maintains any beach or beaches, which are open to the use of all persons.

(*b*) To propose to the committee certain amendments to tilte II of H.R. 7152 to effectuate such exclusion, and to suggest certain amendments designed to eliminate certain injustices from the act.

(2) Description of the types of beaches for which exclusion from the provisions of title II of H.R. 7152 is requested.

(*a*) Examples of the types of beaches for which exemption from title II of H.R. 7152 is requested are the approximately 21 privately owned and privately operated bathing beaches, which are located on the western shore of the Chesapeake Bay and its tributaries in Maryland.

Of these 21 beaches, 14 are located in Anne Arundel County south of Baltimore, 4 are located in Baltimore County north of Baltimore City, and 3 are located in Calvert County within approximately 25 to 35 miles of the District of Columbia. Approximately three of these privately owned and operated beaches are fully integrated.

(*b*) Generally speaking, these 21 beaches, with few exceptions, are small family owned and operated, and have been so owned and operated for several generations.

(*c*) Most of these small bathing beaches are located adjacent to small residential communities, and in a certain sense are practically parts of these residential communities.

(*d*) Based on personal experience and observation it is estimated that the total annual gross business done by these 21 beaches will be less than $5 million.

(3) Publicly owned and publicly operated bathing beaches located on the western shore of the Cheapeake Bay in Maryland.

(*a*) The State of Maryland operates two very beautiful public bathing beaches on the western shore of the Cheapeake Bay, within easy access from Baltimore City, Washington, D.C., and the adjacent metropolitan areas; namely, Elk Neck State Park and beach, north of Baltimore City, and Sandy Point State Park and beach, south of Baltimore City. Both beaches are within easy access to both Baltimore and Washington, by excellent roads. (Sandy Point State Park and beach is located in Anne Arundel County and annually has more than 300,000 visitors.)

Baltimore City owns and operates a beautiful bathing beach, located in Anne Arundel County, south of Baltimore and within about 35 miles of Washington, D.C.

Furthermore, according to newspaper reports, the Federal Government has recently been devised a beautiful waterfront property located in Anne Arundel County within 25 miles of Washington, D.C., and within about 36 miles of Baltimore City, consisting of approximately 265 acres of land and with more than a mile of waterfront. This property could, with little expense, be converted into an additional waterfront park and beach by the Federal Government for the use of all of the public.

(*b*) It is estimated that the total acreage and the number of miles of waterfront available to the public in the publicly owned beaches on the western shore of the Chesapeake Bay in Maryland is in excess of the total acreage and the total miles of waterfront operated as private beaches in Maryland by private ownership.

(*c*) In no instance does it appear that the patronage of these publicly owned and operated beaches has reached anything near their maximum potential patronage, and there is absolutely no present lack of sufficient bathing facilities available to the general public, in the immediate vicinity of Baltimore and Washington.

(*d*) In addition, the many miles of beach front on the Atlantic Ocean at Ocean City, Md., are owned by Worcester County and are available to all persons.

Furthermore, the State of Maryland is presently acquiring an extensive expanse of Assateague Island for use as a public beach.

Summary: Based on a need for additional bathing beach facilities, the public needs are more than adequately provided for, and there is no justification for requiring the privately owned and privately operated bathing beaches to accept undesired patronage.

(4) The findings as set forth in title II of H.R. 7152 fail to establish any valid facts sufficient to justify the inclusion of privately owned and operated bathing beaches within the classification of businesses to which the provisions of title II of H.R. 7152 are applicable, as indicated by the following analysis of the findings.

Section 201(a) of the findings, sets forth no basis for such inclusion, as bathing beaches are abundantly available to all persons in Maryland at publicly owned and operated beaches, and in addition in at least three privately owned and operated beaches, which three beaches are fully integrated.

Section 201(d) of the findings sets forth no basis for such inclusion, as the movement of goods, services, and persons applicable to the operation of bathing beaches, with but minor exceptions, does not move in interstate commerce, and strictly defined, bathing beaches are not places of amusement as used in section 201(d) but rather are places of participating recreational activities, as distinguished from places of amusement.

Comment: The findings as stated in section 201(d) would appear to be mere expressions of opinion, entirely unsupported with any factual basis in support of such opinions.

Section 201(b) of the findings sets forth no valid basis for such inclusion as none of the 21 privately owned and operated beaches, insofar as known, offer overnight accommodations (all being within commuting distance of Washington and Baltimore, and all catering to daily transient business only).

Section 201(e) of the findings would not appear to be applicable to bathing beaches, generally speaking, as they would not appear to fall into the classification of retail establishments as used in this subsection.

Section 201(f) of the findings, sets forth no basis for the inclusion of bathing beaches in title II of H.R. 7152, as these beaches are not located in any city, they have no facilities for holding conventions, and generally speaking offer no accommodations for overnight visitors.

Section 201(g) of the findings set forth no basis for the inclusion of bathing beaches in title II of H.R. 7152, as in no instance are there any business organizations seeking services in any area affected by the operation of these beaches. All of these beaches are located in remote rural areas where their presence contributes extensively to the local economy, and which economy would be seriously injured as a result of these beaches being forced by law to accept all persons. This would result in a certain loss of business and a resultant loss of employment opportunity by the residents of these rural beach areas.

Section 201(h) of the findings sets forth no applicable principal or basis for the inclusion of privately operated beaches in the provisions of title II of H.R. 7152. In the case of these privately operated beaches, no discriminatory practice is encouraged, fostered, or tolerated in any degree by the governmental authorities of the State in which these beaches are located, or by the activities of their executive or judicial officers.

Comment: As applied to the operation of privately owned and operated bathing beaches in Maryland, section 201(h) is a statement of opinion unsupported by any factual evidence.

Section 201(i) of the findings. The conclusions set forth in this subsection are not applicable to privately owned and privately operated bathing beaches in Maryland, as these beaches neither burden nor obstruct commerce, and the use of the commerce clause of the Federal Constitution for the purpose of imposing integration on these privately owned and operated beaches is a perversion of the commerce clause for the purpose of effectuating a highly dubious purpose, concerning which purpose there are wide differences of opinion and which principle is not generally accepted by large segments of the population.

It is not the proper function of government to legislate for moral purposes. Nor is it a proper function of government to deprive any segment of the people of their inherent right of the self-determination of their associations for the sole purpose of appeasing the demands of another segment of the people in their desire to satisfy their social ambitions.

(5) Despite the fact that the findings set forth not a single valid basis for the inclusion of privately owned and operated bathing beaches in the provisions of title II of H.R. 7152, nevertheless section 202 of the act is so broadly drafted that some, if not all, of these privately owned and operated beaches would be included under the act.

(a) The provisions of section 202(a)(3)(i) and section 202(a)(3)(ii) apparently would be applicable to any privately owned and privately operated bathing beach which fell within the stipulations of these two sections.

(1) Considering subsection (ii) of section 202(a)(3) first, the language used in this subsection which states that if a "substantial portion of any goods held out to the public for sale, use, rent, or hire, has moved in interstate commerce," makes it almost impossible for any bathing beach operator to determine whether or not his operation comes within the purview of this act.

There is no beach operator alive who could know for a certainty that a substantial portion of the goods sold at his beach has not moved in interstate commerce, because there is no standard set forth in the act to guide anyone in determining

what constitutes a substantial portion of goods held out for sale, rent, or hire.

To determine what constitutes a substantial portion of goods in any case will require a court determination. It well may be that there will be as many different decisions as to what does constitute a substantial portion of goods as there are district courts and courts of appeals in the United States.

It would appear that even the Supreme Court would be unable to lay down a hard and fast rule as to what constituted a substantial portion of goods, which rule could be applied to all cases.

The inclusion of the word "substantial" in the act does not appear to be a loose use of terminology, but rather it appears to be a careful and well-studied use of this word, with the object in view to force the operators of businesses into compliance with this act, because they would be unable to stand the expense and difficulties involved in litigating the question.

The result being that the inclusion of the word "substantial" as used in the act, without a prior determined standard as to what does or does not constitute a substantial portion of goods makes this act legislative duress. The operator of a place of business must either yield to the dictates of those empowered to institute legal proceedings against him on a charge of noncompliance with the act or else entail expensive litigation.

The same lack of clearness and uncertainty as to what is intended manifests itself in the use of the words "moved in interstate commerce" as used in the same subsection.

There is, of course, no difficulty in determining that if goods are transported in interstate commerce directly to the operator of any place of business, then clearly such goods have moved in interstate commerce and are covered by the act.

But what about goods which moved in interstate commerce in the normal course of trade, and have come to rest within a State, and are in the hands of a dealer in such goods for resale in intrastate commerce? If the operator of a privately operated bathing beach were to purchase such goods from a dealer in intrastate commerce after such goods had previously been transported in interstate commerce, would the imprint of prior interstate commerce follow these goods into the hands of the beach operator who had purchased them in intrastate commerce? How could a beach operator who had purchased such goods be certain under the language used in this act that he would not or could not be charged with offering goods which had moved in interstate commerce and thereby be subjected to litigation or threats of litigation for being in violation of the provisions of this act?

Unless the words "moved in interstate commerce" are clearly defined and limited in the act by proper standards, the use of such undefined words will enable those authorized to institute litigation under the act to use the act as a form of legislative duress, to compel the operators of small businesses and others who cannot afford the costs of expensive litigation to either yield to the dictates of those empowered to institute litigation under the act, or become involved in expensive litigation which they may be unable to afford.

The inclusion of the words "substantial portion of goods" and the use of the words "moved in interstate commerce" as used in the act, gives those empowered to institute enforcement litigation the powers of autocratic dictators.

Furthermore, the inclusion of these words with no limiting or defining standards in the act permits the act to be used by persons with ulterior motives as a vehicle for legalized blackmail against the operators of small business.

For the Congress to place such an unrestrained power to institute or threaten to institute coercive litigation for the enforcement of any law in the hands of the public would be a betrayal of the American form of government.

(2) The provisions of title II section 202(a)(3)(i) would appear to bring the operators of privately operated bathing beaches within the act, if "goods, services, facilities, privileges, or advantages or accommodations * * * are provided to a 'substantial' degree to interstate travelers."

The same uncertainty and requirements for a determination by the courts, as previously discussed, would likewise face every operator of a private bathing beach, to determine what was or what was not a substantial degree of interstate travelers, as used in this subsection, and the operators of private bathing beaches would again be at the mercy of those empowered to institute enforcement litigation, and would be subjected to duress and threats to instigate enforcement litigation, with its resultant burden of heavy costs, or else surrender their rights and comply with the provisions of the act.

As to the 21 private bathing beaches cited in (2) of this statement, the application of this particular provision of the act would be chaotic and unequal, as between the several private beaches for the following reasons:

(*a*) As to the beaches enumerated, which beaches are located to the north of Baltimore City, it is probable that less than 1 percent of the patronage of these beaches is from other than residents of Maryland.

(*b*) As to the private beaches which are located in Anne Arundel County to the south of Baltimore and which beaches are not more than 20 miles distant from Baltimore, a similar condition probably exists.

(*c*) As to the private beaches which are south of the Severn River in Anne Arundel County, the proportion of out-of-State patrons may rise to as much as 30 to 40 percent.

(*d*) As to the beaches which are located in Calvert County the percentage of non-Maryland patrons may rise to as much as 60 or 70 percent.

The result being that out of 21 beaches cited in this statement possibly 11 would not have more than 1 percent of out-of-State patrons, while the other 10 private beaches would possibly have from 30 to 70 percent of out-of-State patrons.

Under this situation it is possible that 11 of these local private beaches would not have to integrate and could continue to operate on a segregated basis, while the remaining 10 beaches would have to be integrated under the act, merely because their particular locations were more accessible to out-of-State visitors.

Any such result would be unfair and inequitable.

This possibility in itself is sufficient to justify the exclusion of these privately operated beaches from the provisions of title II of H.R. 7152.

(6) The same lack of definiteness and clearness and lack of standards is present in section 202(b) of title II of H.R. 7152 (p. 15 of the act). This subsection provides for the exclusion of "bona fide private clubs or other establishments not open to the public."

What is a bona fide club? Are the so-called Key Clubs bona fide clubs, as used in the act? If in the operation of our private bathing beach we limit admission to persons who have applied for and have been given a guest membership card, entitling them to admission to our beach, with nonholders of such cards being excluded, does that constitute a bona fide club or other establishment not open to the public, as used in the act? Under our present operation we have a sign at our entrance which reads as follows: "No invitation is extended either expressly or impliedly to the public to visit our beach" and "that admission is by invitation of the management." Is this type of operation covered by the exclusion, as to "other establishments not open to the public" as used in the act?

The answer to these questions does not appear in the language of the act itself. How are we and other beach operators to determine whether our operations qualify our beaches for exclusion under this subtitle?

What standards are set forth in the act to guide us in our determination of these questions?

What standards are set forth in the act to enable the courts to determine what are bona fide clubs and what are other establishments not open to the public?

Under these conditions, we, as beach operators, will be at the mercy of those persons who are empowered to instigate enforcement litigation.

We would either have to submit to their dictates and abandon our right to operate under what we construe to be the law, or else be subject to expensive litigation.

This makes it possible for those empowered to institute enforcement litigation to exercise duress upon the operators of these private beaches in an effort to compel them to integrate their properties.

(7) Justification of the right of the privately owned and operated beaches to operate on a segregated basis.

(*a*) The findings as set forth in title II section 201 of the act set forth no factual basis for including privately owned and operated bathing beaches under the provisions of the act.

(*b*) There exists no lack of available publicly owned and publicly operated beaches in the Maryland area, and persons who for personal reasons may not desire to patronize these public beaches should not be denied the right to have available to them, for their patronage, privately owned and privately operated

beaches, whose patronage is compatible to those persons who do not desire integrated bathing.

(c) Privately operated beaches should not be denied the right to offer segregated services for the use of such persons.

Analogy: The operation of these privately owned and operated bathing beaches falls into the same category as does the operation of private schools.

The State operates public schools, paid for by the taxpayers, for the use of all persons.

Persons who for personal reasons do not desire their children to attend public schools, should not be denied the right to send their children to private schools, whose enrollment may be segregated, and such private schools should not be prohibited from operating on a segregated basis.

Likewise, the State of Maryland, the city of Baltimore, and certain counties operate public bathing beaches, paid for and maintained by the taxpayers.

Persons who do not desire to bath with the persons who patronize these public beaches should not be denied by law from having available to them private beaches, whose patrons are compatible to their customary associations.

The Federal Government has available waterfront property in Anne Arundel County, Md., for use as a federally operated public bathing beach.

(8) Possibly the most repugnant and un-American provisions of this entire act are the provisions of title II, section 204 (pp. 16, 17, and 18 of the act). This section empowers private citizens to instigate enforcement litigation of the act.

This opens the door to harassment and worse by vindictive persons and also opens the door to extortion through threats of instigating unfounded enforcement litigation, and creates by law, as previously stated, a vehicle which could be used by unscrupulous persons as the basis for legalized blackmail.

It is suggested that section 204 of title II be stricken from the act in its entirety, and that in lieu thereof, criminal penalties be written into the act, to be enforced by the Attorney General.

The additional effect of striking from the act the provisions relating to the so-called civil action for preventive relief and substituting therefor criminal penalties is that with criminal penalties inserted in the act, the language of the act will have to be clear and definite so as to meet the constitutional requirements relating to the validity of criminal laws.

SUGGESTED AMENDMENTS TO TITLE II OF H.R. 7152

Suggested amendment No. 1:

After the end of line 15 on page 15 of the act, insert a new subsection to read as follows:

"(c) The provisions of this act shall not apply to a privately owned and privately operated bathing beach, nor to any facility contained within the boundaries of any such privately owned and privately operated bathing beach, which beach is located within any State or in any county of any State, in which State or county, the State, county, any municipal corporation, the Government of the United States, or any department or agency thereof, or any other public authority maintains, operates, or makes available to the general public, without discrimination as to race, color, or creed, the facilities, services, privileges, advantages, or accommodations of such publicly operated or publicly owned bathing beach."

Suggested amendment No. 2:

In pages 15, 16, 17, and 18 of the act, strike out all of section 203 and insert in lieu thereof criminal penalties.

Suggested amendment No. 3:

In page 18 of the act, amend section 205 by eliminating all reference to the institution of remedies by other than the Attorney General of the United States.

The CHAIRMAN. And there will be placed in the record the following, the statement of Representative Albert Rains, of Alabama, before the Civil Rights Subcommittee in opposition to H.R. 7152.

STATEMENT OF REPRESENTATIVE ALBERT RAINS, OF ALABAMA, BEFORE THE CIVIL RIGHTS SUBCOMMITTEE IN OPPOSITION TO H.R. 7152

Mr. Chairman, I am here today to oppose H.R. 7152 in its entirety. During my 19 years in Congress I have seen many bills proposed under the misnomer of "civil rights" but never have I read a bill which so defies our Constitution in such sweeping language and on so many fronts as does the measure now before you.

This bill was sent to Congress by the pressures of rampaging mobs and frenzied demonstrations. Its philosophy would perpetuate a double standard with which we are becoming all too familiar in this country and at least two sections of this bill would provide enough nebulous laws to keep the professional agitators in business forever.

The extremists have contended that this bill does not go far enough. I doubt you could get a bill that would go far enough to suit them. Before I set forth my views on the various sections of this bill, I would like the members of this committee to know that racial strife in Birmingham was developed with dollars and cents. I hope that no one is so naive as to believe that the demonstrations which occurred in Alabama were the spontaneous expressions of a downtrodden people.

In this connection, please permit me to read some excerpts from a letter I recently received from a respected and prominent Alabama banker. He wrote: "I just want to pass on a little information since the civil rights bill is coming up. On Saturday, before Mother's Day, when the explosion and violence took place in Birmingham, a local bank changed $7,400 in $100 bills into $5's and $1's. On Monday this bank changed 2,700 $100 bills into $5's and $1's and on Tuesday $2,400 was changed the same way. The bills were presented by young Negroes between the ages of 16 and 30, and a lot of them left for Birmingham. It was some coincidence that a mob just happened along at the time the bomb went off in the house and also a coincidence that the occupants were not around to get hurt."

Alabamians who have had firsthand experience with these organized and paid demonstrations know that it is common practice to pay individuals for getting arrested. I understand the price for getting arrested is higher than for merely rolling in the street. I think Congress should be aware of these things, since this legislation is here today as the result of the mob actions.

I have said before that I cannot believe Congress will legislate with a gun at its head.

In regard to title 1 of this bill, let me remind you that while today you may send Federal agents to tamper with Alabama's poll lists, don't forget that they will also be on your doorsteps. Do not think for a minute that this bill merely affects the traditional whipping boy, the Southland, for today there are more Negroes outside the South than there are in the South. New York City alone has more Negroes than the combined colored population of the South's seven largest cities.

A flagrant example of the arbitrary nature of this whole bill is the criterion of 15 percent voter registration of Negroes. Why 15 percent? Passage of this section of this bill could result in the appointment of Federal voting referees to register Negroes in 261 counties included in some 60 congressional districts in 11 Southern States.

I have not checked the figures on the Northern States but you may be sure that some of you would be equally affected. I am also curious as to why no percentage was listed for white voters. In many counties of my State, less than 60 percent of the eligible white voters are registered. I am sure this is true in many sections of the whole country.

Title 2, relating to public accommodations, provides the means for minorities to cripple private business with litigation. No business, large or small, would be overlooked in the prosecutions which the Civil Rights Division of the Justice Department would bring. And I can only judge the future, in this regard, by the past record of that Division.

The costs of defense and appeals in Federal courts would put thousands of businesses out of business. I submit that enactment of such a law as this is not only clearly unconstitutional but it would lead to police control of employment and to control of personal associations.

If the Federal Government is to register voters, as is proposed in title 1, and if the Federal Government is to control hiring and firing, then the Federal Government will be saying who can vote and who can get a job. Under this

bill, that would be the pattern. You either vote for the Government slate or you don't get a job. That day will witness the death knell for democracy in America.

Title 3 of this bill goes into further control of the education of our young people and it too provides the means to keep every school district in the country in turmoil. Its discussion of employing "specialists and technicians" to deal with "racial imbalance" is absurd. It is just as absurd as the recent stir in New York about transporting school students all over the great metropolitan area just so the schools can be evenly divided by races.

There must somewhere be a limit to the extent reasonable minds can go. After all, only about one-tenth of our population is Negro. On that basis, equally apportioned all over the country, 1 out of every 10 schoolchildren would be Negro. The theory on which this section of the bill is based could carry forth to the extent that whole towns could be transplanted, for there are some towns in this country which have no Negroes at all.

Title 4 presents another sociological feature in the form of a new bureaucracy known as Community Relations Service which would offer its services at the grassroots. This, coupled with title 5, to preserve the Civil Rights Commission, and title 7, to create a new Commission on Equal Employment Opportunity, represents complete efforts to control every aspect of American life and yet nowhere are we told what for legal purposes constitutes discrimination.

This bill does discriminate against the majority of our citizens in that it takes away or curtails freedoms and individual rights which have been a part of our heritage.

Title 6 is one of the most vicious features of this bill for its provides a coercive force in the hands of the Executive. Not only does it give the Executive broad, discretionary powers to cut off Federal assistance to States in various programs but also it permits the Executive to cancel Government contracts with businesses which may be accused of discrimination. At the charge of "discrimination," State programs—to which the tax dollars of a State have contributed—could be terminated, and industries with Government contracts could be wrecked overnight.

No one has yet contended that the Constitution of this free country ever evisioned placing such a power in the hands of the Executive.

This, like the other laws proposed in this one bill, are an invitation to domestic disorder and civil strife.

Finally, title 8 of this bill merits some consideration. It would authorize to be appropriated such sums as are necessary to carry out the provisions of this act.

Has the committee asked for or received any estimates of what this bill would cost to administer? What would be the cost of the Community Relations Service? What would the new Equal Employment Opportunities Commission cost? And how many new prosecutors would the Justice Department hire and how many Pentagons would it take to house this Federal police force?

I appeal to this committee to keep in mind the great heritage of a free people and refuse to be frightened by mobs and demonstrators and questionable leaders who have pushed this package before you.

Let us remember that our Nation's freedom was not won by sit-in or walk-in or stand-in demonstrations, nor by street scenes and riots.

Do not shackle all of our citizens and future generations with chains in order to provide preferential treatment for one segment of the population or to appease a mob. Members of Congress are sworn to defend our Constitution, and knowing this, I do not believe you can report the bill now before you.

The CHAIRMAN. And there will be placed in the record the following statement:

STATEMENT BY HON. FRANCES P. BOLTON, OF OHIO

Mr. Chairman, thank you for giving me an opportunity to present an additional statement on civil rights to supplement the one I presented to the committee in May.

The bulk of the President's civil rights program, in fact, is similar to the bills drafted by Republican members of the Judiciary Committee and which were introduced some time before the President sent his message to Congress. Perhaps this is natural that Republicans were first, as the Republican Party,

since its inception, has been the leader in civil rights. The first Republican platform, written for the presidential elections of 1856, opposed the extension of slavery and advocated the admission of Kansas as a free State. From that date the Republican Party has never wavered from its belief that there can be no second-class citizens in a free country. In 1863 our first Republican President, Abraham Lincoln, signed the Emancipation Proclamation. Today, 100 years later, we are again in the forefront of the fight to secure those rights to which all citizens are properly entitled under our Constitution.

The first bill introduced last January by Republicans contained several provisions now adopted in part by the administration: for example (1) in the field of voting rights the administration adopted our proposal that any person with a sixth-grade education is presumed to have sufficient literacy, comprehension, and intelligence to vote in Federal elections. The administration proposal still contains no provision requiring that votes be counted properly, a safeguard Republican measures seek for all Americans. (2) A specific authorization for suits by the Attorney General to enforce school desegregation had been backed by Republican bills as early as last January. It has finally been endorsed by the administration. (3) Permanent status for the Civil Rights Commission is backed by the Republican proposals whereas the administration proposal calls for an extension of only 4 years. Why shouldn't we make the Civil Rights Commission permanent rather than extend its life every 2 or 3 years? These problems have been with us well over 100 years. They are not going to disappear completely overnight, so why not make the Civil Rights Commission permanent, thereby giving it better status to deal with situations as they arise. (4) Republican proposals suggested an Equal Employment Opportunity Commission to serve as a watchdog against discrimination on Government contracts or by Government agencies and, particularly, to check on labor practices in this connection. A similar proposal has now been backed by the administration.

In June, Republican members, led by the minority members of the Judiciary Committee, introduced additional legislation proposing two other steps: (1) authority for the Attorney General, as well as individuals, to take legal action against any owner or operator of a business supplying accommodations, amusement, food, or services to the public, if such business is authorized to operate by a State or local subdivision, where the business segregates or otherwise discriminates against customers because of race, national origin, etc. A legal suit may also be brought against any State or local official who seeks to require or encourage segregation or discrimination. The administration now proposes a similar public accommodations provision. However, the Republican proposal is based on the sounder approach of protection of equal rights under the 14th amendment rather than on an unlimited extension of Federal power under the interstate commerce clause. To base it on the commerce clause could very well set a precedent for extending Federal power over almost every aspect of private life by Federal Government regulation, whereas to base the authority on the equal rights provision of the 14th amendment would not set such a precedent.

We propose also that the Attorney General be given authority to institute legal proceedings against State or local officials who are depriving or denying individuals' rights to equal protection of the law because of race, creed, color, or national origin. This provision was the so-called title III provision which was passed by the House of Representatives during the Eisenhower administration, but failed of enactment in the Senate.

Mr. Chairman, these are basic proposals which, while they will not provide all the answers, should go a long way toward securing the rights for all citizens guaranteed by our Constitution. Let us bear in mind that we are not "giving" any group of people anything. These basic rights are already theirs under the Constitution, but many have been unduly deprived of them over the years. It is my hope that the committee will bring a good bill before us without undue delay.

The CHAIRMAN. We will now adjourn until tomorrow morning at 10 o'clock.

(Whereupon, at 4 p.m., the subcommittee adjourned until Friday, July 19, 1963, at 10 a.m.)

CIVIL RIGHTS

FRIDAY, JULY 19, 1963

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 5 OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to adjournment, at 10 a.m., in room 346, Cannon Building, the Honorable Peter W. Rodino, Jr., presiding.

Present: Representatives Rodino, Toll, Meader.

Also present: Representatives Shriver and Corman.

Staff members present: William R. Foley, general counsel, and William H. Copenhaver, associate counsel.

Mr. RODINO. The hearings will resume and our first witness this morning will be Mr. Walter P. Reuther, president of the United Automobile Workers.

Mr. Reuther.

STATEMENT OF WALTER P. REUTHER, PRESIDENT OF THE UNITED AUTOMOBILE WORKERS

Mr. RODINO. Mr. Reuther, we welcome you here, and I regret exceedingly that the chairman of the committee is not here.

He would certainly have wanted to welcome you personally, but he was unable to be here, so he asked me to extend to you a warm welcome.

I personally myself, and on behalf of the committee, am glad to have you here, and you may be sure we are interested in your presentation this morning on the very important issue of civil rights.

Mr. REUTHER. Thank you, Mr. Chairman and members of the committee.

I am appearing here, both as the president of the UAW, which represents 1,250,000 wage earners in the United States, and also a president of the Industrial Union Department of the AFL–CIO, which represents 6 million industrial workers throughout the United States.

I should like first to express my sincere appreciation for the opportunity to present our views. I come here in support of H.R. 7152 and I hope that the committee will either adopt the bill in its present form or strengthen its provisions, because we believe that nothing less than the minimum provisions of the current bill will be adequate to deal with this basic problem.

Your committee, Mr. Chairman, over a long period of time has made a great contribution toward trying to find answers to basic problems within the framework of our present society. We believe that here

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again you have a historic opportunity to make a very meaningful contribution toward helping American democracy fill its high promise.

We believe that you can meet that responsibility and make the maximum contribution if your committee brings out a bill adequate to the dimensions of the current problem. If you do that, we believe that you will make a meaningful contribution in helping American democracy bridge the moral gap which exists between our noble promises and our ugly practices in the field of civil rights.

We look at the question of civil rights not as a political issue. This is essentially a great moral issue, and America is faced with a great moral crisis. This matter of civil rights, equal opportunity, and full constitutional rights for every American transcends partisan politics. It bears upon the central question of the relationship of man to man within the framework of a free society.

We need to understand that we face a great challenge in the world, and we are the only country that has all of the essential elements for leadership in the contest between freedom and tyranny. What we do in this important area will determine the kind of moral credentials we have as we face these responsibilities around the world.

When Mr. Khrushchev was here some years ago, I had the opportunity to spend an evening with him. He told us, as he has told other Americans, that history is on his side, that the Communist system is riding the wave of the future, and that in due time it will bury our kind of free society.

Why does Mr. Khrushchev believe it—and he does believe it; it is not a propaganda technique. He really believes that our kind of free society is composed of competing and conflicting irreconcilable pressure groups, which make it incapable, in the absence of the threat of total war, to achieve the sense of common purpose and national unity essential to meet the kind of basic problems we are talking about here this morning. He believes we cannot achieve that deep sense of national purpose and national unity essential to the implementation of that kind of program. He feels we will be incapable of solving this kind of problem and that it will continue to worsen until it fragmentizes our society and ultimately destroys us.

This, I think, is the historic basis.

I tried to tell Mr. Khrushchev that the essential difference between his kind of society and ours is that the Communist gets unity by conformity. Everybody goose steps to the party line. The genius of a free society is to achieve unity in diversity; that while we have so many differences, nevertheless, those differences are secondary, compared with the central values that we all share. We share these not as Democrats or Republicans, not as labor or management, not as Protestant or Catholic or Jew. We share them as humans who understand that within the framework of a free society, what matters is the loyalty and commitment to the central core values around which we have built our free society. Those values involve the belief in the worth and the dignity of each human person. Everything we do has importance only as it bears upon those central values of trying to find a way, within the framework of a free society, to enable each human being to live his life, so he can achieve a sense of personal fulfillment.

Mr. Khrushchev thinks that we just give lipservice to these values. He doesn't really think we are committed to them. I think that each

of us has to ask ourselves the question, when we are faced with this kind of moral crisis, we need to ask ourselves: "By what do you measure one's commitment and one's convictions with respect to these central values?"

I say it is not how eloquently you can articulate these values. It is what you are prepared to do as an American to implement these values, to give them meaning, substance and purpose in the lives of people; not just some of the people, but all of the people, not just in some phases of American society, but in all phases.

This is the central question before your committee:

Can American democracy be true to itself? Can it take the central core values, around which we have built the whole system of values that make up our free society? Can we find practical ways to implement and give them meaning in items of the needs and the problems of all of our people?

Negro Americans have waited a hundred years since that great American, Abraham Lincoln, issued the Emancipation Proclamation. It is one of the great shames of America that we have waited 100 years and have not fulfilled the high purposes of the Emancipation Proclamation. No one need debate the fact that millions of Negro Americans are denied first-class citizenship. They are denied, they are discriminated against in many phases of our national life.

They are on the march today because their patience is about expended.

Now, it is not enough for Negro Americans to be on the march. Every American must be on the march with them. All of us, I believe, share the responsibility of understanding the impatience of the American Negroes, because 100 years is a long time to wait and to be denied. We need to translate that general impatience that we all need to share into bold, adequate action, so we can begin to end every ugly and immoral form of discrimination in every phase of our lives. In this way, equal rights and equal opportunities can become a fact and not a fiction in American life.

As an American and as a human being, I believe in equal opportunity and full constitutional rights for every American, first as a matter of simple morality, and also as a matter of simple decency and simple justice. Everything else aside, I believe we ought to do what is now before this committee and what the President has recommended as a simple matter of morality.

Second, I am also in favor of equal opportunities and civil rights. They underscore the nature of human freedom. Human freedom is an indivisible value. No one really can have it and feel secure that his freedom will not be put in jeopardy except as freedom becomes a universal blessing shared by all men. When the freedom of any American is denied, my freedom as an American is in jeopardy. From a very selfish point of view, I want to fight so that every American can have the same rights and the same equal opportunity that I share. Only as I fight so that they all share it can I be certain that my freedom and my opportunities will be made secure.

Thirdly, there is this broader consideration. I have been to Berlin many times and I have seen that ugly wall, which is perhaps the greatest monument to the failure, to the moral bankruptcy of communism that has ever been built in the world. We cannot defend the freedom

in Berlin so long as we deny freedom in Birmingham because no one will take us seriously. As the Secretary of State, Dean Rusk, stated the other day, we are going to be judged in the world not by what we preach, but what we practice.

This is the area in which we are most vulnerable.

I have been to Asia. I have been to Africa, where we are trying to help establish a democratic free trade union movement so the working people of those countries will have effective instruments with which to advance their struggle for economic and social justice. We are helping because we know communism builds its power out of the exploitation of human poverty. Everywhere I go in the world, whether it be in a mountain village in India or in Africa, whether it be with the textile workers' group in Bombay, the first question that is raised about American democracy is about our delinquency in the field of human rights and civil rights.

I am asked about Little Rock. I am asked about Birmingham. Mr. Chairman, I must confess, no matter how hard I try, I have not been able to come up with satisfactory answers. I can only give them lame and weak and unacceptable excuses, because this area of our national delinquency cannot be defended.

Mr. RODINO. I would like to make a point there.

I was attending a conference at Geneva a month ago and the incident of the police dog attacking the Negro in Birmingham was printed all over the world. One of the delegates from one of the nations represented at the conference there showed me the front page of the European edition of the Times and he was a little more frank than some of the others, and he asked me, "Is this the way you practice democracy?"

Mr. REUTHER. That is right.

Mr. RODINO. And I had no answer.

Mr. REUTHER. It is this ugly immoral gap between what we promise, what we preach, and what we practice, that emphasizes American democracy's lack of performance.

People are not stupid. They are not going to be influenced by noble platitudes about the virtues of American democracy. They are not going to be fooled by eloquent declarations of human rights. They are going to judge us by what we do. Every time there is a serious gap between what we promise and what we perform, there are going to be headlines. Every time a police dog or a firehose is used against an American who is merely asking to be treated like an American, there will be headlines and pictures on the front pages that will be exploited by the enemies of freedom, democracy, and human dignity.

What we need to understand is that this is America's Achilles heel. We cannot lead the forces of freedom against Communist tyranny except by getting our moral credentials in order. We can stand before the world and people will believe what we say only when we practice what we preach.

If we don't, then I think we will be unequal and unworthy to lead the forces of freedom in the world.

I think the Supreme Court in 1954 delivered a very historic decision. Since then, the Court has moved forward. I think that what the President has done in his Executive orders ending discrimination in Federal employment, in employment by companies having Federal Government contracts, ending discrimination in housing, are very

significant steps. But we must measure where we are, not by looking backward and saying, "Well, we have come this far from where we were."

We have to measure progress not from where we have come from, but where we have to go. When you measure what still remains undone in providing equal opportunity and full rights to all of our citizens, there is much work ahead.

That is why the President has suggested the bill that is before your committee.

I believe that the Members of Congress have got to recognize that the congressional branch of our Government has done the least in the last 100 years to bring practical fulfillment of the great promise of American democracy. The Court has acted much more boldly. The executive branch of the Government has acted much more boldly. But they can act only within the framework of existing law.

You, in Congress, have the initiative and the responsibility to broaden the legal structure so that both the executive and the judiciary branches of the Government will be able to move forward. This is why we believe that bold, adequate action on the part of Congress is a matter of compelling urgency.

Now, we support the President's proposals as they are before your committee and before the Senate in bill 7152. We support them because we recognize that they represent the most comprehensive civil rights proposal that the President of the United States has ever recommended throughout the history of our Nation. But we do so, fully mindful that while this is a comprehensive bill, it is also a very moderate bill.

If I were sitting down and writing a bill, I would go much further in many areas than this bill goes. We give this bill our full and unqualified support and urge you to enact it and, if possible, make it stronger. If that is not possible, we urge you to enact the bill without any weakening amendments.

I would like, Mr. Chairman, in addition to putting my prepared testimony in the record, to put in the record a telegram which was authorized by the unanimous vote of the executive board of my union, the United Automobile Workers Union. We sent the telegram to the President on June 11, 1963. In it we called upon the President to submit a legislative proposal to the Congress.

We go beyond what the President has proposed in several important areas which I should like to indicate very briefly. I would like this put in the record, along with my prepared testimony, if I might.

Mr. RODINO. It will be put in the record.

(The documents above referred to are as follows:)

TESTIMONY OF WALTER P. REUTHER, PRESIDENT, UNITED AUTOMOBILE WORKERS

My name is Walter P. Reuther. I am president of the International Union of Automobile, Aerospace, and Agricultural Implement Workers and of the Industrial Union Department of the AFL–CIO and I appear here today on behalf of both organizations. We appreciate this opportunity to present our views to this committee and to urge you to report out a bill at least as strong as President Kennedy's H.R. 7152 and, if possible, a stronger bill.

The House Judiciary Committee has an exceedingly proud record of achievement. But nothing that this committee has ever accomplished in war or peace throughout its long history has greater significance for our country than the

decision you will soon be making on the President's civil rights bill. Yours is the opportunity to move this Nation forward toward the promise of democracy that all men are equal. You will not be true to yourselves or to that promise if you fail to seize this great opportunity.

The eyes of the Nation are upon your committee. Later on, they may be upon the Rules Committee or the whole House or the minority that resorts to filibuster in the Senate, but right now they are on you. If this committee reports out the President's bill, strengthened if possible, you will be living up to your time-honored traditions. But if you compromise one principle of this bill, if you weaken it one scintilla, you will have failed a Nation urgently looking to you for leadership.

Mr. Chairman, the facts which have made this legislation necessary are not in dispute. There is no denying from any member of this committee that Negroes are denied the right to vote, that school desegregation is too often a bitter joke in some States, that Negroes are deprived of the right to drink a glass of water or to stay overnight in a motel, and that civil rights is the urgent No. 1 issue before the American people today.

We support the President's bill as a strong first legislative step toward the goal of a Federal code of civil rights that will guarantee all Americans equality in law and equality in fact. President Kennedy's courageous action deserves the loyalty and support of all Americans regardless of race, color, or political party.

The President's bill is only a beginning, though a vital and necessary beginning, toward that goal. Despite loose talk by opponents of civil rights, the President's bill is a moderate and restrained proposal. Indeed, our union urged the President to ask Congress for far more—for a Fair Employment Practices Commission, for Federal voting registrars who will make the right to vote an American reality, for an across-the-board part III so the Attorney General can protect all constitutional rights of Negroes, for a requirement that all school districts commence desegregation here and now. All of these bills and more yet are needed if we are to stamp out discrimination and segregation from the length and breadth of this land. But the President, who I am confident believes in civil rights every bit as much as anyone in this hearing room this morning, has decided to move forward in stages rather than all at once. Your committee certainly cannot do less than he has asked; we urge it to do more.

The single most important part of H.R. 7152 is title II, the public accommodations bill. Discrimination in public facilities has been a national disgrace for far too long; by ending it now, by protecting every human being from Maine to California against the colossal indignity of a refusal of service, the 88th Congress will only be catching up at long last with the 44th Congress which sought to end discrimination by enacting just such a law as long ago as 1875. We can never recoup the loss to democracy in these long years of discrimination against Negroes. But we can—and we must—stop it now.

One good way of measuring the validity of any proposal is by taking a good look at the arguments being made against it. Even the most cursory examination of the current arguments against the public accommodations bill will demonstrate that they are shallow in content and defeatist in spirit. These voices of the past must not be permitted to thwart the will and vision of a nation ready, willing, and anxious for true equality.

Some say the public accommodations bill is unconstitutional. But what of the commerce clause of our Constitution which has been the firm base on which most of our economic legislation has long been predicated? Can anyone seriously argue that Congress has power to regulate the color of the margarine that goes on the restaurant table but not the color of the citizen who may sit at that table? And what of the 14th amendment which gives Congress express authority to implement the right to the equal protection of the laws?

I am not a lawyer, but the impression I have from the newspaper accounts of these hearings is that there is so much constitutional underpinning for this bill that most people are arguing whether to predicate the bill on the commerce clause or on the 14th amendment. I am sure the Negro and his family who have been traveling all day don't care much for the legal quibble whether the right to a night's lodging is based on one or the other. I am sure, too, what we would do in a collective bargaining situation if we had two good arguments in support of our case—we would simply use them both. I respectfully suggest to your committee that the same principle might go pretty well here.

There is very direct precedent for combining the commerce clause and the 14th amendment as the constitutional underpinning for the President's civil rights program. The Tennessee Valley Authority was based on three constitutional powers—the war power, the navigation power, and the right to dispose of property. The Holding Company Act and the Securities Exchange Act were both based on the commerce and postal powers of the Constitution. It is time to stop arguing and start legislating.

Some say the bill interferes with property rights. But I refuse to accept the principle that our democratic society affirms a property right to discriminate against Negroes. Once a man holds out his property to the public, once he asks the public to deal with him, he ought not be heard to say that his property is open to all the public except Negroes. Property rights are important in our society, but they must never be permitted to overshadow human rights and human dignity.

Some say that it is unfair to cover Mrs. Murphy's roominghouse and therefore we must exempt from the bill small public facilities of all kinds. But the conclusion does not follow the premise. The right to choose roomers in one's own residence is one thing; but this right of privacy in one's residence has no applicability to a small commercial hotel, a small restaurant, a bowling alley, or a barbershop. A Negro seeking service at a small lunch counter can be just as hungry as the one who stops at Howard Johnson's.

The public accommodations title of this bill is too important to be compromised by limiting either the size or type of establishment covered or the means of enforcing the right to equal service. We need a public accommodations bill with teeth in it. Most proprietors of public establishments want to do the right thing, but they are concerned lest their competitors gain an advantage by continuing old discriminatory practices. A strong bill will let those who open their facilities to everyone do so with confidence that others will have to do likewise. Toward this end, we would urge that the committee consider, in addition to the sanctions now in the bill, providing that anyone who has been wrongfully excluded from a public facility be entitled to recover a flat sum in damages. Not only the patron but the public-spirited proprietor will benefit from an enforceable public accommodations measure.

There is great good will in America in all parts of the country to do the right thing. The Deerfield prejudice of Illinois suburbia is just as evil as the Bull Connor prejudice of the South. Down deep in the hearts of most Americans there is the desire to do the right thing—but the right thing will not be possible in Chicago or Birmingham unless there are strong laws backed up by the power of the Federal Government.

Sweatshop employers a generation ago, and today, are a constant embarrassment to enlightened employers. Strong labor laws are welcomed by employers who want to do the right thing, and strong civil rights laws are welcomed by businessmen, labor unions, school boards, State officials, voting registrars, and others who want to do the right thing with respect to first-class citizenship for all Americans.

Second only to the public facilities title are the school desegregation provisions.

Under title III of the bill, technical assistance, grants and loans would be made available to school boards to meet problems arising out of school desegregation or the adjustment of racial imbalance in schools.

The more important part of this title authorizes the Attorney General to institute civil actions for school desegregation upon receipt of complaints and a determination that the complainants are unable to institute legal proceedings.

As the Attorney General made clear in his testimony before this committee on June 26, this title "would thus combine a program of aid to segregated school systems, which are attempting in good faith to meet the demands of the Constitution, with a program of effective legal action by the Federal Government * * * these programs would smooth the path upon which the Nation was set by the *Brown* decision."

The crisis in school desegregation—national dissatisfaction with the snaillike pace toward compliance with the *Brown* decision—was evident long before the protest marchers of Birmingham initiated a new era in America. Back in 1960, both parties pledged action on school desegregation along the lines of title III of H.R. 7152: the Democrats went even further and pledged legislation that school districts must begin complying with the Supreme Court's decision

in 1963. We would prefer the stronger measure pledged by the Democrats, but we support the proposal in the bill before you as a significant step toward speeding up school desegregation.

The present rate of school desegregation is a national disgrace. More than 9 years after the Supreme Court held segregated schooling unconstitutional, most school districts in the South still act as though nothing whatever has happened. Only three-tenths of 1 percent of the Negroes of the Southern States are in integrated schools and at the present rate of token integration it will be some time in the 21st century before this problem is resolved. We cannot accept 21st century integration; we cannot accept 1970 integration. We need school integration now.

There are other significant provisions of the bill besides the public facilities and school desegregation provisions. Title I reinforces the 1957 and 1960 voting laws and gives the Department of Justice useful tools in this important area. Title IV provides a Community Relations Service which will serve the useful function of bringing together people of influence in both races to work toward elimination of discriminatory practices. Title V wisely extends the life of the Commission on Civil Rights and authorizes it to serve as a national clearinghouse to provide information, advice, and technical assistance to private and public agencies. Title VI reinforces existing Presidential authority by placing Congress on record behind the withholding of Federal funds from any program or activity that receives Federal assistance, directly or indirectly, by way of grant, contract, loan, insurance, guarantee, or otherwise, when discrimination is found in such a program or activity. Title VII appropriately gives statutory authority to the President's Committee on Equal Employment Opportunity. Each of these provisions is needed; together they add impetus to the drive to build a better America respected throughout the world.

Prejudice is not an American product. In my travels around the world I have discovered that there is race prejustice in every land—India, Japan, the countries of Western Europe—yes, even in Africa there is race prejudice. But, as Dean Rusk, the Secretary of State said only last week—more is expected of us because we claim more. The Declaration of Independence proclaims that all men are created equal and that all men have a right to equal opportunity. All that we are asking Congress to do today is to make sure that these promises are guaranteed in a way that reaches up to the very best of the American dream.

Someday there will be a Federal code of civil rights which will protect every American, from birth to death, against discrimination in voting, in housing, in education, in employment, in public accommodations. Such a legal code of racial security will be the fulfillment of the promise of our forefathers that all men are in fact equal beings. Someday, after this code has been accepted by all Americans, prejudice will end and the code will fall into disuse. Such a code of civil rights will have set a standard of conduct that will make fair practices in all walks of life not only a rule of conduct but a condition of mind and of heart. This bill will not accomplish all that needs to be done, but we must begin the crusade to reach that goal. The first step is for your committee to report out this bill, H.R. 7152, strengthened to the best of your ability and your belief.

The question of civil rights and equal opportunity transcends the question of partisan politics because this is essentially a moral question that bears upon the relationship of man to man in a free society.

As an American, I stand for equal opportunity and full constitutional rights for all our people as a matter of morality, decency, and simple justice. I am for civil rights and equal opportunity because freedom is an indivisible value and so long as any person is denied his freedom, my freedom is in jeopardy. I am for civil rights and equal opportunity because American democracy cannot defend freedom in Berlin so long as we continue to deny freedom in Birmingham.

We can make our own freedom secure only as we make freedom universal so that all may share its blessings. We cannot successfully preach democracy in the world unless we first practice democracy at home. American democracy will lack the moral credentials and be both unequal to and unworthy of leading the forces of freedom against the forces of tyranny unless we take bold, affirmative, adequate steps to bridge the moral gap between American democracy's noble promises and its ugly practices in the field of civil rights.

There is no halfway house to human freedom. What is needed in the present crisis is not halfway and halfhearted measures but action bold and adequate to square American democracy's performance with its promise of full citizenship rights and equal opportunity for all Americans.

JUNE 11, 1963.

President JOHN F. KENNEDY,
The White House,
Washington, D.C.

The cause of freedom is on trial in America today, and American democracy is on trial in the eyes of the world. As a nation, we must determine now once and for all whether we believe in the U.S. Constitution which guarantees the rights of all citizens; whether we are willing to act in the knowledge that all men are free and have the right to exercise all the privileges of freedom; whether we are prepared to give practical substance to our noble professions in the belief of the worth and dignity of each individual.

The century-long patience of millions of Negro Americans who have been deprived of their constitutional rights of full citizenship is at an end. Through their words and their courageous actions, they have announced to all the Nation and to all the world that they will no longer tolerate or endure the indignities, the humiliations and the barbaric treatment that accompany second-class citizenship. And all who abhor the immorality of discrimination and social injustice toward their fellow men must share the impatience of the Nation's Negro Americans and stand shoulder to shoulder with them in full, active, and affirmative support of their struggle to make a present reality out of the 100-year-old Emancipation Proclamation.

It is long past the time for the Congress of the United States to act affirmatively and adequately to secure, guarantee, and make effective the constitutional liberties of every American without regard to race, creed, or color.

Millions of Americans, both north and south, are disenchanted with democracy's unfulfilled promise of equality, dignity, and freedom. They are expressing their resentment of the status quo daily through picket lines, sit-ins, kneel-ins and other demonstrations.

They are dissatisfied with, and unwilling to continue to accept, token integration in classrooms, both north and south. Those who have resisted desegregation by "lawful means" have flaunted the order of the U.S. Supreme Court to desegregate with "all deliberate speed." It is a tragic fact that today, more than 9 years after the Court's edict, some 2,000 school districts not only have failed to start desegregation but have given no indication that they intend to do so.

While the Congress has passed two civil rights laws since 1957 designed principally to guarantee the voting rights of Negroes, these measures fall far short of the need to establish full citizenship rights for all Americans.

Moreover, in the 9 years since the historic decision by the Supreme Court on school desegregation, the Congress has failed to enact a resolution providing moral support behind the spirit of the Court's decision and has failed also to enact legislation essential for the speedy and orderly implementation of that decision.

We have been gratified by the many Executives actions you, Mr. President, have taken in the implementation of civil rights in administrative agenices in Government. Your Executive orders to end discrimination in Government employment, in employment under Government contracts and in all federally assisted housing have aided considerly in the fight against bias in these areas.

The personal intervention of your administration to bring about a settlement of the struggle for Negro rights in Birmingham adds to your record of achievement in support of freedom and constitutional rights.

These affirmative acts by you demonstrate your deep moral commitment to the struggle to achieve equal rights and equal opportunity for all American citizens.

The Department of Justice is also to be commended for its aggressive action in filing lawsuits to outlaw practices of voting discrimination in those areas where they have been most rampant.

Like you, Mr. President, we and millions of other Americans, share the view that these actions to date, while significant, have not been sufficient to bring about an end to discrimination and segregation and the denial of equal opportunity and full citizenship rights to all Americans.

We in the UAW urge that specific pledges made in the field of civil rights in the platform of the National Democratic Party in 1960 which can be accomplished by additional Executive action be implemented immediately by the use of every possible authority at your disposal.

We urge also that your administration take affirmative, aggresive leadership in the Congress to win speedy enactment of additional legislation that will fulfill the pledges made in 1960.

Specifically, we urge that you strongly recommend and vigorously pursue the following minimum legislative goals at this session of the Congress.

1. Enactment of effective legislation which would empower the Department of Justice to bring suits where persons are denied their constitutional rights because theye are Negroes or members of any other minority group.

2. Enactment of an effective public accommodations law forbidding discrimination at any restaurant, lunch counter, hotel, motel, or any other facilities open to the public and that this legislation be based both on the 14th amendment to the Constitution and on the commerce clause.

3. Legislation that would require a "first step" desegregation compliance plan applicable to every school district at once.

4. Enactment of a Federal fair employment practices law to place the full moral and legal authority of the Federal Government behind a national effort to wipe out discrimination in employment.

5. Enactment of meaningful voting legislation based on the principle of "Federal registrars" ready, willing, and authorized to bring about mass Negro registration and voting in any area where the local registration machinery fails to provide such opportunity for registration and the exercise of full citizenship rights.

6. Legislation based on the Constitution to reduce congressional representation in States where Negroes are denied the right to register and vote.

7. Extension of the Federal Civil Rights Commission on a permanent basis.

These recommendations constitute the minimum that should be achieved in the field of civil rights and equal opportunity in this first session of the 88th Congress.

The question of civil rights and equal opportunity transcends the question of partisan politics because this is essentially a moral question that bears upon the relationship of man to man in a free society.

The UAW is directing a similar appeal for action in the field of civil rights and equal opportunity to the leaders of both the Democratic and Republican Parties in both Houses of the Congress.

We join with other men of good will in endorsing the words and the spirit of the U.S. Supreme Court which observed that "the basic guarantee of our Constitution are warrants for the here and now."

Mr. President, we know that you know that there is no halfway house to human freedom. What is needed in the present crisis is not halfway and half-hearted measures but action bold and adequate to square American democracy's performance with its promise of full citizenship rights and equal opportunity for all Americans.

WALTER P. REUTHER,
President, International Union, UAW.

Mr. REUTHER. Thank you.

I would like to point out four areas. I do this to underline what I think is an important consideration for the people of this country and the Congress to keep in mind: That is, while the President's bill is comprehensive in scope, it is nevertheless moderate in tone.

With respect to the voting rights provision of the President's recommendation, we suggested in our telegram that there be provided Federal registrars who would take upon themselves the responsibility for a kind of wholesale approach to the registration of millions of American Negro citizens in the South who have been denied the opportunity and the right to register and, therefore, to exercise the right of franchise.

While the President's bill has certain provisions in this area, is certainly extremely moderate, compared to the proposal that we made. It is a kind of a retail approach and we believe that the massive nature of the problem would justify a wholesale approach.

Mr. FOLEY. At that point, Mr. Reuther, are you referring to the approach that was suggested prior to the enactment of the 1960 Civil Rights Act, of the Federal registrar that would include registration without interference?

Mr. REUTHER. That is right. We make this proposal because of the obstacles that have been put in the way by people who have deliberately and wilfully tried to manipulate the mechanisms of Government to deny millions of Negroes in the deep South the right to franchise. We believe that the massive nature of the problem requires a more drastic, more adequate approach. We believe that the Federal registrar approach would create a practical mechanism in those communities where millions of people have been denied the right of franchise on a massive basis. It would register them, if they meet the basic minimum requirements, so that they could utilize the right of franchise.

The second point I would like to make is that we have urged the inclusion in the civil rights bill of the FEPC provision. Why do we say that? Well, we know a great deal about discrimination in employment. This is an area in which I have been working for 27 years, and working hard. My own union, from its very inception, did not tolerate discrimination.

Mr. RODINO. I would like to say that your union is to be complimented for the outstanding record that it has achieved in that area.

Mr. REUTHER. Thank you.

When we founded our union 27 years ago, we approached this problem of equal opportunity in employment on a very simple basis. We just said a worker is a worker. Whether he is white or black or brown or yellow, he has to earn his daily bread and as an American, he is entitled to equal opportunity in employment.

Now, we knew that having said that in our constitution, that that wasn't sufficient. Always you are faced with the practical job of how do you take noble declarations and implement and give them meaning. So we created in our union a special department, of which I am the chairman as the president of our union.

We earmarked 1 cent of every $1 we take in, and that is spend implementing these provisions, fighting against discrimination.

Inside of the factory where we have a collective-bargaining agreement, we have been very successful in fighting to eliminate discrimination. We have not achieved perfection, because when you are dealing with organizations made up of imperfect people, starting with the leaders, right down to the rank and file. It is very difficult to achieve perfection, but we keep working at this and we do not tolerate discrimination.

We tell a fellow: "Look, you don't have to work with a Negro or some other member of a minority group; but you have a simple decision to make. You can either have your pay check or your prejudice. Make up your mind."

It is a strange thing, they always wind up with their paycheck. But if they could have both, that is exactly the way they would like to keep it. We have told them, "Look,"—and we have done this in the East, North, South, and West because we believe in it

Our problem has been that while we make great progress in the plant after a worker is employed seeing that he does get equal opportunity the real discrimination takes place at the hiring gate We have nothing to say about that We have tried for 27 years to write in model clauses While we have made some progress with the companies

in the last couple of years we have never been able to get our model clause because they say "Look after we hire them and they go on the payroll you represent them and they become your business."

This is why we believe a FEPC makes a lot of sense It will meet the problem of discrimination whether it be on the part of the employer or on the part of the union; it is just as evil This is the way to deal with it

I am opposed to it, whether the company is guilty, or they are both guilty.

Mr. RODINO. It is discrimination?

Mr. REUTHER. Exactly. You know, when you talk about this with people. There are people who are of good will, but they don't understand.

They say to you, "You can't legislate this kind of a problem out of existence. You have to have education. You have to educate people and get this out of peoples' hearts."

That is a fine sentiment and I assure you that I share it. But it seems to me if we can have laws that say you can't go through a red light or do 90 miles an hour down the street, that regulate people with respect to how they drive their cars, why can't we have legislation that regulates this kind of basic human problem?

No one would suggest that what we ought to do is to throw away all of the traffic regulations and just have everybody on their good behavior. Not only do we have traffic regulations but on the Fourth of July weekend, we have a big campaign—the radio and TV all cooperate with the National Safety Council. We try to make every American conscious of the fact that maybe 800 people will get killed over the Fourth of July weekend if we don't cooperate. We don't just end there with this kind of enlightened educational program. We have a fellow on a motorcycle with a blue uniform. When you go through a red light he gives you a $10 ticket and it is that $10 ticket that accelerates the educational process.

That is what we ought to do in this area. In other words, if a union discriminates, there ought to be a penalty. When the employer discriminates there ought to be a penalty and the penalty is the thing that will facilitate and accelerate progress.

I don't understand people who think you can regulate how you drive but object to regulation in this area. Here is a more sensitive area involving the right of a person to be employed, to use his skills to earn his daily bread. Yet, we tolerate this because we talk about, "Well, we have to educate the people."

We also propose to go farther than the President in the powers of the Attorney General, what we called part III in the old legislation. We believe that one of the very serious problems is that too often the person who is victimized by discrimination has to carry too heavy a legal responsibility in seeking redress. We believe that the Attorney General ought to have broad authority to institute action in any situation where an American citizen is denied his proper constitutional rights.

The fourth area is in the area of desegregation of our schools.

We believe, and we have proposed that there ought to be machinery to initiate immediate action in desegregation in each school district. The President's proposal is much more moderate. It seems to me that

we need to keep in mind that the President's proposal represents the absolute minimum which the Congress ought to enact if you are going to deal realistically with this problem.

I think it is imperative that the Members of Congress recognize the dimensions and the dynamics of the determination of Negro Americans to gain their full constitutional rights and equal opportunity.

I think we need to recognize that there are no halfway, halfhearted answers to this problem, because there is no halfway house on the road to freedom.

I believe that the American Negroes will not, nor should they accept anything less than the full rights of an American citizen in every aspect of our national life. Take the question of public accommodations. This is the source of all the public protests; more than any other aspect of denial of civil rights and equal opportunity.

I believe that we need legislation that will meet that problem now, not at some indefinite, undefined tomorrow which may never come.

We have to meet that now. We need legislation. I talk to business people and they say, "Well, I would be quite willing to do it. I would be willing to make my faciilties available without discrimination as to race or creed or color, but if I do it and my competitor down the block doesn't do it, then I am in a very serious competitive disadvantage."

This is true. Suppose we had a minimum wage law and we said "Everybody ought to pay $1.25 an hour," which is little enough, and frankly, I don't know how you can raise a family and growing children on $1.25 an hour. But suppose we had a resolution that said "Be it here and now resolved that it is the intention and purposes of Congress that every American employer ought to pay $1.25 an hour, but we leave this to your good judgment."

Well, what would happen? The people who have a sense of responsibility would be victimized by the irresponsible minority. You need legislation that compels the minority, who would exploit these kind of situations, to meet the minimum standards of public responsibility. By so doing you protect the responsible majority.

I think the overwhelming majority of American businesses are prepared to carry out the spirit of equal accommodations, but they can't do it as long as the irresponsible minority can victimize them economically. These are the kind of practical problems.

This is not just a problem in the South, it is a problem from Boston to Birmingham, from New York to New Orleans, from Michigan to Mississippi, and only legislation can deal with it.

I believe that this is an area in which Negro Americans are being robbed of their sense of dignity. I have spent the last 27 years in the labor movement and we got off to a very bad start in the automotive industry. We had some very bitter early struggles. I am very happy to report that I think there has been a great deal of progress and maturity. I think both labor and management have grown up together in this very important industry. I think the the recent Joint Study Committee which I proposed and to which the companies have agreed so we may study the problems of next year's negotiation 16 months in advance, is a tangible illustration that we have made great progress. But I have been pushed around. I have been beaten up inside of my home, with gangsters breaking into my home and trying to kidnap me.

I have had my car blown up and my office bombed. I have been shot by guns aimed through the rear window of my kitchen. My brother has had the same treatment. So I have been pushed around.

If I were to make the same decision again today, I would do it all again. I believe that progress is only accomplished when people are willing to pay the price.

Mr. RODINO. It is a great tribute to you personally that with all the rigors, difficulties, and dangers that you have been through, you have continued to dedicate yourself to these not just lofty ideals but ideals which I believe could be put into practice. Unfortunately, however, just as you pointed out a little while ago, there is a need for a legislation in all areas because were there people who needed no guidelines, then there would be no need of legislation, but there are the irresponsible, so the argument that the way things will develop falls flat on its face when you consider the vast area of legislation which has been laid down for the human race, no matter where, as a guideline of the proper kind.

Mr. REUTHER. You see, Mr. Chairman, if everybody really believed in common brotherhood and believed deeply enough to lead their lives by those noble concepts, we wouldn't be sitting here today and we wouldn't need any laws. But one of the problems is too much high butane brotherhood where they drop the brother and keep the hood.

That is one of our problems. I cite the difficulties I have gone through, not because I solicit your commendations. I cite them to illustrate that while I have been pushed around and beaten up and shot at, I do not believe that I can even remotely comprehend the inner hurt and the harm and the humility that a Negro American must suffer every day of his life, because my hurt was physical.

It is the inner man who is being hurt among the Negroes. When you walk through a door, because your skin is black, you don't know what awaits you an the other side. You don't know whether you are going to be welcome or whether you are going to be rejected. It is this continuous humiliation, this denial to the inner man that bruises his sense of worth.

This is the great tragedy of discrimination and the source of the revolution which is sweeping America. We can't get lost in the wilderness of legal technicalities. We can't hide behind Mrs. Murphy's skirt. This is a simple, clear issue; the question of human rights versus property rights.

This issue was settled 100 years ago. This was the great issue in the Civil War: Were property rights superior to human rights? We made a decision as a nation and we said property rights are important and they have to be protected, and that we devise a whole system of law to protect those rights. But when you equate human rights with property rights, human rights have always been given priority over property rights.

This is the nature of things in a free society. This is the central question here and to those people who raise constitutional questions. I think we need to reply very simply that the equal public accommodations provision of this bill rests upon the sound constitutional basis of the commerce clause.

Now all of the basic social legislation in the past 30 or 40 years has essentially been built around that concept of the commerce clause. You gentlemen represent the congressional authority in carrying out the responsibility bestowed upon you by mandate of the American people. If you have the constitutional right to regulate the color of the margerine that is served in a restaurant, how can anyone claim that you haven't the same constitutional right to deal with the color of the people who ask for access to eat that margerine?

I mean, so we shouldn't kid ourselves. But in addition to the commerce clause you have other good arguments. In collective bargaining, we learned a long time ago that if there are five good arguments, you just don't pick the best one and use it. We use them all. That is what we ought to be doing.

The 14th amendment that came out of the Civil War period states very clearly and simply that no State can enact legislation to deny any citizen his equal protection. Now the Republican Party, to its credit, was the architect of that concept during the period. That made a great moral struggle of the Civil War. The Republican Party and most of its legislative history is built around that concept of the 14th amendment, while the Democratic Party has put more emphasis on the commerce clause.

I think we ought to join the highest traditions of both parties. I think that both partise ought to stand together on this great moral issue and say, "There are two solid constitutional bases and we will stand on both." When you stand on both feet you are much more solid than when you stand on one.

Mr. RODINO. I cannot agree with you more wholeheartedly, Mr. Reuther. Those seem to me to be the bases on which we really move and in order to be able to implement this bill it would be necessary that both are employed.

Mr. REUTHER. That is our opinion, Mr. Chairman.

Take on the question of school desegregation. It has been 9 years since the Supreme Court issued its very historic decision, and that decision rang bells all over the world. It would be difficult for an American to really appreciate how people in the darkest parts of Africa and the most poverty-stricken villages in Asia and Latin America felt. Here was a great tribute, of the greatest and oldest Republic in the world, the United States of America, and it said finally, "We are going to end discrimination."

But we have the practical problem. How do we implement the decision? In 9 years what is the record? The record is that no American who believes in equality and human dignity can be proud of; three-tenths of 1 percent of the Negro children in the Deep South are going to integrated, desegregated schools. Three-tenths of 1 percent, after 9 years!

It will take more than another 100 years at that rate, except that we don't have that much time. History will not wait for American democracy to do its unfinished work and we need legislation to accelerate the process. I believe, as we said earlier, that the President's proposal represents the very minimum needed to get moving.

In the platforms with which the Republican Party and the Democratic Party went to the American people to seek a popular mandate, both went much farther than the President's recommendation.

In the case of the Democratic Party's platform, which I think was a little more advanced than the Republicans, they said:

> We favor legislation that will make a beginning in every school district in the year that marks the 100th anniversary of the Emancipation Proclamation.

The President's bill does not provide that and represents, therefore, the barest minimum of what must be done in this important area.

Mr. FOLEY. Are you there referring to what is commonly known among the legislative group as "first step"?

Mr. REUTHER. That is right. That is right. That first step is the most important one.

I would like to take just a couple of minutes on some other provisions We support the recommendations of the President on title I on voting rights, although we would go much further, as I said earlier, on the registrars.

On title IV covering community relation service, we think this is a very fine thing. But we point out that a mediation service in the absence of strong affirmative legislation will not do the job.

In other words, mediation is not a substitute for effective legislation. It will supplement, but cannot substitute for effective legislation.

We also support title V, which is the extension of the term of the Civil Rights Commission. We support title VI which reinforces the authority which the President already has under the Constitution to withhold funds from any sections of the country where there is discrimination against any citizen. When all of our citizens are obligated under our tax structure to contribute to the creation of these Federal funds.

We support title VII, which gives the statutory authority to the President's Committee on Equal Opportunity. I am a member of that Committee. I served on the comparable Committee under President Truman.

I served on the Contract Appliance Committee under President Eisenhower, and I am privileged now to serve on President Kennedy's Committee on Equal Opportunity.

I want to say that I think that Committee is doing effective work under the leadership of Vice President Lyndon Johnson. But I do believe that giving it statutory authority will strengthen its moral influence and provide greater leverage for its work.

So I conclude, Mr. Chairman, by saying that if you look at the facts objectively and really believe in the basic values of our free society, and the worth and the dignity of each human, then I believe that you must conclude that the need for affirmative, adequate legislative action is a matter of compelling urgency.

We are the only country in the world that can provide leadership for the free world, although not because we are better than other people. Some years ago I had the privilege of addressing a huge freedom rally in Berlin—in West Berlin. There were 660,000 people present. After that meeting I was asked by the mayor of West Berlin, Mayor Willy Brandt, to speak to a group they hoped would come to a pine woods, a natural amphitheater on the outskirts of free Berlin.

The Communists had sealed the border so none of the workers in East Berlin in the Communist sector could come to this huge freedom meeting.

Word was passed out that maybe in the afternoon, if the borders were not so rigidly controlled, that any worker who could get through should come to a freedom rally for the workers in East Berlin. There were 22,000 East Berlin workers who somehow got through the Iron Curtain to come there and demonstrate for freedom. Then these workers went back through the Iron Curtain to live.

I came away feeling that as an American, we need to stand up and be counted. Yet, I came back with this feeling—I went from Berlin to the Dusseldorf, which is the heart of the German industrial Ruhr, and was overwhelmed by the tremendous vitality of the German economic recovery. New construction was everywhere. It is a tremendous modern, economic miracle. Germany has great economic power, but Germany does not have a rich democratic heritage.

Democracy in Germany is only veneer thin and we pray that the people in Germany can build a democratic society with deep roots.

Then I went to England, where I met with my friends in the House of Commons. England has 1,000 years of rich democratic heritage. It is the cradle of Western parliamentary democracy. England has a rich heritage, but no economic wealth and muscle. We are the only country in the free world that has both economic wealth, productive power and all things that we need in the material sense, plus a rich democratic heritage to give us a sense of social purpose and a sense of moral direction. The field of civil rights—because that is an area in which we need to relate our material wealth to human values—this is the area in which American democracy is going to be judged in the eyes of the world.

They are not going to say "How rich are you, how productive is your economy?" Not what your industrial indexes are. Nor are they going to judge us by the brightness of the chrome on the new Cadillacs. They are going to say "What do you do as a free society to give meaning and purpose to these values as they relate to every human being in our society?"

They are going to look at us, and they are going to look most critically in the area where American democracy is failing.

I believe, Mr. Chairman, your committee has a great historic opportunity to provide leadership to both Houses of Congress by taking the initiative and reporting out the strongest possible bill. I would urge you to give consideration to strengthening certain sections of the President's bill and stress that nothing less than the President's bill ought to come out.

If you do that, I think that you will make a great contribution in helping American democracy square its practice with its promise.

I think the choice is clear and compelling. We are either going to find answers to those problems in the framework of rational, responsible actions based upon reason or desperate men will search for those answers by irrational actions. We are either going to find answers in the bright daylight of brotherhood, or desperate people will search in the darkness and they will find—try to find—answers in bitterness and bloodshed.

You have in your hands both the responsibility and the opportunity to provide affirmative, rational, responsible leadership. I urge you to act as quickly as you can, because the hour is much later than we realize. I don't know how long the responsible leaders of the Negro

community in America can restrain the emotional pressures that are building up. If you can't make progress by rational and reasonable means, then the apostles of hatred, who are advocating the bitterness and bloodshed, will be the route that we travel. You have in your hands the opportunity of averting that kind of catastrophe and I urge you to carry on in the high tradition of your committee and meet this challenge boldly and adequately. Thank you.

Mr. MEADER. Mr. Reuther, I am glad to see you here again. I remember when we used to ride back and forth to Michigan on the plane together. How large is UAW now in terms of members?

Mr. REUTHER. When we talk about our membership, we talk about the people who are currently paying dues. We are collecting on about 1,200,000 dues-paying members. We have a number of unemployed workers who are still members of our union. We do not collect dues from unemployed workers, although they have full rights, nor do we collect dues from retired workers. We have 200,000 retired workers, so that if you took the dues-paying workers, unemployed workers, and retired workers we would have probably 1,600,000 workers.

Mr. MEADER. In other words, there are roughly 200,000 unemployed as well as 200,000 retired?

Mr. REUTHER. That is right.

Mr. MEADER. Do you have any means of knowing how many of the 1,600,000 are Negroes?

Mr. REUTHER. I wouldn't know. We are trying to get figures on this now. One of the things that was done many years ago—and I was much involved in that—we fought for the takeoff of all employment records and application blanks the designation of white or Negro. We succeeded, and now it is very difficult to get figures because we did this job so well. We are now working on this. More recently we asked some of the major companies to give us a breakdown.

They also didn't know for the simple reason that we fought to take these designations off of the employment cards.

We have in the automotive industry a sizable percentage of Negroes. I think we do not have enough in the skilled classifications. We are working harder on trying to meet this problem of apprenticeship, so that more young Negroes can get the benefit of apprenticeship training.

In the agricultural implement industry we have, I think, a sizable percentage, but not as large as in the automobile industry and in the aerospace industry we have a smaller percentage.

We made a great deal of progress during the war. I think, however, when you really deal with the basic question of employment, you have to recognize that we won't ever really solve the problem of Negro Americans employment until we solve the basic problem of unemployment. How do we have full employment?

I think, if you are interested, I should be glad to try to expedite our effort to pull together figures on Negro membership so we can give you more accurate figures.

Mr. MEADER. You indicated there was some discrimination still in your union. Is that largely confined to locals in the South?

Mr. REUTHER. I said that I don't think we have achieved perfection, because I have to be honest with myself and with you. Wherever we

find discrimination, we go to work on it, whether it be in the South or elsewhere. Where there is discrimination, it is because we don't know about it. So what I am saying is that I don't think that we have achieved perfection because there can be some discrimination tucked away in certain areas of our union that we don't know about. But the minute we know about it, we go to work.

In addition to the provisions of our own constitution, which are very clear, we have this special department with a full-time staff that work on these things. If a worker feels he has been discriminated against, he can file a grievance and we process that.

In addition to that, my union has set up what we call a public review board. It is a kind of a supreme court. It is the only major union in the United States that has ever done this. This supreme court, which is made up of seven distinguished Americans—there was one Canadian—has the constitutional authority to set aside any decision of the executive board of our union, which is the highest authority between conventions.

In certain areas—if there is discrimination—they have more authority than our executive board. If a worker thought that he was being discriminated against and he didn't get justice from our executive board, he could go to the public review board. They would have authority under our constitution to make a decision which would be final and binding upon our union.

In addition to matters of discrimination, they can handle matters of collusion. If they say some national officer is in collusion with a company to the member's detriment, they can take that up. They can take up the broad question of all the things covered in the ethical practices code of the AFL–CIO, which deal with the whole question of moral conduct.

So in arguing, we do have a supreme court. It is made up of very distinguished Americans. Bishop Oxnam, who was the highest bishop in the Methodist Church, was on it until he retired, and recently he passed away. Dr. Henry Littcrane has taken his place, a very distinguished Methodist minister. These are the people on our public review board, they have an independent budget, independent staff, and have the right to handle this kind of a question if we don't do right by the person involved.

Mr. MEADER. I might say that my general impression is that the UAW, being an industrial union, probably has far less tendency to discriminate than some of the trade unions. When Mr. Meany was here the other day, he indicated that there was some lack of real power in the international union to compel fair treatment by the local unions and their stand on discrimination.

I take it that you have had no such difficulty with your locals in the UAW.

Mr. REUTHER. Well, we have problems, but we work on them. I am sure such problems motivated Mr. Meany and I understand he also proposed FEPC legislation. You have this kind of problem: A democratic union obviously means that the local unions have certain rights and that the memberships in those local unions have certain rights, as they should have.

Supposing that local A in a given city is discriminating. Suppose there are 5,000 workers in local A and they are in violation of the constitution of the union, and the international union says to them,

"Look, you have to take in Negro apprentices or you are in violation of the spirit and letter of our constitution." So the local union has a meeting and the directive from the international is read, and they reject it.

All right. The next thing we could do under our constitution—and most union constitutions have comparable provisions—is to establish a trusteeship. In our union we only do this on very rare occasions. We can only do it for a very limited period of time, and we have to have a new election, so we establish a trusteeship.

At the end of the trusteeship, we have to turn the local back to its membership, so they reelect the local union officers who are in defiance and who refuse to cooperate.

All right, then you have a choice. Do you revoke the charter, which means you put them completely out of the labor union, completely beyond your influence? Well, if you take any other punitive act under the constitution, they can always vote to decertify; they can apply for decertification and escape your discipline. This is why you need a law.

They can't escape the law. Therefore, you would back up the provisions of the constitution of the union and the moral levers that would be exerted by the greater leverage of the law. This is what we beleve—there has been discrimination in some of the building trades. I think they are making progress. There was an agreement worked out in Detroit the other day which I think was very significant.

I was disturbed by the press reports that I read in New York and some of the statements made in the last several days. But progress is being made, and if we had an FEPC law we could make much greater and faster progress.

Mr. MEADER. That brings me to my next question. You mentioned in your statement that with respect to employment there should be a penalty both on management and the union for violation or for discrimination. What would be the nature of the penalty with respect to unions?

Mr. REUTHER. Well, I think that there are other penalties. With a union you could act after a certain period of time, so that you wouldn't just lower the boom without giving them an adequate time to try to correct the problem. I would think that after you have exhausted certain proper procedures and have done all possible to try to bring compliance; I believe that a union that willingly and knowingly practices discrimination should be denied certain protections of the law. How drastic——

Mr. MEADER. You would get a law on the union?

Mr. REUTHER. On the type of penalties, I think that this is a matter that reasonable people could sit down and agree upon appropriate penalties. But unless you have penalties, you have no teeth in the law and then I think you need penalties. I would be in favor of penalties.

I think it is just as wrong for a trade union to discriminate as for management. Since I am in favor of penalties against management where they discriminate, I am equally in favor of penalties where labor is equally guilty.

Mr. RODINO. The penalties should apply equally to the laborer as well as management.

Mr. REUTHER. That is correct.

Mr. MEADER. I don't know whether you are familiar with the bill that the House Education and Labor Committee reported on FEPC. Are you familiar with that?

Mr. REUTHER. In its general provisions, yes.

Mr. MEADER. Would it be your suggestion that this committee should incorporate that bill in lieu of the section that relates only to Government contracts?

Mr. REUTHER. Well, I hope that your committee might give consideration to the incorporation of the full provisions of that bill as it bears upon Government contracts, which is a very sizable portion of the work being done. I think it should be applied generally to all employment.

Mr. MEADER. In other words, you would be in favor of this committee either adopting the provisions of the bill the House Education and Labor Committee has already reported or some similar provision broadening fair employment practices to all, rather than just those contractors that deal with Government?

Mr. REUTHER. That is right. We favor the broadest application of the concept of the FEPC legislative approach. We believe that if you could get a single all-inclusive legislative package that would be the best way for the bill to go to the Senate.

Mr. MEADER. We have had considerable discussion, Mr. Reuther, with various witnesses and Mr. Rauh, whom I see at your right, on title VI. We had Mr. Wirtz and also Mr. Celebrezze of the HEW. That is the withholding provision.

This is not a very long section. Have you examined the phraseology of that section? Perhaps I should address this question to Mr. Rauh, as I don't believe you are a lawyer.

Mr. REUTHER. No; I am not. I have been accused of many things, but I have never been accused of that.

Mr. MEADER. In general, do you support that broad language which gives discretionary authority to every administrative grant aid program to withhold funds where the administration believes there is discrimination and the section now contains no provision for review of that decision by the Administrator?

Mr. REUTHER. Yes. I think, first of all, that historically and constitutionally the President of the United States has this implied power. I think he must have it.

Mr. MEADER. He apparently doesn't agree with you.

Mr. REUTHER. Well, I think what he is trying to do in this situation, he is trying to get a reinforcement of that power by legislative action so that it will get it completely out of the area of possible controversy.

I think that the section of the bill as now set forth is adequate and it would be unwise to clutter it by creating any administrative review mechanism. I do believe that if a State felt that it was being denied funds improprly and without constitutional justification, I think that the State could challenge that in the courts. Therefore, I believe that the courts provide all of the review mechanism essential to protect the equity of any State that feels that it is being wronged.

Mr. MEADER. We are in the process of asking Mr. Rauh, and we also asked our own counsel to brief this question on this matter of withholding, such as was contemplated under title VI, but in the event it doesn't appear that there is adequate court review, you would be in

favor of providing for court review of any such decision by an administrator?

Mr. REUTHER. That is right. I think that a court review is implicit in every situation. But if there is any question about that, I would not oppose specific designation of it.

Mr. MEADER. That is all.

Mr. REUTHER. Mr. Chairman, I apologize. I neglected to introduce Mr. Rauh, who is one of the legal counsels of the UAW, and Mr. Jack Conway, who is my administrative assistant to the president of the industrial union department.

Mr. RODINO. We were privileged to have Mr. Rauh here yesterday and testify. There was no need to reintroduce him.

On that point brought up by Mr. Meader in connection with a court review, do you not feel that court review would only entail more protracted litigation and greater delay and therefore the efficacy of this section would be completely out the window?

Mr. REUTHER. I would feel, Mr. Chairman, that under this bill the President would have the authority—the authority of the President would be exercised by some executive branch of the Government or some agency of the Government—to deny funds where the administrator of that program felt that a State or a local community was in violation of the purposes of this bill. The law would be implemented, and while it was being implemented, the local community or State would then have the right to seek redress through the courts if it felt it was unfairly denied. But they could not, by court action, block the implementation of the decision to withhold the funds. The funds would be withheld during the period of review. That is the construction that I would put upon it, but I am not a lawyer. I think, perhaps, Mr. Rauh is much more competent to discuss that phase of the problem than I.

Mr. MEADER. Mr. Chairman, might I suggest that I believe Secretary Celebrezze testified that he did not believe court review was available for a decision made by him. We have had two decisions that he made in Michigan, which I am sure you are familiar with, one was aid to the children of unemployed, saying that the Michigan statute didn't qualify Michigan to receive funds, and recently he denied Hill-Burton funds to two hospitals in Monroe, in my Congressional district. I have not heard of anyone suggesting that he be sued and compelled to exercise the discretion of granting Hill-Burton funds or aid to the children of unemployed.

He seems to think—at least that is his testimony—that there is no court review available.

Mr. REUTHER. I think that court review is available in any of these kind of situations because I think it fits within the general framework of our kind of governmental structure.

It would seem to me that if a State were improperly denied, that it ought to have some means of redress.

On the other hand, if there was a basis to discrimination charges and the funds were withheld, I certainly would not want to be in the position of the lawyer of that State who goes before the Supreme Court in view of the Court's attitude on these matters. I think no one would seek redress where there was actual discrimination.

Mr. MEADER. Of course, that could be the issue. Was there or wasn't there discrimination. Mr. Celebrezze might think there was.

It is a question of fact. If you leave it to Mr. Celebrezze's unreviewable discretion to make that determination, it vests in him a terrific amount of power, because he testified that in his department alone there were 128 aid programs totaling $3.7 billion a year.

Multiply that across the Government. There is a lot of money involved and sometimes money is more powerful than criminal penalties, when you have localities that are starved for funds and they don't get the money from Washington that they want, you will probably have them doing things that they might not do even under criminal penalties.

Mr. RODINO. We can well remember that it is true that there has been testimony that has been asked for here, does show that the power is rather broad and I think the chairman, himself, indicated that it was a broad power and something that has to be looked upon guardedly, but nonetheless, in view of the urgency of the situation and then again looking to the history and the experience of these programs and the administration of these programs, I wonder why we can't look upon it positively instead of trying to find that there is going to be some situation where there is going to be wrongful withholdings, we assert ourselves and believe confidently that they will do as they have been doing.

The history and experience of the administration in these programs doesn't show that we should have such great power and whether or not now it would be properly administered.

However, I do think that it may be necessary to look over this with a fine-tooth comb and to try to protect and insure that it is handled properly in every instance.

But the question comes up—and this is a closed question—we recognize that there are some cases that have been pending for a long time on the problem of rights, and civil rights are revived. Because we know the complex of the thinking that varies, in the courts of the country, too, where are we going to know and when will these programs that should be administered immediately, when will they be completed?

Of course, this is a grave situation on which the committee will rest.

I think, however, whether we recognize the fact that the powers are broad and they give us laws, nonetheless do we recognize the urgency and the compelling nature of the situation that prompts us to consider a provision of this sort.

Mr. REUTHER. Mr. Chairman, I am confident that the committee is of one mind with respect to the objective of denying funds to any State or community where they willfully are practicing discrimination. I believe there will be enough collective wisdom on the part of the community to meet the problems being discussed.

Mr. RODINO. Mr. Toll.

Mr. TOLL. Nothing.

Mr. RODINO. Mr. Corman.

Mr. CORMAN. Mr. Reuther, I heard about you a couple of weeks ago when I visited some parts of the South. There was always the statement, "if the Negro raises himself to our level," and I must say that on its fact that has some persuasion.

I also talked to an employer and an employee who was interested in your comment about it being difficult to live on $1.25 an hour, and I share that view. But I was told by an employer that a typical Negro family, working on a plantation, if there were a man and woman

and three children old enough to work, would get their house—and I visited one of them. That was an interesting experience. But if the five of them were reasonably industrious and they worked, they could earn as much as from $1,500 to $1,800 per year.

Would it be your view that that might in some way impede these people from raising themselves?

Mr. REUTHER. I would like to meet a Negro family that is sharecropping down there that makes $1,500 to $1,800 a year.

Mr. CORMAN. That is five people working for a year.

Mr. REUTHER. That is right, excepting they don't make that much, five of them working per year.

Mr. CORMON. Even if they did?

Mr. REUTHER. That is right.

Mr. CORMAN. Even if they did, are they able to raise themselves out of that standard of living?

Mr. REUTHER. I would like to make this statement: "You go into the fanciest neighborhood and pick out the brightest kids out of the wealthiest family and get them when they are about 5 years of age, and then you transplant them into a slum. You send them to the worst possible school, let them play in the back alleys and they will grow up exactly like every other kid who grows up in the slums."

What we need to understand is that in every human being there is a great potential for growth and development, that some people have the opportunity to facilitate that growth through education, environment, and cultural opportunities, while other people live in the slums or on a sharecropper farm and are denied these things.

Then the people who have all the advantages say, "When they are as good as I am, I will associate with them."

The only way you can hold the Negro down is to stay down there with them. When we hold them down, we really do great harm to ourselves and our Nation.

I have seen young Negroes in our organization who had a chance, and they have made tremendous progress. I don't know how many of you have ever had the opportunity of meeting a young Negro by the name of Tom Mboya. He grew up in the bush in Africa, in Kenya. He went to school at first in a little primitive school where they didn't have blackboards. They learned to write in the sand. He won a scholarship, first at a mission school and then finally Oxford University. He is one of the most brilliant human beings I ever met. He is now the Minister, I think, of Foreign Affairs of Kenya.

This indicates a tremendous growth potential in all people, but some people have a chance to facilitate that growth and other people are denied such a chance.

Give the Negro children of America decent education, enough nourishment, give them cultural environment that will facilitate their growth; give just one generation that opportunity and they won't have to be lifted up. They will stand there on their own right.

Mr. CORMAN. I would like to say: I think that this bill may help, but I think until collective bargaining arrives at the factory-farm that we won't have solved the total problem, and I will work this one, too.

Mr. REUTHER. I am for that, too.

Mr. RODINO. Last night I talked with an employer, a builder. I put this question to him. I wanted to know whether he would volun-

teer to tell me how many Negroes he employs. He told me he employs some 60 percent of Negroes, and this is in the building trade. He said in answer to my question: "Well, do you have any supervisory foremen position?" And he said no, although he is eager because he feels with greater production he could move faster if he had a Negro, since he does employ some 60 percent Negroes. He said unfortunately, however, he hasn't been able to, and he expressed himself sincerely; he hasn't been able to find the type of individual or individuals qualified to be placed in that capacity.

How do we overcome this situation?

Mr. REUTHER. I think the key to the whole question is education, and I think we need to make a tremendous effort on the educational front.

Negroes more than any other group are denied truly adequate education. In general we are not doing enough on the educational front, but Negroes, especially, are being denied opportunities.

I believe that we need to work out some special programs as in the area of apprenticeship. There are a lot of people who say: "We will hire some Negro apprentices, but we can't find any boys who qualify."

What we need to do is to search out some young, bright Negro boys and give them some special training so that they can qualify for an apprenticeship program and even go on to serve their apprenticeship.

We need to work on motivation. You take the dropout problem. There are tens of thousands of young Negroes dropping out of high school. There are many white boys and girls who drop out of high school, but the young Negro has less motivation.

I talked to a young fellow the other day, and said, "Why did you drop out of school?" He said, "My oldest brother went to school, worked real hard and had good academic standing, and he is unemployed. Why should I break my neck to go to school and acquire an education to be unemployed?"

There has to be some motivation and reward for initiative and incentive. The older brother is walking the streets unemployed, no matter how hard he applied himself. When you realize that there are more Negroes with Ph. D. degrees than there are Negro journeymen in America, you have an indictment on America. That is the problem.

You need educational opportunities, and you need motivation. There have to be some rewards for efforts. This is one of the reasons.

Sometimes you say "Well, the Negroes don't work as hard as we do." There is no incentive to work hard when at the end of that effort you have been repudiated, rejected, and denied. We have to overcome that by putting rewards on initiative and incentive, hard work.

Mr. FOLEY. Mr. Reuther, I think it should be pointed out here, in referring to the public accommodations section, that a member of this committee, Mr. Lindsay of New York, has introduced a bill, H.R. 6720, which primarily takes the constitutional approach as distinguished from the interstate commerce clause approach.

Secondly, Mr. McCulloch, our ranking majority member, introduced H.R. 3139, and in that bill, touching upon the subject of labor and management, on the problem of discrimination, should be treated equally—Mr. McCulloch did and does have a fair employment oppor-

tunity provision in the bill, and he implements that in the enforcement of the commission on discrimination by amending the National Labor Relations Act, first, to make it an unfair practice for labor unions to discriminate. Secondly, it would provide that the Board could not certify the results of an election where a union practiced discrimination.

Would you suggest or accept that as a proper enforcement?

Mr. REUTHER. I think that both of these approaches, both the unfair labor approach and the denial certification are possible enforcement mechanisms in an FEPC law. I am not really prepared to give you a final decision on which I would think was the more effective.

I would like to study both of those particular bills. But I do favor an FEPC law with enforcement machinery which will provide appropriate penalties against labor or management where they are guilty of discrimination.

Mr. RODINO. I would like to point out to you, Mr. Reuther——

Mr. MEADER. Might it be well to ask Mr. Reuther if after such a study he might write the committee and give the position of his union on the enforcement mechanisms that are referred to by counsel?

Mr. REUTHER. I should be happy to do that.

Mr. RODINO. I was merely going to add to what you said, Mr. Reuther, very briefly, and I think your declaration was not only an eloquent one but one which is sensible and realistic.

I think if we all applied ourselves in that direction we would have no problem, but it would seem to me that it is in our own self-interest and I think that we should recognize this. If each of us is made more useful by being better educated, if each of us is given more ability because we will be more productive and contribute to greater health and economy, and in turn we are going to be rewarded, so it makes a good deal of sense to recognize not only human rights which are basic, as you pointed out, but also the necessity of our own self-interest in doing those things which will make every citizen a productive useful citizen of the State and country.

Mr. REUTHER. I agree completely. It seems to me that when we deny the other person the opportunity to achieve maximum growth and development, we are not only robbing him of the opportunity to make the greatest contribution to himself, but denying him the chance to make his greatest contribution to the whole of society.

Mr. RODINO. Mr. Reuther, we want to thank you for having come here. It is always a privilege, as well as a pleasure to have you before us, and we certainly appreciate the clarity and intelligence of your arguments and your presentation. Thank you very much.

Mr. REUTHER. Thank you very much.

Mr. RODINO. Mr. Ferman.

Proceed, Mr. Ferman.

(The statement of Irving Ferman is as follows:)

STATEMENT OF IRVING FERMAN

My name is Irving Ferman. I am appearing today as a former Executive Vice Chairman of the President's Committee on Government Contracts during the Eisenhower administration. The Committee was a forerunner to the existing President's Committee on Equal Employment Opportunity. I am now vice president of International Latex Corp.

I strongly urge the committee's approval of H.R. 7152 in its entirety. However, in my testimony this morning, I want to particularly endorse title VII which provides a statutory base for the President's Committee.

Whatever disagreement might exist among certain groups of our citizens for the need of additional civil rights legislation, no one can dispute the need for Federal action to insure the right of every qualified citizen to a job created by the expenditure of Government funds.

The most grievous abuse in the discrimination of the American Negro has been his inability to lead a full and productive life because of job discrimination. This abuse violates the deepest obligation of a free and open society such as ours—an obligation both private and public—that no man be prevented from leading the fullest and most productive life his capabilities permit.

I believe that the present attitude of our Negro citizens expressed in their demonstrations of protest reflects essentially the frustration of job inequality.

The poll taken by Louis Harris, published by the Washington Post on July 15, 1963, more than suggests that the American people realize that job opportunities must be opened to minority group members. Harris' poll indicates that 86 percent of the people nationally, and 79 percent of the southern citizens uphold Federal action to insure job opportunity.

I feel sure that if the specific question was put as to whether every qualified citizen should have the right to a job generated by Government funds, the percentage of American people supporting this principle would even be higher than reported in the Harris poll.

If title VII becomes law, it will stabilize the function of the President's Committee to a Commission basis. Such stability will result in a permanent staff of experts who would be afforded a sense of continuity; and, therefore, be in a position of performing this essential task of Government even better than it has in the past.

I particularly endorse the language in section VII extending the jurisdiction of the Commission to "* * * direct or indirect financial assistance by the United States Government * * * by way of grant, contract, loan, insurance, guaranty, or otherwise."

If we accept the principle of job equality in Government contracts, there is even more reason to extend it to all expenditures made by the Government in the public interest outside the contractual relationship, since the Government does not receive fair consideration. The President should be congratulated for recommending Federal guarantee of job equality to all programs of financial assistance, direct as well as indirect.

While the work of the present Committee, and its predecessor Committee has been effective, I submit to this committee that this work could be rendered more effective if its basis in law was clear and unequivocal. I believe that the policy of equal employment opportunity should be established by the legislative branch of our Government.

Mr. FERMAN. That completes my statement.

Mr. RODINO. Mr. Meader.

Mr. MEADER. No questions.

Mr. RODINO. Mr. Corman.

Mr. CORMAN. No questions.

Mr. RODINO. Mr. Foley.

Mr. FOLEY. Mr. Ferman, do you believe that proposals as contained in H.R. 7152 should be amended to provide for some enforcement where a Negro involved in a Government contract should be punished under the practices of discrimination and in violation of the Commission's order?

Mr. FERMAN. No, I believe that title VII should not be amended because under the existing Executive order the Committee has the power to enforce significantly and effectively the nondiscrimination clause.

I would like to be specific. For instance, in the problem of construction unions in the District, the General Services Administration requires that every contractor submit the list of subcontractors to the

GSA before the contract is performed in order for the GSA to determine the responsibility of the subcontractors.

Within the GSA regulatory framework, without straining the legal interpretation of the language of the regulations, it is possible to incorporate the nondiscrimination clause, so that if an electrical subcontractor has used in the past a discriminatory source of labor, the GSA could characterize such a subcontractor as not being a responsible party and refuse to sign a contract with the prime contractor.

I think the President and the Vice President have such power now.

Mr. RODINO. Mr. Meader.

Mr. MEADER. Counsel's question is directed to whether or not there should be a direct sanction against the union practicing discrimination, rather than the indirect one of canceling the contract on the employer, who is perhaps helpless in this situation.

Mr. FERMAN. The reason, Mr. Meader, that I don't think such an amendment is necessary based upon the observation that I have made of the work of FEPC's through the States in the difficulty they have in making a finding of discrimination. It is extremely difficult in terms of how business operates or how unions operate today to make such a finding.

The work of the FEPC's through the States certainly indicates that effective enforcement of discrimination gets bogged down in the evidentiary problems in supporting a determination of discrimination.

Now, in what I suggested, if the GSA simply tells a potential contractor, before the contract is signed, "The electrical subcontractor whom you are proposing as the electrical subcontractor for this particular contract has used in the past a discriminatory union. We will not characterize such a subcontractor as a reliable contractor; and, therefore, we will not sign a contract." I think that is a neater and clearer way of administering an antidiscrimination clause, and I think very much more effective.

Mr. MEADER. You think it is impractical, then, to deal directly with the discrimination by the union, by applying any sanction directly to the union that does discriminate?

Mr. FERMAN. Unless Congress is prepared to extend the concept of equal employment opportunity beyond the forms of Government assistance.

I am responding, sir, to your question within the framework of policing antidiscrimination within the structure of Government assistance. If we go beyond, certainly I would support such an amendment.

Mr. MEADER. But within that limited area of Government contracts, do you think that it is impractical to devise any sanctions which would operate directly on the union?

Mr. FERMAN. Yes, I also think it is impractical and I also think it is unnecessary. As a lawyer, I don't think we should pass laws unless it is absolutely necessary. I think we could do the job today and Mr. Meany suggested when I was Executive Vice Chairman of the President's Committee, and chided as a matter of the fact the Eisenhower administration for not enforcing the antidiscrimination laws against the electrical unions in the District.

Mr. MEADER. Of course Hill of the NAACP stated there were only 300 Negro electricians and plumbers in the entire United States. It

is obvious that there are plenty of electrical and plumbing unions where there are no Negroes.

Mr. FERMAN. I recall in 1959 and the early part of 1960, Mr. Meany said at that time, at the AFL–CIO convention or council meeting that was held in Florida, that if the President's Committee would enforce the antidiscrimination clause, he would supply the necessary qualified Negro electricians.

I don't think you need to enforce the antidiscrimination clause directly to unions. I also think if you did enforce the antidiscrimination clause, we would find qualified people very, very quickly.

Mr. Meany at that time suggested there are qualified people and he would take the responsibility for finding those qualified persons.

Mr. RODINO. Mr. Corman.

Mr. CORMAN. I just want to say that I very much appreciate the testimony. I think that this witness proves that neither Democrats, Republicans, nor labor or management has a monopoly in this field, and I think your contribution is substantial.

Mr. FERMAN. I appreciate that, and I speak in part as a former vice chairman and a businessman, and I do speak as a Republican today.

Mr. RODINO. We want to thank you, Mr. Ferman, for your appearance here today, and I also echo the sentiments of my colleague.

Your appearance here is not only from management, but a member of the party that still makes contributions. We thank you.

Mr. FERMAN. Thank you very much, Mr. Chairman.

Mr. RODINO. The next witness is Mr. Fauntleroy of the American Veterans Committee. Mr. Fauntleroy is not in the room.

We will include the statement of the legislative committee, the American Veterans Committee, of Mr. Fauntleroy in the record, due to the fact that he is not here.

(The above referred to is as follows:)

STATEMENT OF THE AMERICAN VETERANS COMMITTEE, INC., (AVC)

Mr. Chairman and members of the committee, my name is John D. Fauntleroy; I am a member of the bar of the District of Columbia and of the Supreme Court of the United States. I am appearing today as a representative of the American Veterans Committee to offer the views of this organization on the pending civil rights bill, H.R. 7152.

The American Veterans Committee is an organization consisting of veterans of the Armed Forces who served in World War I, World War II, and the Korean conflict, and which has as its motto, "Citizens first, Veterans second." The American Veterans Committee has a record, unique among veterans organizations, of positive action in the field of civil rights, and has been instrumental in developing the policies of integration and nondiscrimination which are now the rule in the Department of Defense and in other areas of AVC interest. The American Veterans Committee is, and always has been, fully integrated, and among the nine men who have served as national chairman in the 20 years since its founding, there have been two Negroes, one of whom, Dr. Paul Cooke, acting dean of the District of Columbia Teachers College, is presently serving as our national chairman.

The American Veterans Committe (AVC) approves the principles and aims which have led to the formulation of the pending legislation and supports the passage thereof. I would like to quote the text of a resolution on civil rights legislation adopted by our recent 20th anniversary convention, May 30–June 2, 1963, here in Washington.

CIVIL RIGHTS LEGISLATION

"Assembled in national convention to commemorate the 20th anniversary of its founding and the centenary of the Emancipation Proclamation, AVC calls upon the Congress of the United States speedily to enact comprehensive civil

rights legislation to close the gaps left open in the 1957 law and to go further. AVC calls upon the Congress in particular:

"1. To enact title III, deleted from the 1957 civil rights legislation so as to authorize the Attorney General of the United States broadly to take all necessary legal action to redress all denials and violations of and to enforce the civil rights of every American.

"2. To enact a Fair Employment Practices Act to be executed by a Commission with broad powers of investigation, subpena, and enforcement, and with adequate penalties for violation of the law.

"3. To enact legislation to assist school authorities financially and otherwise in integrating their school systems.

"4. To provide for the withholding of Federal funds from any State, local, or private activity or program which in anyway discriminates against any person on account of race, creed, color, or national origin.

"5. To prohibit by law discrimination in respect of all housing construction, rental, sale or acquisition of which is directly or indirectly federally financed or supported.

"6. To protect effectively the voting rights of all citizens, in particular by making 6 years of education at a public or at an accredited private school conclusive evidence of a voter's or prospective voter's qualification under any literacy or voter qualification test, by providing for the appointment of registration and voting referees and by granting preference in the Federal courts to all voting rights cases.

"7. To enact legislation forbidding any person or firm to sell any commodity or service which has been transported in interstate commerce, or the sale of which affects interstate commerce, if such person or firm, in the sale of such commodity or service, discriminates on the basis of race, creed, color, or national origin."

What is basically a good bill could be improved, however, by the addition of some of the items which follow. In connection with the legislation as introduced, AVC has a number of suggestions which are submitted for the attention of the committee with the hope that they will be incorporated in the bill as reported out of committee:

TITLE VI

Title VI of the bill presently pending before the committee provides, in effect, that the Federal officials in charge of any program which receives Federal assistance in the form of grants, loans, or otherwise may withhold such assistance if individuals participating in such programs are discriminated against; the proposed legislation, despite the lofty ideals enunciated in the preamble to the entire bill, does not require them to do so. AVC agrees that a blanket requirement that no Federal assistance be given to any program in which any individual may be discriminated against may be going somewhat too far, albeit in the right direction.

For these reasons, AVC suggests that title VI be redrafted, so as to provide that where discrimination exists, Federal assistance to the program in question (not to all programs in the State or area in question) be terminated unless the responsible Federal official makes affirmative and public findings, somewhat as follows:

(*a*) That plans for changing the program so as to assure nondiscrimination have been submitted to him, and found to be workable and adequate.

(*b*) That the temporary continuance of the program in question is authorized until a date certain, by which it will be terminated unless all discrimination in connection with that program has been ended.

If, as an example, therefore, an institution or agency which discriminates is close to the discovery of a cure for cancer, or of a new way to get to the moon, such institution or agency may be permitted to continue its program on a temporary basis, provided that plans for changing the program so as to assure nondiscrimination have been submitted to the administrator, and found workable and adequate.

CIVIL RIGHTS CASES

Another vital area in the civil rights struggle is not covered in the bill at all: the question of removal of criminal prosecutions or civil actions of a discriminatory nature from the State to the Federal courts. The present statute dealing with such removal (28 U.S.C. 1443) has been so restrictively interpreted (as a matter of statutory construction, not as a lack of congressional power under the Constitution, *Virginia* v. *Rives*, 100 U.S. 313 (1879)) that its use has been

almost totally limited to cases where the State constitution or State statutes on their face deny or create the inability to enforce a citizen's equal rights. Review of this old decision which would almost certainly be reversed if properly before the Supreme Court has been precluded by the provision, enacted in 1949, of 28 U.S.C. 1447(d) which bars all review, either by a U.S. court of appeals or by the U.S. Supreme Court of the decision of a U.S. district judge remanding such a case to the State courts. Furthermore, 28 U.S.C. 1446(c) limits the possibility of removal to the time before trial has begun; assuming that removal is made easier, this would require those concerned with civil rights to remove every case in which prejudice is possible, thus imposing a great burden on the Federal courts, rather than permitting them to initiate removal action only as, when, and if prejudice is shown.

For the foregoing reasons, AVC proposes the addition of language to the following effect to the bill before the committee:

"SEC. —. Title 28, United States Code, section 1443, is amended by the addition of the following subsection:

"'(3) The right of removal under this section shall be freely sustained, and this section shall be construed to apply to any State action which denies or abridges equal rights, including executive, legislative, administrative, and any other.'

"SEC. —. Title 28, United States Code, section 1446(c), is amended by deleting the words 'before trial.'"

"SEC. —. Title 28, United States Code, section 1447(d), is amended by deleting the word 'not'."

REIMBURSEMENT

Section 304(d) of the proposed bill provides that where a school board or local government is deprived of funds because it is attempting to desegregate, the Commissioner may make a loan to the school board or local government in question. While section 304(e) provides that the loan shall be made upon such terms and conditions as the Commissioner shall prescribe, there is no provision for recoupment or other reimbursement.

AVC proposes an additional subsection to section 304 which will explicitly allow either or both of the following procedures:

(*a*) A suit by the Attorney General on behalf of the United States against the State or local government which has withheld the funds in question, for reimbursement of the loans made under section 304(d), or

(*b*) A provision by which the Attorney General, in his discretion, may recoup the amount of such loan by withholding a part or all of the funds otherwise payable to the State or local government unit which has withheld funds, under some other program.

As an example, suppose State A withholds funds from local school board B because the school board is making a conscientious effort to comply with this law. Under AVC's suggestion, the Attorney General may sue State A to recover the moneys lent, or recoup by reducing the funds paid to the National Guard of State A.

The American Veterans Committee appreciates the opportunity to present its views before Subcommittee No. 5 of the House Judiciary Committee and commends the committee for its careful study of this crucial domestic issue.

Thank you.

Mr. RODINO. Dr. Kuttner.

STATEMENT OF DR. ROBERT KUTTNER, PH. D., OF OMAHA, NEBR., REPRESENTATIVE OF LIBERTY LOBBY, WASHINGTON, D.C.; ACCOMPANIED BY JOHN W. WOOD, ESQ., GENERAL COUNSEL

Mr. WOOD. Dr. Kuttner is a teacher in normal biology at the Creighton Medical School, Omaha, Nebr. He holds a Ph. D. from the University of Connecticut. He is president of the International Association for the Advancement of Ethnology and Eugenics, a nonprofit educational organization devoted to the critical examination of race science and race relations. He is assistant editor of Mankind Quarterly, a Scottish journal devoted to ethnological questions.

Dr. Kuttner appears in opposition to H.R. 7152 and speaks for Liberty Lobby, a political action organization composed of voters and citizens in all of the 50 American States who are interested in good government.

Dr. KUTTNER. I want to direct my remarks briefly to some of the suppositions underlying title II. This is the section which argues that serious economic harm would result if Negroes or members——

Mr. RODINO. Excuse me. You have a prepared statement?

Dr. KUTTNER. I have no prepared statement. I have only the outline.

This section argues that serious economic harm results if members of minority groups or Negroes fail to secure services of goods in certain segregated facilities that are part engaged in interstate commerce or catering to interstate traffic.

I don't believe this has any demonstrated basis in fact. Whatever the faults are in the American economic system, it has never been seriously suggested by any theorist in economy or finance, that this is affecting our economy in any crucial manner.

I think it is worth noting that the corporate organization executives and the majority stockholders in large corporations are not the ones that are demonstrating and rioting in the streets.

It is true that it is sometimes claimed that discrimination and prejudice are costly on a society-wise scale. Even in this broadened sense, however, such economic rationalizations do not provide much support for this portion of the bill.

We know that the Germans had a reputation for efficiency. Mr. Reuther made a point of that in his statement, and yet the Nazi Party, exiled and executed scores of thousands of talented scientists, teachers, doctors, bankers, and lawyers who were members of a minority group and against whom they entertained prejudices.

Apparently then the German theorists did not regard prejudice as harming the national efficiency, even though they were engagd in a crucial struggle for control of the world.

Likewise, Lenin and Stalin were deeply prejudiced in that they executed many scores of thousands of middle class businessmen and upper class bureaucrats and administrators. Yet likewise, they are dedicated to social efficiency and economic prosperity.

Even today in modern Russia it is well known that the Asiatic Russians, the Mongols and others, get a third-rate treatment. Even in parts of Europe and Russia, the non-Russian nationalities suffer a semicolonial exploitation and are victims of prejudice and still the Russians may land on the moon first, so that I believe that it is an evident fact that the economic argument is far fetched and I don't believe it can be seriously entertained that the production of cars in Detroit or steel in Pittsburgh is measurably influenced because a Negro entertainer cannot drink a cup of coffee with a white man in a Birmingham bus terminal.

I may say, so far as economic——

Mr. MEADER. May I interrupt? Are you making the point that the regulation of interstate commerce is not an appropriate basis for combating discrimination of accommodations?

Mr. KUTTNER. I am trying to make this point: that the economic rationalization that precedes the presentation of title II is not valid.

Mr. MEADER. Are you saying that a denial of access to motels, hotels, restaurants, and other accommodations for Negroes is not a burden on interstate commerce?

Mr. KUTTNER. I am saying that it is not a serious nor a substantial influence upon a national economy and from this point I wish to then get to perhaps the underlying reasons for the title action and then discuss whether or not this would have a beneficial effect. This is just my introduction.

Mr. MEADER. I followed what you were saying, but I was trying to relate it to the bill. It would seem to me that the point you were trying to make was that discrimination in public accommodations was not a burden on interstate commerce and it was stretching the power of Congress to regulate interstate commerce to reach that area by means of calling it a regulation of interstate commerce.

Dr. KUTTNER. I don't wish to attempt to define what the powers of Congress may be. I only wish to—I will make this point, that the argument used, economic argument used, the analysis used will not stand up under critical examination and that it is perhaps disguising some other reason for the attempt to regulate the private property engaged in——

Mr. MEADER. I haven't heard anyone who is advocating this legislation argue that discrimination in public accommodations is holding back our economy. I haven't heard that argument by anyone.

You seem to be destroying an argument that no one has made.

Dr. KUTTNER. I see here on the bill several portions which say that goods and services of persons, amusements, diners, movement in interstate commerce, and so forth—then it says "because of audience discrimination."

We have burdens imposed on interstate commerce by those practices and the obstructions that would result therefore are serious and substantial.

Mr. FOLEY. Right there. Where is the economic reference?

Dr. KUTTNER. Page 10. The one I just cited was page 11.

Further places are at, well, line 23 on page 12, that the industrial and commercial expansion and development of the Nation is damaged because some business organizations may not relocate in one place because of prejudice or discrimination. These are economic arguments. I question because I think the far more serious discrimination outside of interstate commerce and facilities involved in interstate commerce need not necessarily lead to main economic dislocation and then from that point I want to develop the rest of my thesis.

Mr. RODINO. Well, doesn't discrimination exist?

Dr. KUTTNER. Do I question that it exists?

Mr. RODINO. Yes.

Dr. KUTTNER. No; I don't question that it exists.

I will question later, as I develop my point, that the attempt to control it by legislation and by compulsion may create greater harm than the prejudice itself is supposed to engender.

Mr. COPENHAVER. If the accommodations provision was keyed primarily on the 14th amendment, would you have any objections to that?

Dr. KUTTNER. I would like to partially evade answering that for this reason, that I would like to present a sort of a viewpoint of a scientist, rather than a constitutional lawyer.

I don't feel that I would be qualified to decide these things, but if you ask my personal opinion——

Mr. COPENHAVER. Assuming, as most lawyers do, that under the 14th amendment it would be constitutional, would you agree that it would be desirable to have an accommodations proposal?

Dr. KUTTNER. I believe personally that regulations of activities like interstate commerce, insofar as——

Mr. COPENHAVER. I wasn't talking about interstate commerce. I was talking about the 14th amendment.

Dr. KUTTNER. I see. Do I believe in the application of the 14th amendment to discrimination and localities—well, a discrimination about private property——

Mr. COPENHAVER. With regard to a hotel, again held out to the public in general.

Dr. KUTTNER. I would regard the application of the 14th amendment to a hotel privately owned as being, in my opinion, again not as a constitutional lawyer, as invalid.

Mr. COPENHAVER. Therefore, you are totally opposed to a public accommodations bill, whether it be the 14th amendment, the 13th amendment——

Dr. KUTTNER. I think that this would be my case, but I am going to argue it on the basis of the fact that such legislation would be harmful to society. I am still not answering the question.

Mr. RODINO. Pardon me.

To get to a more basic point, you are talking as a scientist, you say.

Dr. KUTTNER. I would like to confine my remarks to scientific analysis.

Mr. RODINO. We have this legislation in effect and we think it is a problem with which it is confronted. I don't know whether or not the scientific discussion—while probably something we are going to interest ourselves in—is going to shed any light on legality and constitutionality, as I see it.

Therefore, I would ask one question, basic; If there were any other area in the public accommodations clause than the 14th amendment, would you be in support of eliminating discrimination?

Dr. KUTTNER. I would like to continue the outline of my remarks and I will omit the economic analysis.

I would say that, from the context of my other remarks you might obtain your answer.

I would come to this, what let's call a perhaps more pertinent than the legal rights matter:

The fact is that it is believed that there would be some benefit obtained for the Negro if he could enter into public accommodations engaged in interstate trade to some extent, and that there is legislation to this end.

I want to make the fact of compulsion here central to my argument, because in this case this is a factor that remains visible to people who are opposed to this integration.

The Negro has a high social visibility and is a distinct individual, racially distinct, and when present in a forcefully integrated situation, he is a reminder of the fact that rather than welcome, it was law which entitled him to enter into this facility.

Then this is a chronic irritation and opposition to this type of integration, which might before have been the result of a mild negative

attitude on the part of the whites, may now become active hostility because of that element of compulsion and because of the fact that there is a constant reminder there.

Mr. COPENHAVER. Do you want to hide the Negro, then?

Dr. KUTTNER. I don't want to hide the Negro, but I am saying that civil rights legislation, enforcement compulsion in this area can be harmful and that this is a consideration which may make some bills produce more harm than good.

Mr. COPENHAVER. Do you not believe that by continually requiring the Negro to be a second-class citizen—you seem to almost support the Black Muslim philosophy—you want to keep him totally separate.

Dr. KUTTNER. The Black Muslim movement itself has a complex origin and it is certainly not the first time that a racial group has sought isolation and separation. The fact is that there have been in the past attempts by Negroes, attempts to set up their own colonies, Oklahoma, for instance.

Then there was the Garvey movement, attempts to remove the Negroes from the white. This then is not a unique phenomona.

Mr. COPENHAVER. But they have all failed.

Dr. KUTTNER. The failure of these movements—of course Garvey's resulted in imprisonment, I believe, but he had secured a following which was in his time a far greater percentage of the Negro population than the NAACP can today claim among its supporters.

I think the desire of distinct ethnic groups or distinct racial groups to withdraw or preserve their culture or develop a culture is not abnormal.

I am not prepared to say, because my knowledge of the Black Muslim movement is naturally based upon what I read—that this is the result of a genuine desire to withdraw or whether it is a regression syndrome. This is an opinion that we will have to wait on before more evidence is in.

Mr. RODINO. Dr. Kuttner, if whites were denied educational opportunity and economic opportunity, would you be making the same argument?

Dr. KUTTNER. Well, I would like to say that there are special situations where the denial of rights or nonexistence of rights may not bar progress in some sense or in some direction. We are dealing with the development of a society and this must develop and mature on its own feet. This is the Negro society.

Mr. RODINO. You don't believe in helping it along?

Dr. KUTTNER. I would believe in helping it along, but I would be very careful that the kind of help I was giving was not actually hindering and this is a point that I think I will make from my notes in a moment.

Mr. RODINO. Proceed.

Dr. KUTTNER. I made this point that compulsion may convert a negative attitude to active hostility.

Mr. RODINO. Compulsion on whom?

Dr. KUTTNER. Compulsion to integrate into social activity, what might be entertainment.

Mr. RODINO. This is not compulsion. This is merely recognition of rights that we believe exist and which we are trying to implement. Now on whom are we compelling this?

Dr. KUTTNER. The fact is that we have a private property engaged in interstate traffic or interstate trade. This might be a sports stadium in the South or it might be a hotel that has entertainment or it might be an eating facility. This is private property. Previously it was segregated.

The white clientelle, let us suppose, were present here from habit. This was the social custom of the area. Now, you say that the Negro, because of this law or simply existing laws, or some preexisting law or right is entitled to walk into this area or this facility and the owner of it is not entitled to bar him.

Now, this is a question that I believe comes out of the philosophy of title II, whether this is right or wrong. You seem to have already decided that the right is present and exists and that it cannot do any harm to assert.

Mr. RODINO. Because he is a citizen of the United States.

Dr. KUTTNER. Also there is the right of private property——

Mr. FOLEY. Do you believe in the dignity of the human being?

Dr. KUTTNER. I certainly do.

Mr. FOLEY. Do you believe in natural rights?

Dr. KUTTNER. I am afraid that natural rights is sometimes used to justify what someone believes in. It is always a natural right when it is a right we believe in.

Mr. FOLEY. Do you believe in God-given natural rights?

Dr. KUTTNER. I believe that people have used that phrase to justify the rights that they have believed in.

Mr. FOLEY. That is your philosophy.

Dr. KUTTNER. This is a historical fact. It is the divine destiny of Nazi Germany to do certain things. This was their natural right.

Mr. FOLEY. You speak about compulsion, Doctor. Let me say to you right here and now, if it wasn't for compulsion that brought the Negro from Africa into America as a slave, you would not have that problem today.

Dr. KUTTNER. I am aware of that. The origins of the problem, unfortunately a knowledge of them, does not help in the solution of it.

Mr. RODINO. But we want to admit that the problem exists and to help it along, according to your argument.

Dr. KUTTNER. I am saying that there is a way of avoiding group animosities, or many ways—of course I have no monopoly on solutions either, or theories—but the fact is that compulsion and compulsory tolerance in intergration in general, not only this bill—it is my belief—can be harmful and that individuals who previously were not strongly prejudiced, but merely had the appearance of coping with the social prejudice of the area that they may have occupied, may develop a more active prejudice and actually a hostility because of the element of compulsion.

This, of course, is a point where you set compulsion on an existing right. Well, I want to continue my statement and perhaps this might provide a partial answer.

I believe that the Negro society exists and it has a structure. This is well recognized even by Negro sociologists, but I believe that this Negro society, if it is grafted onto a white society, and elements of compulsion are involved, where they are not applicable, that this would create harm to the Negro society.

It is no secret that association with white people has for some segments of the Negro population become a sort of status symbol and that this has resulted in many activities, it has resulted in intermarriages, as has happened in Africa, for example, where we find that Negro leaders frequently find it necessary on a political prestige move to have a white wife, or a wife from a light-skinned race.

It has happened in our country that Negro leaders have regarded it as a sign of success to have a white wife, to be accepted in white society, to mingle very intimately in white society and that in the past and even in the present, leaders of millitant Negro movements have had white wives or white husbands.

Mr. CORMAN. Could you touch briefly on the motivation of the white wife?

Dr. KUTTNER. This, I say is a status symbol——

Mr. CORMAN. That is the motivation of the Negro man. What is the motivation of the white woman?

Dr. KUTTNER. That I can't answer. I would say that when it is a case of status symbol for the male or, of course, sometimes the Negro female may marry a white male, but the point is that if it is a status symbol, this is an extreme symptom of something that is abnormal and that you would not regard as a personal relationship in the sense that we are accustomed to regard marriage.

I say then that this is a symptom, an abnormal symptom when a society, a developing society seeks to graft itself on, and to intermingle with another society, especially when it is not coming in under an automatic welcome.

I feel that this type of acceptance and intimacy which is not automatically offered is harmful.

Mr. RODINO. Right there, the individuals entering into marriage, are they being——

Dr. KUTTNER. I am using that as an extreme example, but there is also the fact of association. I feel that if this type of association is used as a measure of how far up a social ladder one has gone, let's create an example. The one of the Negro individual who has the right to eat a hamburger next to a white man, might regard this as raising him a step higher than the one who can merely attend an integrated basketball game. This type of measuring of esteem and of success is abnormal.

The roots of self-esteem and the individual self-image should be based on something more secure and substantial than this type of qualification.

Mr. RODINO. Whose guideline is that?

Dr. KUTTNER. Well, I think it is generally recognized that an individual's self-esteem should be based upon some real accomplishment, not acceptance, especially an acceptance which may be a legally required or a fostered——

Mr. RODINO. Without presupposing that one individual is better than the other as a human being, if I have the feeling that another individual is more elevated economically and socially established status, and I want to get is there something immoral about that?

Dr. KUTTNER. This is again a complicated question. I recognize the fact that there are other things that enter into a person's self-image and that you may be able to point to other accomplishments.

On the other hand, you may find an individual who is very successful and yet still requires a Cadillac with tailfins to really convince himself and his neighbors that he is successful.

Still this visible object is important, yet we would regard it as childish and perhaps it might not identify the man as a failure because he has other things which society recognizes as sufficient credentials or qualifications.

I again seem to have wandered from what I wish to remark.

Mr. RODINO. I am sorry. Go ahead and finish your statement.

Dr. KUTTNER. To summarize it, I don't believe that a person can gage his upward progress by how successfully he has penetrated a place or area where previously he was unwelcome and the legal basis for this is another matter that I recognize.

Psychologically and sociologically there is the question of preserving the position. What I sought to make, and again I repeat, that compulsion in such situations can create hostility and not intimacy.

I have a third point here that I feel is worth making because of the great emphasis given to tolerance throughout the world. I am a believer in tolerance. I think this was asked by one of the counsel. I believe in tolerance, of course, and I am not even going to condemn compulsory tolerance if in some situations and some places, and certainly by the assurance that it would be successful, I would not condemn it. But the point is made that the world watches us.

I believe Mr. Reuther made that point, and it is well known that Mr. Reuther has contributed throughout the world financially, and so has his brother and so have many organizations in many foreign countries where minority groups or even suppressed majorities sought to assert themselves, but the point is that we know that the rest of the world is not tolerant and there is no place that we can point the finger and not find within at least fairly recent times examples of atrocities and intolerance. Because this is widespread. I do not say that we must tolerate intolerance, but I say that this is a consideration and if we are to be setting an example to the world with out tolerance, an example to an intolerant world, actually, because we know that from Iceland to South Africa, and to India and Japan, there are extreme cases of intolerance, and that these gentlemen who travel around the world speaking to the intellectuals about our difficulties rarely bother to cross-examine their friends, and ask pointed questions about their shortcomings.

But the other thing, if an example is so important, I feel that the fact that now this title II provision, which would be regulating private property, and, of course, there are other attempts to regulate private property in other legislation, I think private housing, which is not a question here perhaps.

The fact is that the tendency and increasing tendency to regulate private property is setting an example to new nations and old nations that this country, which is the prime example of successful capitalism and free enterprise, and certainly the most important champion of the right of private property, is finding it necessary to regulate private property because we, for some reason, and in weakness, perhaps, are unable to use it properly, and this placing restrictions on private property—perhaps the motives behind some of this legislation may

be very high, but it is indicating to people, perhaps to propagandists, that the existence of private property has inherent in its elements of abuse and that the consumption of service and goods, even though they are emanating from private facilities, must be regulated. And this, I think, encourages Marxism, inasmuch as the fact that Marxist propaganda has raised instances of racial intolerance in this country.

I will return to the compulsory tolerance. It has been legislated before. The best examples are the minority treaties after World War I and the idea was, of course, that in these newly created nations, new minorities existed and must be protected from the majorities.

As the example turned out, the League of Nations managed, with what effectiveness it had, to review cases of intolerance, but the general situation was that these hostilities, which might have been minor in some cases, as say between a Czech and a Sudeten German, blossomed forth in a single generation in such rank animosities that racial wars developed.

World War II is marked by conflict between every minority that had a guarantee as to its security. When compulsory tolerance was imposed on the Ukrainians in Poland, this did not mean that the Ukrainians who passed through Poland in German uniform prevented or suffered any inhibition. They massacred the Poles and likewise the animosity between the Croatians and the Serb, which previously was minor, to massive atrocities, murdering hundreds of thousands of people. Likewise the Slovak and the Czech, guaranteed under the peace treaties, did not spare these people strife and the Czech-German and many others, the Hungarian and Rumanian animosities. Here we had compulsory tolerance.

The majority resented the fact that they had to tolerate someone, that they previously tolerated, previously, anyway, but perhaps not perfectly, and perhaps with—perhaps we should consider that they had justice on their side from a historical viewpoint.

We cannot examine each case, but the general trend has been in cases of this kind to increase animosities and this is a factor I feel which deserves consideration.

I believe that in legislation regarding integration we sometimes lose sight of other realities which deserve to be considered. The Supreme Court considered such realities worth referring to in the 1954 decision.

Psychological, biological, sociological facts cannot be ignored in making good laws. There are some cases in which people believe that segregation can be good.

The fact is that the Catholic Church maintains that the faith of its children is strengthened if they attend segregated schools.

The other point of view, of course, is that if this is so, perhaps we should consider that integration may not always be beneficial, or not beneficial to all parties.

I am very familiar with one example where it is stated that the purpose of education is to not just instill the three R's; that this is obsolete. The purpose of education is to give experience in life and this has been used by Negro psychologists and sociologists, even though the status of white students might be impaired. Legally they don't need this justification.

Nevertheless, the viewpoint of the white parent might be—where in the South Negro illegitimacy might approach 25 percent—and this

happens in many counties in the South—or what benefit do the white children get by attending school with such children? That question of morality is important here.

Mr. FOLEY. What if it was an illegitimate white child attending school with legitimate Negro children?

Dr. KUTTNER. Likewise.

I don't feel that probing my motives and reactions here throws any light upon the real situation.

Mr. FOLEY. What?

Dr. KUTTNER. On the real situation.

Mr. FOLEY. I think that throws a lot of light on that.

Dr. KUTTNER. Well, we have a real situation. We have school districts in the South where there are some students, Negro students, 25 percent, 22 percent, 23 percent illegitimate.

Mr. RODINO. Dr. Kuttner right there: The fact that there are so many who are illegitimate, don't you believe that this is a consequence of a denial of economic opportunity, educational opportunity, and that if there was a correction of this, that the situation would not prevail?

Dr. KUTTNER. Well, I can't answer that question. I know that with the improvement of economic conditions there is usually a stronger social situation. There are those, they do not have to be Negroes, who will take on the dominant character. I would like to point out that improvement in social conditions doesn't always improve standards of morality. We know that crime in northern cities is higher than in southern cities. There are many explanations for this and I am not prepared to discuss all the viewpoints presented. I have no personal knowledge of which viewpoint may be correct.

Mr. CORMAN. As a scientist, Doctor, can you tell us how much morality is hereditary?

Dr. KUTTNER. I would say very little of morality is hereditary. In fact, I would say on the question of morality it is not quite the matter to invoke.

Mr. CORMAN. We were worried about the marital status of the student.

Dr. KUTTNER. When I made that reference, I tried to bring out the fact that integration in every situation does not give automatic benefit to a group, or both groups, or many groups, and that the white parent can justifiably be concerned and disturbed that his child—and I am not questioning the reason for the Negro illegitimacy, this is a social reality—that this child, the white child goes to school and learns that there are families without fathers.

Mr. CORMAN. It would be a legitimate decision for a man to make, and they permit illegitimate whites to go to school as well as black ones.

Dr. KUTTNER. I didn't get that.

Mr. CORMAN. I say wouldn't that be a reasonable conclusion that a school district could make a decision that white illegitimate children would not be permitted to go to school with black illegitimate children?

Dr. KUTTNER. Even children who are married in high school are sometimes barred from continuing in the public school.

Mr. CORMAN. My inquiry is as to the illegitimacy of the child would be a proper decision for a school district to make, that they

would not permit an illegitimate child to go to school, under your theory.

Dr. KUTTNER. This is a proper matter for them to concern themselves about. I don't want to say what the decision should be.

I made this example here for the purpose of finding, perhaps a hypothetical one in some areas of the country, but nevertheless, it is worth remembering that the white parent in the type of situation I remembered would consider himself damaged and his child damaged, so integration I feel is not, as far as white people are concerned, always of an automatic merit.

I recognize that I am taking up more time——

Mr. RODINO. Yes.

At this point, Doctor, not meaning to be discourteous to you, could you tell us just how much more time you will need to make your presentation?

Dr. KUTTNER. I am sure there won't be any questions, so I will finish in less than 5 minutes perhaps.

Mr. RODINO. I don't mean to cut you short, but nonetheless——

Dr. KUTTNER. I feel that I am being cut short, but I recognize that it is not your fault.

Mr. CORMAN. I wonder if you might, during your remarks, because I think that you really go to the heart of the problem of segregation, as such, rather than just segregation in places of public accommodation, I wonder if you could comment a little bit for us as to how you feel about compulsory integration in schools?

Dr. KUTTNER. I would like to meet those remarks. I would like to meet them, and I recognize that though I may have wandered from the bill, I see that other people have likewise wandered.

I make the point that the fact that white negative reactions can occur, I make this point only to remind this audience that harm can come from it, and we know that in many social integration situations, a great deal of strategy has to be devised to accomplish the end.

For instance, when a community is integrated, it is understood that you must scatter Negro families in all directions, so that there is no refuge area for white people who want to leave. This strategy is, itself, evidence that the white community has a negative feeling about this, and that again antagonisms can be created by it.

This is worth considering, not only from the private accommodations, private housing, too.

I also think that the fact that this legislation has been proposed, it is obviously a hasty reaction to the demonstrations, and I feel that this element of haste may have made it a weak or poor piece of legislation.

We know there are many serious inequalities in American society. I know that the American Indian exists under conditions far more appalling than the Negro.

Mr. FOLEY. It applies to the American Indian as well as the Eskimo up in Alaska.

Dr. KUTTNER. I recognize that, but I know that there has been no mark of deep concern previously, because the American Indian is not numerically of much concern so far as voting is concerned, and yet I think people interested in this question have known that the compari-

sons between Negro and Indian are far in favor of the Negro, so that if this legislation——

Mr. RODINO. At just this point, I think only today I saw a poll which indicated that the people, the general public is for recognizing equality of opportunity of all peoples, so your point, when you talk about the recognized question of voting and your recommendation and inferences that there is political motivation here falls flat, because I think if we would poll all the American people we would find that all the American people, regardless of the method we would use to implement what they believe is basic human right, believe in basic human rights and believe in trying to give these people and all people equality of opportunity.

Dr. KUTTNER. I think there is no question that we would have to agree there on the fact that everybody wants maximum benefits, even though a southern representative might, in some cases, regard a separate school as offering the best opportunity. He might run into some dissention, but this might be his sincere belief, and he might feel that an integrated school in his community would meet with harm.

I would not accept, however, whatever the American public thinks, because I regard polls as sometimes misleading. There are many polls taken, and you can poll people from various communities.

I know of one poll in New Jersey where everybody thought it was fine to integrate schools, and then they made the point in integrated schools, would you send your child to a school with 75 percent Negroes and the acceptance fell sharply.

So I don't feel that if the question is always framed specifically, we might find a surprising amount of unwillingness to integrate or give opportunities, even.

But I would like to, since the question of heredity was raised, and since Mr. Reuther remarked about the slum child, I would seriously question whether or not the element of heredity does not enter into some areas of performance in society.

There is no question that this is the most urgently—requires the most urgent investigation. We have suffered a blight for a long time because genetic explanations for group differentials' performance were regarded as Fascist or racistic, and there has been a decline in that type of work.

However, there is a growing interest in that area now and I feel that it has become respectable again to say that people can differ intellectually and groups can differ intellectually and that this performance might be important in some roles, in some areas.

Certain genetic differences should be recognized in some places in some areas. This certainly could not be a minor concern in school performance, and there is a great need for research in this area to find out how much environment contributes and how much heredity.

I will warrant that there may be some surprising discoveries for people who are exclusively, who believe exclusively in environmental influences.

There have been times when this kind of explanation has fallen down completely.

I think I have summarized my view.

Mr. COPENHAVER. Doctor, do you believe in the doctrine of race superiority?

Dr. KUTTNER. No, I don't believe in a doctrine of race superiority, but I do recognize race differences, and this might mean that one race might perform better in one task than another.

Mr. COPENHAVER. Then you do believe that there are——

Dr. KUTTNER. I believe that there are differences in performance, that these differences are not merely physical, but they may touch strongly or release to a measurable extent into the sphere of intellectual achievement.

Mr. COPENHAVER. Therefore, you do not believe that there is race equality?

Dr. KUTTNER. I do not believe that there is equality on the great majority of items that one could measure.

Mr. COPENHAVER. Secondly, you were referring to a situation where there existed a high rate of illegitimacy in certain areas, among the Negro population. You say that the white parents shouldn't be required to send their children to that school. What about the Negro parent?

Dr. KUTTNER. I made that reference to point out the white resentment, the white parent feeling that his child is mixing with people who might reveal standards of behavior which are unacceptable perhaps by the white parents.

Now what about the Negro parent? I can understand that a number of things may pass through the Negro parent's mind, if there was no other school facility of comparable equality available, the Negro parent would doubtless feel that his child should enter that school regardless of what happens to the white child.

On the other hand, there may be Negro parents who feel that their child should go to a separate school even if their child is legitimate, so I can't probe all the possible thoughts that the Negro parent may have.

I think that the question here is not exactly pertinent to the point that I tried to make.

Mr. COPENHAVER. I submit it is directly pertinent.

Dr. KUTTNER. I cannot answer that question for you. I imagine a number of——

Mr. COPENHAVER. I may say to you that you have been here for an hour trying to give us the viewpoint of what the white parent thinks. I ask you a question and you hold yourself out to be an expert in some form in this area.

I now ask you to put yourself in the position of the Negro parent who desires to give his child a decent education.

Dr. KUTTNER. If the Negro child enters into this school in an atmosphere clouded with hostility, I believe the Negro child would suffer damage, and I believe that if the Negro parent was aware of that, he would be concerned about that psychological damage.

We know that the Supreme Court regarded this as an important matter, and if the 1954 decision is fresh in your mind, they cited the fact that the Negro child suffers damage from the mere fact of segregation, even though, of course, the actual study, as was pointed out, revealed that the damage was greater in integrated northern schools than in segregated southern schools.

These were the famous tests conducted by Dr. Clark.

I think perhaps if the Negro parent was acquainted with the fact that his child might suffer greater damage in a forcefully integrated school, or even in a voluntary integrated school, he might have second thoughts.

Some may and some may not. Much depends upon the atmosphere of the moment.

Mr. CORMAN. You said that you represent organizations and people in 50 States. Could you tell us who the organizations of people are in California?

If it is a lengthy list, you might want to put it in the record, but if it is short you might just tell us. Who do you represent in California?

Mr. WOOD. We don't represent organizations as such. We have members of our board of policy who are active in other conservative organizations. We have membership that overlaps in many conservative organizations. I would say all conservative organizations, we have representative membership. We have 25,000 subscribers in total.

Excuse me, sir.

Mr. CORMAN. You have some members of the board of policy that are members of the John Birch Society, for instance?

Mr. WOOD. I suppose so. I am not familiar with——

Mr. CORMAN. Is Billy James Hargis a member of your association?

Mr. WOOD. He is no longer a member of the board. He was, up to a year ago.

Mr. CORMAN. How about Tom Anderson?

Mr. WOOD. Tom Anderson was a member of the board up until about a year ago.

Mr. CORMAN. Mr. Brackenlee?

Mr. WOOD. Yes.

Mr. CORMAN. Sumter L. Lowry?

Mr. WOOD. Right.

Mr. CORMAN. R. Carter Pittman?

Mr. WOOD. Yes.

Mr. CORMAN. Reading from one of your publications:

Washington, D.C., is an occupied city. It has been captured by an aggressive coalition of minority special-interest pressure groups. The Federal Government is the obedient servant of its captors, which band together as the occasion demands, to manipulate Government force in order to pry from the majority of Americans special privilege and power.

Another one:

The arms of the world octopus of power move in different directions at all times.

Might I ask if this concern for civil rights and what has become recently known as the movement, would you discuss that in relationship to this world octopus?

Dr. KUTTNER. I am not acquainted with the world octopus. I have no responsibility for the material in the publications or some issues of the publications of the Liberty Lobby. I am here merely to present a scientific viewpoint which the Liberty Lobby, or members of it, feel is worth presenting.

Mr. CORMAN. So to make the question more simple then, Is there any relationship between the Communist subversive movement and the civil rights effort?

Dr. KUTTNER. Well, I would say one thing. The question of communism, if it pertained to scientific opinion, I could perhaps give you a partial answer. In the area of generating scientific opinion, Communists have been active.

What they are doing in the civil rights movement as journalists or as union leaders or any other type of occupation, I could not speak, but in the area of scientific opinion there has been Communist activity, and I think it is well documented and well tested. I can cite for you one example, and this is the famous biologist's manifesto, which has been reprinted in several books on race questions, and this was framed at the 1939 meeting of the Geneticists Society in Edinburgh, and held to be the viewpoint of the geneticists of the world. This was actually framed by seven partisan people, and I think the studied works of these people—Haldane indicates that there is no question of where their allegiance was at the time, and others make such remarks, "We await the day when the worker is in control and the capitalist is downtrodden," and claim Lenin as the greatest gift to the 20th century.

These statements have been published in Negro publications as a scientific viewpoint. I think the thing was fraudulent. The meeting was adjourned because of the imminent outbreak of war and just a group of American-English extremely partisan people were present to frame it.

Mr. CORMAN. To get to something more recent; you are here to testify for the Liberty group. Do either of you gentlemen believe that this movement, which is very obvious throughout the country, to attempt to do away with segregation, is that in any way a part of this overall subversive world movement that I take it your organization—your personal opinion or the position of the Liberty Lobby?

Dr. KUTTNER. I don't speak for the Liberty Lobby on this particular question, but my personal opinion would be that a good portion of the agitation comes from misguided individuals who have misjudged the extent of damage that some of their actions may produce. I would not say that everything of this kind can be traced to the Communists. I don't know what their activities may amount to in this front. We know that the Communists, themselves, are not averse to practicing segregation and have practiced it, and I feel that——

Mr. CORMAN. Then the movement would be inconsistent——

Dr. KUTTNER. In view of some of their practices in Russia, it would be. What they would be doing here and what the local tactics would call for, I couldn't say, but I feel—it is my personal opinion—having no specific knowledge of what a journalist, labor leader, a scientist, a person of no acquaintance to me or a politician in some local area may have behind him, I couldn't say. But I would say that personal opinion, again, is misguided idealism, and it is a dangerous idealism is some cases, which calls forth hasty action on a subject as sensitive and close to human emotion as the race problem.

It is discarded idealism which is responsible for much of it.

Mr. CORMAN. Do you have a comment on that matter, Mr. Wood?

Mr. WOOD. Liberty Lobby is convinced there is a great deal of Communist influence in the present agitation, as any reading of the "Peoples World" on the west coast or the "National Guardian" or "The Worker" on the east coast makes quite obvious.

Dr. KUTTNER. I would add that I am aware of one fact, the very famous DuBois, one of the founders of the NAACP, who is now over 90 years old, if he is still alive, only some months ago openly embraced the Communist Party, though in the past, though he applauded Red China and called for the overthrow of one thing or another, along with his wife, they were never members of the party until he became 90 or over. Of course, he was recognized, he was a man with hundreds of affiliations, one of the founders way back then. Then, again, there are scientists who have been in public life and have committed things that one might suspect or that would identify him with the Communist Party. Maybe the germ warfare in Korea. Some scientists active in the controversy have subscribed to this, and one would say that this is evidence.

Mr. CORMAN. Would both of you concur with the statement that the struggle for desegregation on the part of the Negro is not a part of the Communists' subversive effort in this country, but rather that there may be Communists who attempt to use the unrest for their own purposes; is that a fair statement?

Dr. KUTTNER. Use it and create it also. I think this might be part of it. I feel that Communists are much too clever to omit any opportunity of this type, and that if we didn't have a race problem that they certainly worked to create it.

Mr. CORMAN. You also agree that segregation is a Communist practice?

Dr. KUTTNER. In parts of Russia, I think one of our Senators, I don't know whether it was Justice Douglas who toured Asiatic Russia and reported segregation there in a popular magazine about 4 or 5 years ago in the schools. And we know from the non-Russian nationalities that they have suffered prejudice and segregation and other difficulties, so that there is no question that in Russia, inconsistent as it may be with some elements of Marxist theory, there is this kind of thing.

Yet on the other hand, I recognize also that they are very strongly environmentalistic and that socialism will create a superman, and that by merely living in a socialist and Soviet environment is superior to capitalist humans.

Mr. CORMAN. Do you have for us the names of the representatives of your organization in California? Do you have that, or could we get it?

Mr. WOOD. We do not have representatives in California. We have approximately 5,000 people in California.

Mr. CORMAN. But you don't have any officers of your organization or any field representatives or anything of that sort?

Mr. WOOD. No.

Mr. CORMAN. Do those people just join by mail?

Mr. WOOD. Yes, sir.

Mr. CORMAN. Are there any other organizations that assist you in gaining membership in your organization?

Mr. WOOD. We work as closely as possible with all the conservative anti-Communist groups.

Mr. CORMAN. Would the John Birch Society be one of them?

Mr. WOOD. There are many members of the John Birch Society who subscribe to our service. We don't have any official connection with the headquarters whatsoever in any way.

Mr. CORMAN. Do you supply the study material to the John Birch Society?

Mr. WOOD. It is not our function to supply study material to anybody.

Mr. CORMAN. What quantity—you indicate they take some of your material. As I understand the John Birch Society——

Mr. WOOD. Anyone who wants to subscribe and receive our legislative reports may do so for $1. This is the only connection we have with the 25,000 people who support us.

Mr. RODINO. Is that all?

Mr. FOLEY. Doctor, is Creighton University integrated?

Dr. KUTTNER. Yes.

Mr. FOLEY. That is all.

Dr. KUTTNER. It is an integration, of course——

Mr. FOLEY. It is a Catholic university, is it not?

Dr. KUTTNER. It is not only integrated racially, it is also integrated religiously.

Mr. CORMAN. One further question. You stated earlier that segregation didn't have much to do with national efficiency. And you cited here, accepting the fact that there was nothing wrong with it from the point of national efficiency, was there anything wrong with Hitler's solution, from the point of view of Germans?

Dr. KUTTNER. On the question of morality, I feel this question of morality is so simple that even though I am not speaking as a moralist I can answer it. I don't believe in violence of any kind or the artificial nonviolence which creates violence. I have no faith in the Ghandi-type activity because Ghandi, himself, knew well and good that he was going to meet violence in some of his movements. I believe in tolerance.

Mr. RODINO. Doctor, we want to thank you for coming here, and I will say that while we appreciate your testimony as a scientist, I would view with alarm if this were the prevailing opinion that has confronted others on the basic problem of human rights. Thank you very much.

Dr. KUTTNER. Thank you.

(The biographical sketch of Dr. Kuttner and his outline of testimony is as follows:)

Dr. Kuttner is a teacher in normal biology at Creighton Medical School, Omaha, Nebr., and he holds a Ph. D. from the University of Connecticut. He is president of the International Association for the Advancement of Ethnology and Eugenics, a nonprofit educational organization devoted to the critical examination and reexamination of race science and race relations. He is assistant editor of Mankind Quarterly, a journal devoted to examining the race questions. Dr. Kuttner appears in opposition to H.R. 7152.

OUTLINE OF TESTIMONY

1. The justification for title II—an argument based on economic efficiency—is false and disguises the fact that this portion of the bill attempts to propel the Negro into closer social proximity to whites. Doubtless, this is merely the first of a series of cumulative measures aimed at complete social blending.

Whatever economic good develops will be far outweighed by other consequences.

(*a*) The element of compulsion can create active hostility since the Negro has high social visibility and his presence is a constant reminder of his mode of entry, not by welcome but by law.

(*b*) The bill caters to the motivations underlying much of the drive for social blending. Association with whites has become for some segments of

the Negro population a sort of status symbol. This is abnormal and destructive to the development of a mature and stable Negro society.

(c) The bill suggests that Americans misuse private property and that state control is necessary to regulate the consumption of goods and services. This may make a bad impression in the new nations of the world and strengthen propaganda for socialism. It is as much Marxism to control consumption as it is to control production.

(d) Compulsory tolerance has historically failed to attain any idealistic end. The minority treaties after World War I, for example, did much to promote the fanaticism of World War II.

(e) Integration legislation in this and other cases often loses sight of existing psychological, biological, and sociological realities. The white majority may suffer injury in some cases. Integrationists believe that it is a valuable educational experience for white children to attend school with illegitimate Negro children, yet few white parents would regard this as a desired broadening of the purpose of schools.

Mr. RODINO. The committee will adjourn its hearings at this time until 2:30 this afternoon.

(Whereupon, at 1:05 p.m., a recess was had to 2:30 p.m., of the same day.)

AFTERNOON SESSION

(The subcommittee reconvened at 2:30 p.m., the Honorable Peter W. Rodino, Jr., presiding.)

Mr. RODINO. Your witness this afternoon will be Mr. Bennett, of the American Friends Service Committee.

Mr. Bennett, I would first like to say that although I inquired initially as to how much time you would take to present your testimony, I didn't mean to confine it to any 15-minute period, as you suggested. Although we would like to get through as early as possible, don't feel restricted or confined.

STATEMENT OF RICHARD BENNETT, CHAIRMAN, COMMUNITY RELATIONS DIVISION, AMERICAN FRIENDS SERVICE COMMITTEE, PHILADELPHIA, PA., ACCOMPANIED BY RICHARD TAYLOR, FRIENDS COMMITTEE ON NATIONAL LEGISLATION, WASHINGTON, D.C.; TARTT BELL, HIGH POINT, N.C.; AND BARBARA MOFFETT, NATIONAL SECRETARY, COMMUNITY RELATIONS DIVISION, AFSC, PHILADELPHIA, PA.

Mr. BENNETT. I would be more inhibited if everyone was starving.

My name is Richard K. Bennett. I am testifying on behalf of the American Friends Service Committee, as a member of its board of directors and as chairman of its national community relations committee. I also speak on behalf of the Friends Committee on National Legislation.

Richard W. Taylor, of the Friends Committee on National Legislation, Barbara W. Moffett, national secretary of our community relations division, and B. Tartt Bell, executive secretary of our southeastern regional office, are here with me.

We believe the United States is now facing its greatest opportunity since 1776 not only to keep faith with the tradition of freedom established then but also to further advance our understanding and practice of it. Though man's struggle for freedom and justice will never end, today's opportunity for forwarding that struggle may never come to

us again. If we would lend to bigotry no sanction, if we believe that there are self-evident truths, we must proceed now to erase the major inequity which has burdened our Nation since its inception.

We want to share with you our experience where we feel it has relevance to the legislation you are considering. We testify on the basis of race relations work carried out by the American Friends Service Committee since 1944.

Today, the American Friends Service Committee devotes almost half a million dollars annually and the efforts of more than 30 program staff, supported by 10 times that number of volunteer committee members, to programs designed to establish peaceful and just relationships among the many groups in our diversely populated Nation.

We work at the local community level—North and South as well as East and West—on such major problems as education, employment, and housing.

One key group is at work in the South on school integration. Here we work with school board members, teachers, parents, schoolchildren, and a wide number of community leaders to establish the right of every child to the best public school education of which a community is capable. The goal is an integrated public school system in which decisions regarding curriculum, assignment of pupils, use of facilities, and the appointment of teachers will be made on a nonracial basis. We have worked in this field since 1952.

Our major experience has been in the Southeast. Within this area we have tried to deal with a variety of responses to the Supreme Court school decisions of 9 years ago which found separate to be unequal and which underscored the harmful effects—to Negro and white alike—of differential treatment as a preparation for living in a democracy.

For example, we are at work in Prince Edward County, Va., where schools were closed in 1959 in preference to obeying a Court order to desegregate them. More than 1,500 Negro children were denied an opportunity for public education by that action and 4 years later there are still no public schools in Prince Edward County. While they await the slow processes of the courts, hundreds of young people have passed beyond their school years. Others are growing up without basic reading and writing skills. The miracle in the situation is that a faith in the democratic process is still alive there.

Throughout the Southeast we have observed the contiuation of widespread discrimination in public education. Even where the response to the challenge of the courts was not definance in the sense of closing schools, there has been subtle evasion through pupil placement plans.

In North Carolina in particular we have observed the deadening process of "tokenism" which these plans have engendered. In the entire State only 6 school boards have taken initiative to institute plans for public school desegregation.

In the overwhelming number of cases, it is clear that pupil placement has served to defeat the intention of the Supreme Court decision rather than to implement it. Such plans put an unreasonable burden on the individual Negro family who must apply for reassignment for a child and follow a complicated and tedious set of administrative steps for that purpose. This process often combined with intimida-

tion, subtle or open, has produced either no action at all or only token steps.

Nine years after the Supreme Court decision only 8 percent of the total school districts in 13 Southern States have any degree of desegregated local schools.

It is clear to the American Friends Service Committee on the basis of our experience that the responsibility for initiating school desegregation lies with school officials. The burden of securing this right should not be borne Negro family by Negro family, until at some far distant time, it is possible but unlikely that integration may have been achieved.

The legislation under consideration adds important tools for solving this critical problem and we support the proposals. Technical assistance to school boards seeking to do the right thing is important.

Authority for the Attorney General to institute civil actions for school desegregation upon receipt of a complaint and a determination that the complainant is unable to institute legal proceedings is a step forward.

These are limited actions, however, and the right of each child to the best public education would be better secured and at a pace more appropriate if all segregated public schools, including those only at a token level of desegregation, were required to submit promptly their plans for full integration.

Parenthetically, I might add that we understand that Mr. Celler in introducing H.R. 1766 has called for such action.

We believe that many school officials would welcome this requirement. This problem will be solved only by a full-scale Federal effort—judicial, executive and legislative—combined with the efforts of experienced human relations agencies and concerned community leadership.

Other American Friends Service Committee staff in the South work on the problem of employment. They work with employers, large and small, with labor leaders, educators, parents, and minority group jobseekers to establish equal opportunity in employment.

We have held thousands of interviews and conferences with those who hold the key to establishing equal opportunity, have had some successes in terms of pioneer placements in jobs previously closed to minority group members, and have failed to achieve such placements in other cases.

This program is carried out at present in several North Carolina cities, in Atlanta and in Houston. The program began in 1946 in the North, where the need was and is great, but where government, city and State, increasingly recognizes its responsibility.

There should be no less controversial aspect of man's rights than that which holds that every American is entitled to an equal opportunity to put his skills to work, and that consideration of race or religion has no place if he is otherwise qualified for the job.

There should be no more persuasive economic argument than that which suggests that it is good business to have at one's disposal the entire labor market from which to hire the best man for each job.

Yet employment patterns are extremely resistant to change. Our staff in the South report that voluntary compliance with agreements set forth in the Federal Government's plans for progress is spotty at

best. Home office intentions may be sincere, but are often ignored at the branch office level. Local mores prevail.

Our staff is aware that Negroes best qualified to compete for and achieve nontraditional jobs have in the main been obliged to seek employment compatible with their skills outside the southern area. Employment sources more often than not discriminate.

In this field, the vicious circle of inadequate educational and training opportunity and withheld employment opportunity comes into sharp focus. Any effort at developing legislation to assure enforcement of equal opportunity must deal also with training, apprenticeships, and similar aspects of the problem as well as with compliance.

Mr. FOLEY. May I interrupt to ask you this question: Do you find difficulty in locating Negroes who have skill in certain crafts, electrician, toolmakers and diemakers, and things like that in the South?

Mr. BENNETT. Well, we have a Southerner here who has personal experience with that.

Mr. BELL. We are operating employment programs in both Atlanta and in several of the North Carolina cities, and we are well aware that it is difficult, even in corporations where policy decisions may exist and where they are ready to employ qualified Negroes on nontraditional jobs, often to find qualified people for these positions.

We must say, however, in most instances our experience is that few honest efforts have been made by these corporations in their southern installations to open up the channels through which they normally recruit their employees, in a genuine effort to make sure that no vestiges of discrimination still exist in their normal recruitment.

However, after one has said this, I think you do have to say that it is difficult, and in some cases impossible, to find properly qualified people.

Our experience is, I think, that it is virtually impossible to separate here the educational and the training facilities and problems from the employment policies, and we would be happy to see this continuation of the emphasis on the close relationship of the employment and the educational sections of the legislation that is proposed.

I think we all know the reasons why it is difficult, why, as you cite, there are few toolmakers and diemakers from a community that are available in a place like Atlanta or Greensboro, N.C.

Mr. FOLEY. We have had some testimony here, I believe by Secretary Wirtz, that the Federal Government initiates training programs, I believe in Norfolk or Newport News, Va. They had difficulty recruiting 100 Negroes to go into that program.

Now, do you find that same thing true in other parts of the southeastern area?

Mr. BELL. Yes, I think again one has to say, and try to understand why this is true.

Mr. FOLEY. That is what I am getting at, why. You tell me. You know.

Mr. BELL. I think it is primarily that we have been caught in a cycle in which the Negro has so long been submerged. We must try to raise the aspirations of young people in the Negro community and other minority communities, to give them some substantial evidence that it is worthwhile for them to go through these training programs, that at the end of this chute there are going to be some genuine jobs available.

Some pioneer efforts have been made with a few selected people, and there are some outstanding instances of success, but the problem is so great that we feel now that a massive approach has to be made to this.

Actually it is not something that we can continue to peck away at at the edges. Some kind of massive approach has to be made to this.

Mr. FOLEY. You have to destroy an atmosphere before you can start the program.

Mr. BELL. Yes.

Mr. BENNETT. I think a little later in our formal testimony we will touch on that briefly.

Mr. FOLEY. Thank you.

Mr. BENNETT. We support giving the President's Committee on Equal Employment Opportunity statutory authority for it will strengthen its operation, but we wish to note here its inadequacy in that it covers only a segment of employers and leaves others free of any legal requirement to meet their responsibilities.

We are presenting our experience in this field in more detail elsewhere in Congress where legislation is being considered which will reach beyond employment that is related to the Federal Government.

We want also to report on the work of another key group of American Friends Service Committee staff outside of the South—those who work in the North and West on the critical question of housing, a basic problem which builds segregation into so many other aspects of community life, including schools.

Housing is not mentioned in this bill, a fact we regret. All that exists at the Federal level is an Executive order which covers neither existing housing nor the vital area of financing.

In half a dozen metropolitan areas, American Friends Service Committee staff and volunteers seek to create a truly open housing market, one in which each man will be free to live in the home of his choice, subject only to his ability to pay.

Our work in this field since 1951 has shown us that the barriers to minority group members in buying and renting are high and rigid. We work with realtors, builders, church leaders, concerned citizens—Negro and white.

In the minority community fears of a hostile reception outside the proscribed area are great and need to be counteracted by peaceful moves of Negro families to previously all-white areas. Rights need to be clearly enunciated if we are to remove this basic restriction from our practice of democracy.

We do not have direct program experience in the area of public accommodations from which to testify, but no American escapes experience of this elementary restriction on his freedom. To the Negro it is an unavoidable daily insult. To the white American whose conscience calls him to accept no accommodations not available to all of his fellows, it is an affront to his conscience.

Despite the indignity daily visited upon the Negro there is perhaps no more pitiful figure than the white operator of public accommodations who has a conscience, a democratic vision, but also a fear of doing other than what he thinks is expected of him. This "free citizen" is in some ways the envy of the world and yet he feels like a prisoner of circumstances.

Clear laws which spell out the rights of all to his services will get the many Americans like him "off the hook." They will not only advance freedom but will improve the mental and moral health of Negro and white alike. Our experience as human beings compels us to support the proposal before you without amendment.

In summary, we support the proposals before you. They are minimum proposals in relation to the problems they are designed to help solve. We would urge your consideration of ways to strengthen and broaden them. We have suggested some of those.

We further want to make clear the interlocking nature of the problems of education, jobs, and housing. And here this may have some reference to your question.

We were tempted at each point in this testimony to say, "Our experience shows us that this is the basic problem, the key to the solution of the others." But at no point can that honestly be said. A good education is basic to getting a good job. The possibility of getting a good job is basic to having the will to stick to the task of getting a good education. Getting an education truly compatible with the fast-changing job demands of the day is dependent on having a well-equipped school without serious problems of overcrowding and understaffing. Having access to such a school is dependent on living elsewhere than in an overcrowded, underserviced ghetto. Similarly access to employment requires living in reasonable proximity to it.

Underlying all this, stepping into one's proper place in a democratic society, as a respected citizen with rights equal to those of other citizens, requires the knowledge that society views one in that light, granting equal opportunity and protection under law. As legislators, the opportunity is before you today to play your part in creating such a national climate.

As practitioners of convincement and persuasion, we see a clear role for law. Persuasion and voluntary efforts are not enough.

Almost a decade ago we testified before a Senate committee when it, even then, was considering a bill to prohibit discrimination in employment. On the basis of our experience to date, which then included 4,000 employer interviews which had explored their reasons for hiring on merit or their hesitations to do so, we said that we saw little hope for significant expansion of employment opportunity without laws. Our prediction has come true. In those areas of the Nation without laws, progress is painfully small and slow.

Laws not only caution and restrain those who would do wrong, but also and more importantly they lend support to those who want to do the right thing but are afraid. A staff member of ours in the South draws on his current experience to support this statement. He says:

> We have been told innumerable times that churches, schools, industry and commerce, and governmental units are captives of a bad system which discriminates against Negroes and that they would like to change and would change, but find it impossible to do so alone in the system which now exists * * *. The enactment of these laws would free white men from bondage to an evil system at the same time that it gives Negroes their rights.

One of the most effective ways to change prejudiced attitudes is to change discriminatory patterns.

People say you cannot legislate morality. However, laws do control behavior and uphold rights. In the process of acting without discrimination, people's attitudes change. Further, experience has

shown the difference between how people say they will act in advance of some proposed change in hiring or housing or school patterns and what they actually do when the change comes. Anticipated overt actions do not in most cases materialize. Unfortunately we read most often about the exceptions to this rule. Legislators, like community relations workers, would be wise not to base their actions on such unreal fears.

Tension is an inevitable part of change. It need not be feared. It is often a good sign. It shows that problems are being brought to the surface where they can be solved rather than being left to smolder and erupt into violence at a later date.

Thus we see the present tension in race relations as a healthy sign of life in our body politic. It deserves a thoughtful and creative response from lawmaker and from private citizen, not a repressive and fearful one. However, tension will stay below the level of violence only of unjust conditions which create it are changed. And the pace of change needs to be rapid, for the wrongs which need correction are of long standing and people are weary of bearing their burden. The wrongs can be changed by law and by the courageous actions in their own communities of concerned citizens—white and Negro.

In giving this testimony the American Friends Service Committee and the Friends Committee on National Legislation speak for themselves and for like-minded Friends. No one organization can speak officially for the Religious Society of Friends. As outgrowths of the Religious Society of Friends (Quakers), these two organizations subscribe to a faith in that of God in every man. Our beliefs have consequences. If we are children of one common Father, then we must be of equal worth in His family, entitled to equal opportunity in the society of men.

Our faith is inclurably optimistic and unyielding realistic. It teaches us that we live in an ordered universe in which the moral law of cause and effect, of means and ends, is as unchangeable as any physical law. Violence corrupts and destroys both the user and the victim; the power of love and nonviolence is creative and redeems both.

Given statesmanship in legislators and a willingness to replace ignorance and fear by knowledge and faith, a new day can be born here. Man will be then measured by what he is and not by race, creed or nationality. Each will be free to develop to its fullest extent every capacity with which he is endowed. No two men will be alike; but no two will be different in value to America because of race, religion, or national background. Given equality under law, our experience indicates that as prejudice has in the past fed on prejudice, so brotherhood will nourish brotherhood.

Failure to put freedom into law will mark the decline of the concept of a free society and will continue to deprive the entire Nation of the benefits of such a society. We pray that this Congress will be recorded in history as the architect of a more just society, and a more perfect union.

Mr. RODINO. Thank you, Mr. Bennett.

I might say that it certainly is refreshing to hear this kind of a statement instead of recalling with alarm the type of presentation that was made this early afternoon, prior to your testimony by a scientist.

Mr. Copenhaver.

Mr. COPENHAVER. Nothing.

Mr. FOLEY. Nothing.

Mr. BENNETT. Thank you very much.

Mr. RODINO. I also want to commend your organization for the very constructive efforts and the great contribution it has been making and working in American democracy. I know if we proceed with dedicated faiths we cannot help but realize the objectives.

Mr. BENNETT. You are welcome, indeed.

(The following was submitted for the record:)

THE FIVE YEARS MEETING OF FRIENDS,
Richmond, Ind., July 24, 1963.

THE CONGRESS OF THE UNITED STATES,
Washington, D.C.

GENTLEMEN: The Five Years Meeting of Friends hereby associates itself with the testimony for the National Council of Churches, the National Catholic Welfare Conference and the Synagogue Council of America, to be presented to Congress in their behalf.

We support the objectives of this testimony, since we recognize that this critical moral issue must be met by effective concrete action, now.

We wish, however, to register our uneasiness about the broad extension of Federal action. This is not because we disapprove its use in this critical situation, but because this may set a precedent, which if not carefully watched could lead to undue extension of Federal authority and centralization of power on other issues.

On behalf of the Five Years Meeting of Friends.

SAMUEL R. LEVERING,
Chairman of the Board, Christian Social Concerns
(For S. Arthur Watson, Clerk).

Mr. RODINO. Reverend Ramsey, Rev. Duane H. Ramsey is pastor of the Washington City Church of the Brethern. We welcome you to the committee this afternoon.

STATEMENT OF REV. DUANE H. RAMSEY, PASTOR, WASHINGTON CITY CHURCH OF THE BRETHREN, GENERAL BROTHERHOOD BOARD, WASHINGTON, D.C.

Mr. RAMSEY. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, my name is Duane H. Ramsey, and I am pastor of the Washington City Church of the Brethren. I am appearing here on behalf of and at the request of the General Brotherhood Board, Church of the Brethren, to speak in favor of the proposed civil rights legislation.

The deepening crises in race relations all across the land confront the Congress with one of the sharpest challenges to its integrity and responsible leadership in this century. A revolution in relations between the races is upon us. We can neither stop it nor delay it. We can only hope to help guide it by wise and creative legislation.

The time is now to understand that racial reconciliation is built only on the foundation of racial justice, that justice delayed is justice denied.

The time is now to heal every broken race relationship and every segregated institution in our society—every public accommodation, every place of employment, every neighborhood, every school, and every church. Our goal must be nothing less than a fully integrated society.

The time is now to practice as well as to preach nonviolence. In this revolution let us not only support and uphold the courageous Negro and white leaders of nonviolence, but let us take our share of initiative, leadership and risk in helping guide the revolution over the precipitous trail of nonviolence.

The time is now to recognize Negro disappointment and even outright rejection of white leaders and their political promises. Few white citizens have suffered with their oppressed Negro brothers in efforts to obtain racial justice.

The time is now for us to confess to God our sins of delay, omission, and obstruction for racial justice. Our witness has been weak, despite the courageous witness of a few of our citizens. Our witness has not matched our basic belief that every child of God is a brother to every other.

The time is now for action, even costly action that may jeopardize the organizational goals and institutional structures of the Congress, and may disrupt any fellowship that is less than fully faithful to our Constitution. In such a time the Congress is called upon to put aside every lesser engagement.

The demand upon Members of Congress is for commitment and courage in such a time as this. This demand comes to every one of us—to each of our parties, and to every area we represent. We can neither dodge the revolution nor the call for responsible leadership. Let us respond in works as eloquent as our words, in practices consistent with our party platforms, in legislation befitting our Constitution.

The challenge which I have just presented is an adaptation, for the purposes of this testimony, of a statement "The Time Is Now," spoken by the recent annual conference of the Church of the Brethren to ourselves in the church. Attached to this declaration of concern were seven specific, yet, comprehensive recommendations regarding our church's own racial policies and practices which we are painfully but urgently carrying out. A copy of the original statement and recommendations is attached for your information.

It is urgent that we begin at once to practice the ideal of interracial justice and brotherhood. We must no longer allow the difficulties to excuse lack of effort or the need of time to justify the indefinite postponement of action.

These appropriate words were not written this year or last year, but in 1950. They are from the statement of the Church of the Brethren on the race problem, our church's most definitive pronouncement on the subject. A copy of this statement is also attached to this testimony.

The time is now for our church, for the Congress, and for every group to which we belong to take such words with utmost seriousness, to bring our ideals into reality.

THE CIVIL RIGHTS ACT IS NEEDED

We strongly support the proposed Civil Rights Act of 1963 submitted to the Congress by the President June 19, 1963.

We believe that no legislation is more urgently or vitally needed at this moment.

We believe that such an act is necessary if freedom and equality are to win out in America.

We urge the Congress to approve this act without undue delay. It represents only a minimum of the civil rights legislation needed today. We would approve strengthening the act, and would oppose efforts to weaken it.

It appears to be the most comprehensive civil rights bill ever to receive serious consideration from the Congress. We think it is a strong and a good bill. Yet it is far from being an extreme or all-encompassing measure.

COMMENTS ON PROVISIONS OF THE BILL

Next, I would like to make a few comments on each section of the proposed Civil Rights Act of 1963. These observations grow out of our own experience and out of our conversations and memorandums with other groups supporting such proposed legislation.

COMMENT ON TITLE I—VOTING RIGHTS

The voting provisions of title I of the proposed Civil Rights Act of 1963 constitute improvements in the operations of the 1957 and 1960 Civil Rights Acts. But it is readily apparent that they are both moderate and limited and wholly within the spirit of the 1957 and 1960 acts. Indeed, the first four provisions apply only to Federal elections, although there would appear to be constitutional authority to apply them to State elections as well.

The first two provisions, although primarily declaratory of existing constitutional and statutory requirements, will help persuade some reluctant judges by making the constitutional requirements clear.

The requirement that literacy tests be in writing or transcribed would make proof of discrimination simpler in many instances.

The provisions relating to a presumption of literacy based on a sixth-grade education would make arbitrary denials by State officials more difficult and, when any arbitrary denials are challenged in court, this provision would take effect and create a presumption of literacy in favor of the person applying to register.

The provision for court orders entitling qualified Negro applicants to vote when the complaint alleges that fewer than 15 percent of the Negroes of voting age in the area involved are registered to vote makes possible meaningful interim relief during the customary lengthy litigation period. And the provision for temporary voting referees, despite the failure to date of the referee provisions of existing law, may nevertheless help persuade some judges to move ahead on this front.

The provision for expediting voting cases brought by the United States cannot make hostile judges act quickly, but it can be useful in some situations and will expose judges who deliberately slow down judicial proceedings in voting cases.

There are stronger proposals in the voting field than those contained in the proposed Civil Rights Act of 1963. One of these, for example, is the Federal registrar system proposed by the Civil Rights Commission in 1959 and rejected by the Congress in the 1960 legislative battle. Administrative action of this character could provide mass enfranchisement which the court-centered programs in this act

of 1963 never can accomplish. Yet every legislative advance cannot be obtained at once, and the proposals in the act of 1963 will reinforce the 1957 and 1960 laws and give the Department of Justice additional tools in this important area.

COMMENT ON TITLE II—PUBLIC ACCOMMODATIONS

We consider this to be the most important title in the proposed Civil Rights Act of 1963. It would establish the right to service free from discrimination in places of public accommodation and business establishments.

The time is now to end not only the insult to Negroes when they are refused service at restaurants, places of entertainment, and at other places of public accommodation, but also the embarrassment this gives to their accompanying white associates and friends. Our church has discovered that it is often easier to secure public accommodations for white refugees from abroad, of a different language, culture and citizenship, than it is to secure similar accommodations for distressed American Negro families born and educated in the United States and truly American in every way.

We agree that those persons who are refused service should have the right to sue for preventive relief. In addition, we agree that the Attorney General should be able to enter suit on receipt of a written complaint, if the complainant is unable to bring suit because of financial reasons or fear of reprisals. If successful, a complainant should be entitled to reasonable attorney's fees.

We endorse the provision requiring the Attorney General, before filing suit, to refer the complaint to the Community Relations Service provided under title IV of the bill and to any appropriate State agency with authority to prohibit the discriminatory practice.

We feel that the bill rightly relies on both the 14th amendment and the interstate commerce clause for its constitutional base.

We do not see in this title the conflict between property rights and human rights which some seem to see. However, if such a conflict should exist we believe that our moral values would place human rights before property rights.

We oppose a compromise proposal which has been discussed; namely, a limitation on the size of the establishment covered by the provision. It is true that a small roominghouse in which the owner resides, the so-called Mrs. Murphy roominghouse, retains many of the characteristics of a home, but when it is open to the public, it must be open to all the public. A store, restaurant, hotel, motel, roominghouse, entertainment facility, and all such facilities open to the public, large or small, should be covered by the bill.

Even more dangerous—far more dangerous it seems to us—is the compromise being suggested in some quarters to take the enforcement provisions out of the bill and leave it as entirely voluntary through conciliation. Conciliation is most valuable if there is ultimate enforcement power behind it, and anything that deprives the Civil Rights Act of 1963 of an enforcible public accommodations title would be a tragic defeat for civil rights.

COMMENT ON TITLE III—SCHOOL DESEGREGATION

As the Attorney General made clear in his testimony on June 26, this title would—

combine a program of aid to segregated school systems, which are attempting in good faith to meet the demands of the Constitution, with a program of effective legal action by the Federal Government * * * these programs would smooth the path upon which the Nation was set by the *Brown* decision.

We feel that this school desegregation title is second only to the public accommodations title in furthering civil rights at this moment in America.

There are significant cultural and spiritual reasons why the speed of school desegregation needs to be stepped up. It is inevitable that our society, our communities, and our world of the immediate future will be desegregated and multiracial. While adjustment to this new situation has problems, it also provides challenging new cultural opportunities. Let us turn a supposed liability into a cultural and spiritual asset. We need with all deliberate speed to provide all of our children with an appropriate desegregation multiracial educational setting in which they can learn to live in the new world of the future.

As in connection with the voting provisions of title I, the moderate and limited nature of these proposals on school desegregation should be noted. These provisions contain no requirement that school districts begin compliance with the Supreme Court's decision in 1963 as is contained in S. 772 and H.R. 1766, the so-called Clark-Celler bills. Furthermore, the Attorney General is limited in the Civil Rights Act of 1963 to bringing suits only where complainants are unable to institute legal proceedings, a restriction on his freedom in school desegregation cases which was not included in the 1957 grant of authority to act in voting cases. Finally, it should be noted that there is no provision in this title or elsewhere in the bill for an "across-the-board part III" authorizing the Attorney General to bring suit, not only in school cases, but in all situations where persons are denied their constitutional rights because of race, color, religion, or national origin. Such a provision (which perhaps should be offered as an amendment to this act) would not only reach hospitals, libraries, parks and other recreational facilities, public buildings, etc., not covered by this act, but would also give the Attorney General power to enjoin State interference with peaceful protests as in Birmingham and elsewhere. But moderate and limited as title III is at present, it is a major step in the direction of integrated schooling and a vital and necessary part of any civil rights package.

COMMENT ON TITLE IV—COMMUNITY RELATIONS SERVICE

We believe that such an agency would serve a very useful function if the bill as finally enacted provides strong protection for the constitutional rights of minority group citizens. However, it could in no way be considered as a substitute for enforcement authority. As a complement to enforcement authority, it should have real value.

We have been favorably impressed with the work of aggressive State and local human relations commissions. Their function needs to be

extended to the Federal level in the form of a National Community Relations Service.

From our experience with human relations commissions it is important that they seek out and find areas of discrimination early. If they merely sit and wait for complaints to come to them they may not receive many because those persons who are discriminated against may not know their legal rights, lack the courage or know-how to present their grievances or lack the money to bring suit. Then, when complaints do reach the commission, too often they have reached a stage of serious tension or conflict.

COMMENT ON TITLE V—CIVIL RIGHTS COMMISSION

Because of its fine record, the Commission is deserving of support for extension and additional grant of authority. We would hope, however, that the agency could be made permanent in order to free it of the necessity of constantly revising its plans and to give it the stability it needs to conduct a continuing operation.

COMMENT ON TITLE VI—WITHHOLDING OF FEDERAL FUNDS

Again the moderate nature of the Civil Rights Act of 1963 is evidenced by this provision. Many persons believe that the President already has the authority to withhold Federal funds from any program or activity in which unconstitutional discrimination is found. While the President probably is in a position to act on his own initiative, this provision would add congressional support for his action. Certainly Federal funds contributed by all the people should never be utilized in a way that discriminates against some of those who contribute those funds.

COMMENT ON TITLE VII—EQUAL EMPLOYMENT OPPORTUNITY

We believe that the authority proposed in this title should be granted.

The present Committee is doing a reasonably effective job within the limitation of its authority, funds, and staff. We recently observed in one community a rapid and significant improvement in the employment of nonwhites when the area office of the President's Committee on Equal Employment Opportunity merely made a few telephone calls to some employers with Government contracts indicating that their employment policies were being examined and that an investigator would visit their offices within a few weeks. In addition, these few calls stimulated the local office of the Association of Commerce to issue a strong bulletin to all of its manufacturing and industrial relations members to discontinue any discrimination at once if they wanted to avoid trouble and bad publicity.

The present Committee is apparently handicapped by limited funds and manpower. A congressional grant of authority with subsequent financial support could considerably strengthen the agency in fulfilling its mission.

The enactment of this provision is not, however, a substitute for a National Fair Employment Practices Commission. Such a law with strong enforcement procedures is one of our most needed legislative

requirements. We would strongly support the adoption of such an amendment to the Civil Rights Act of 1963, and the President's message to Congress accompanying this act gives his stamp of approval to this effort.

COMPELLING REASONS FOR ENACTMENT

There are several compelling reasons for enacting as soon as possible the proposed Civil Rights Act of 1963.

This legislation will give legal undergirding and support to our courageous citizens and groups which have been in the vanguard of the movement for racial justice, often at considerable personal risk and sacrifice. Equally important, it will provide the basis for many more of our citizens and groups to move now in this direction—persons and groups who have felt the rightness of this direction but who have either lacked the will or courage to step forward or who have been uncertain as to whether the Government would back them up if they did so. It is time now for the Congress to put itself clearly and unequivocally on the side of racial justice; to adopt laws which will make it easier rather than harder for our more timid citizens to do what they already know in conscience is morally right. For example, many an employer may be personally prepared to employ nonwhites when a State Fair Employment Practices Act provides him with a legal justification.

The legislative branch of our Government needs to take its share of leadership and responsibility for securing and insuring civil rights. Unless the Congress passes the minimum legislation proposed in this act, the demand for legislation, including protest demonstrations, will increase. If the Congress does not use or does not permit the use of the nonviolent legislative approach to achieving racial justice, there will be an increasing tendency for citizens to take the law into their own hands in a violent manner.

The passage of this act will not be as drastic a step in our country as some have supposed since many States and cities already have laws covering some aspects of this proposed legislation. There is real need, however, to make such laws nationwide.

There is considerable evidence that a large majority of our citizenry will approve the several provisions of this act. One bit of evidence is the fact that our own church's recent annual conference approved almost unanimously the strong statement, "The Time Is Now." Our more than 1,100 delegates came from 36 States, one-third of which are in the South.

Another compelling reason for adopting this proposed act is to improve our Nation's image abroad and the foreign relations of our country. Our church's 150 oversea workers report to us that the racial injustice at home creates serious embarrassment in their service and missionary endeavors. They are told, "Physican heal thyself." The integrity of their work as Americans, as unofficial ambassadors of good will, and as representatives of the Christian church is at stake.

This year is the 100th anniversary of the Emancipation Proclamation. There could be no finer way to celebrate this event and no greater opportunity at hand than to adopt the proposed Civil Rights Act of 1963.

Let us pass this legislation because we want to, not because we have to; because we have faith in constitutional democracy, not because

we fear violent anarchy; because it is the morally right thing to do, not because it seems to be the expedient gesture for the moment.

We urge you, Mr. Chairman and members of this committee, to act favorably on this proposed civil rights legislation.

Mr. RODINO. Mr. Corman.

(No response.)

Mr. RODINO. Mr. Foley.

Mr. FOLEY. Reverend Ramsey, turning to page 8 of your statement, your comments on "Title VII: Full Employment Opportunity," the next to the last paragraph on that page, you comment to the effect that the committee is apparently handicapped by limited funds and manpower and congressional grant of authority for subsequent financial support would considerably strengthen the agency in fulfilling its objectives.

I ask this question in this light. Prior to the enactment of the 1960 act, there was a similiar proposal, as we have one today, and in the testimony that this committee took in 1959 on that proposal and on the testimony to date on his proposal, even from members of the Commission, itself, I have never heard any complaint as to the lack of funds or manpower.

I was wondering, on what do you predicate this?

Mr. RAMSEY. This statement was written by the responsible persons of our denominational offices in Elgin. I would need to refer to them, refer this to them, but I could get an answer for you.

Personally, I think it may represent our office's concern that anybody with only tentative authority or resources feels a lack of——

Mr. FOLEY. You misunderstand my question.

I am searching for information, which is the first time that I am sure we have heard it on this side. Therefore, I am very interested in finding out the reason behind it.

Mr. RODINO. If you can pursue that, Reverend Ramsey, we would appreciate your forwarding that information to us.

Mr. RAMSEY. I will do it.

Mr. RODINO. We want to thank you, Reverend Ramsey. We are very grateful for your presence and your testimony, which is a clear enunciation of the declaration of human rights.

I would like to say that that will be reviewed, and the declaration is that, "The time is now."

I understand that we now have Mr. John Fauntleroy representative of the American Veterans Committee. We called Mr. Fauntleroy this morning. He wasn't here. We had then instructed that his statement be included in the record; but since you are here, we will give you the privilege of reading your statement.

STATEMENT OF JOHN D. FAUNTLEROY, LEGISLATIVE COMMITTEE, AMERICAN VETERANS COMMITTEE

Mr. FAUNTLEROY. I appreciate that. I did inform the committee that I had a prior hearing this morning and I could not be available. I requested that I be here this afternoon.

Mr. RODINO. You may proceed.

Mr. FAUNTLEROY. Thank you.

Mr. Chairman and members of the subcommittee, my name is John D. Fauntleroy; I am a member of the bar of the District of Columbia and of the Supreme Court of the United States. I am appearing today as a representative of the American Veterans Committee to offer the views of this organization on the pending civil rights bill, H.R. 7152.

The American Veterans Committee is an organization consisting of veterans of the Armed Forces who served in World War I, World War II, and the Korean conflict, and which has as its motto, "Citizens First, Veterans Second."

The American Veterans Committee has a record, unique among veterans organizations, of positive action in the field of civil rights, and has been instrumental in developing the policies of integration and nondiscrimination which are now the rule in the Department of Defense and in other areas of AVC interest.

The American Veterans Committee is, and always has been, fully integrated, and among the nine men who have served as national chairman in the 20 years since its founding there have been two Negroes, one of whom, Dr. Paul Cooke, acting dean of the District of Columbia Teachers College, is presently serving as our national chairman.

The American Veterans Committee (AVC) approves the principles and aims which have led to the formulation of the pending legislation and supports the passage thereof. I would like to quote the text of a resolution on civil rights legislation adopted by our recent 20th anniversary convention, May 30–June 2, 1963, here in Washington:

CIVIL RIGHTS LEGISLATION

Assembled in national convention to commemorate the 20th anniversary of its founding and the centenary of the Emancipation Proclamation, AVC calls upon the Congress of the United States speedily to enact comprehensive civil rights legislation to close the gaps left open in the 1957 law and to go further, AVC calls upon the Congress in particular:

1. To enact title III, deleted from the 1957 civil rights legislation so as to authorize the Attorney General of the United States broadly to take all necessary legal action to redress all denials and violations of and to enforce the civil rights of every American.

2. To enact a Fair Employment Practices Act to be executed by a commission with broad powers of investigation, subpena and enforcement, and with adequate penalties for violation of the law.

3. To enact legislation to assist school authorities financially and otherwise in integrating their school systems.

4. To provide for the withholding of Federal funds from any State, local, or private activity or program which in any way discriminates against any person on account of race, creed, color, or national origin.

5. To prohibit by law discrimination in respect of all housing construction, rental, sale, or acquisition of which is directly or indirectly federally financed or supported.

6. To protect effectively the voting rights of all citizens, in particular by making 6 years of education at a public or at an accredited private school conclusive evidence of a voter's or prospective voter's qualification under any literacy- or voter-qualification test, by providing for the appointment of registration and voting referees and by granting preference in the Federal courts to all voting rights cases.

7. To enact legislation forbidding any person or firm to sell any commodity or service which has been transported in interstate commerce, or the sale of which affects interstate commerce, if such person or firm, in the sale of such commodity or service, discriminates on the basis of race, creed, color, or national origin.

What is basically a good bill could be improved, however, by the addition of some of the items which follow, in connection with the legislation as introduced, AVC has a number of suggestions which are submitted for the attention of the committee with the hope that they will be incorporated in the bill as reported out of committee:

TITLE VI

Title VI of the bill presently pending before the committee provides, in effect, that the Federal officials in charge of any program which receives Federal assistance in the form of grants, loans or otherwise *may* [emphasis supplied] withhold such assistance if individuals participating in such programs are discriminated against; the proposed legislation, despite the lofy ideals enunciated in the preamble to the entire bill, does not require them to do so. AVC agrees that a blanket requirement that no Federal assistance be given to any program in which any individual may be discriminated against may be going somewhat too far, albeit in the right direction.

For these reasons, AVC suggests that title VI be redrafted, so as to provide that where discrimination exists, Federal assistance to the program in question (not to all programs in the State or area in question) be terminated unless the responsible Federal official makes affirmative and public findings, somewhat as follows:

(*a*) That plans for changing the program so as to assure nondiscrimination have been submitted to him, and found to be workable and adequate.

(*b*) That the temporary continuance of the program in question is authorized until a date certain, by which it will be terminated unless all discrimination in connection with that program has been ended.

If, as an example, therefore, an institution or agency which discrminates is close to the discovery of a cure for cancer, or of a new way to get to the moon, such institution or agency may be permitted to continue its program on a temporary basis, provided that plans for changing the program so as to assure nondiscrimination have been submitted to the administrator, and found workable and adequate.

Mr. RODINO. I would like to point out there, Mr. Fauntleroy, that that is what I believe is intended by title VI. It is in the discretion of the administrator who will be responsible for deciding whether or not the program should go ahead and I am confident that that is what the administrator was considering, the definition of discrimination.

Mr. FAUNTLEROY. If that be so, Mr. Chairman, I think we are thinking on the same lines then.

Mr. RODINO. Yes, I am sure we are.

Mr. FAUNTLEROY. Thank you.

CIVIL RIGHTS CASES

Another vital area in the civil rights struggle is not covered in the bill at all: the question of removal of criminal prosecutions or civil actions of a discriminatory nature from the State to the Federal courts. The present statute dealing with such removal (28 U.S.C. 1443) has been so restrictively interpreted (as a matter of statutory

construction, not as a lack of congressional power under the Constitution, *Virginia* v. *Rives*, 100 U.S. 313, which was decided in 1879 by the Supreme Court), that its use has been almost totally limited to cases where the State constitution or State statutes on their face deny or create the inability to enforce a citizen's equal rights.

Review of this old decision which would almost certainly be reversed if properly before the Supreme Court has been precluded by the provision, enacted in 1949, of 28 U.S.C. 1447(d) which bars all review, either by a U.S. Court of Appeals or by the U.S. Supreme Court of the decision of a U.S. district judge remanding such a case to the State courts.

Furthermore 28 U.S.C. 1446(c) limits the possibility of removal to the time before trial has begun; assuming that removal is made easier, this would require those concerned with civil rights to remove every case in which prejudice is possible, thus imposing a great burden on the Federal courts, rather than permitting them to initiate removal action only as, when, and if prejudice is shown.

For the foregoing reasons, AVC proposes the addition of language to the following effect to the bill before the committee:

The section which is unnumbered now would say:

Title 28, United States Code, section 1443 is amended by the addition of the following subsection:

"(3) The right of removal under this section shall be freely sustained, and this section shall be construed to apply to any State action which denies or abridges equal rights, including executive, legislative, administrative, and any other."

Section unnumbered: Title 28, United States Code, section 1446(c) is amended by deleting the words "before trial." This would mean that removal could occur even after trial.

Section unnumbered: Title 28, United States Code, section 1447(d) is amended by deleting the word "not".

REIMBURSEMENT

Section 304(d) of the proposed bill provides that where a school board or local government is deprived of funds because it is attempting to desegregate, the Commission may make a loan to the school board or local government in question. While section 304(e) provides that the loan shall be made upon such terms and conditions as the Commissioner shall prescribe, there is no provision for recoupment or other reimbursement.

AVC proposes an additional subsection to section 304 which will explicitly allow either or both of the following procedures:

(*a*) A suit by the Attorney General on behalf of the United States against the State or local government which has withheld the funds in question, for reimbursement of the loans made under section 304(d), or

(*b*) A provision by which the Attorney General, in his discretion, may recoup the amount of such loan by withholding a part or all of the funds otherwise payable to the State or local government unit which has withheld funds, under some other program.

As an example, suppose State A withholds funds from local school board B because the school board is making a conscientious effort to

comply with this law. Under AVC's suggestion, the Attorney General may sue State A to recover the moneys lent, or recoup by reducing the funds paid to the National Guard of State A or any State program.

The American Veterans Committee appreciates the opportunity to present its views before Subcommittee No. 5 of the House Judiciary Committee and commends the committee for its careful study of this crucial domestic issue.

Thank you.

May I thank the committee for the opportunity to have testified.

Mr. RODINO. I thank you.

I would like to point out, Mr. Fauntleroy, where you propose changes, of course the section does specifically state a loan. I am sure that it applies to the question of a loan and also the return.

In this way we might be encumbering the bill with unnecessary language that might make it a little more difficult in saying that there is other power given the Attorney General now.

Mr. FAUNTLEROY. We felt—the committee who worked on this was of the thinking that this should be provided for so that there would be no mistake that the U.S. Government expected reimbursement.

Mr. FOLEY. Well, that is pretty true of most of the loans that the Federal Government makes to various State and local agencies, isn't it true?

Mr. FAUNTLEROY. That is true. We were somewhat concerned. I think the bill does refer to grants, too, and in that instance——

Mr. FOLEY. A grant is a different story.

Mr. RODINO. If we talk about a grant, I don't see how we would then recoup.

Mr. FAUNTLEROY. We felt it should definitely be a loan and that the United States should be reimbursed.

Mr. FOLEY. Let's look at it from this point of view. Perhaps the local school board may not have the authority to enter into a loan agreement, but nevertheless the Federal Government wants to encourage the desegregation within that local school district, so isn't it better then to have the Federal Government say, "We will grant you the money for this technical assistance rather than loan it to you"?

Mr. FAUNTLEROY. I don't think so.

My thinking on it, and I think the committee's thinking on this subject is that even in the instance where you cite that if this money is made available to the school board, which does not have the authority to borrow money, that the Attorney General should have the right to recoup this money against the State.

Mr. FOLEY. You want to punish the State because it denies the local school board the authority to enter into a loan agreement?

Mr. FAUNTLEROY. We are not punishing the State.

Incidentally, what we are doing is only making the State pay its fair share of what it should do.

Mr. RODINO. Mr. Corman, proceed.

Mr. CORMAN. Have you had any experience with defending civil rights cases recently?

Mr. FAUNTLEROY. I have been in the civil rights field. The last case I tried I think was 1953 or 1954.

Mr. CORMAN. I notice that you discuss the problem of trying to get into the Federal courts. We have also had some discussion about a need for Federal presence. There seems to be some errors.

No matter what kind of legislation that we pass, we are going to have the breakdown of law enforcement in some parts of this country that constitutes brutality and the thing that some of the people in this movement are worried about more than the right to vote or go to school is just to have the right to not have their heads knocked.

There are a few suggestions in addition to this business of being able to get into and be sustained in a Federal court.

Is there anything else that the Federal Government could do to legislate or to offer some scrap of protection when local law enforcement becomes law unto itself?

Mr. FAUNTLEROY. That is a very imposing question that you have made.

My thinking is that, of course, it is hard in some of these areas to control the activities of the officials of the State and while protection is most desirable to the person who is receiving this type of punishment, the best that could be done is that after it occurred that that official could be handled, that the case could then be removed, say, to the Federal court, but still in that case a person having a right to trial by jury, you are getting into the same area where the community might not be as sympathetic to this type of action as this committee, Congress or the people here.

It presents very serious problems and I am not sure whether I am prepared at all to answer your question now.

Mr. CORMAN. It was propounded to me by people who were in much worse shape than you and they didn't have any answers either, but I think it is worthy.

I am first of all not suggesting that it go in this bill, but I think it is worthy of Federal interest if there is a continuance of the breakdown of protection to people, their physical well-being. Something must be done. It is our obligation, but I am sure I don't know what we will do about it.

Mr. FAUNTLEROY. I agree with it. I surely will present it to the committee and maybe with the combined thinking, maybe we can offer some suggestions.

Mr. RODINO. We want to thank you, Mr. Fauntleroy, for your coming before the committee and making this contribution to this great issue.

Now the committee will adjourn its hearings until Wednesday, July 24 at 10 a.m., and we will hear Mr. Roy Wilkins of the NAACP and others.

The meeting is adjourned.

(Whereupon, at 3:45 o'clock p.m., the subcommittee was adjourned to reconvene at 10 a.m., Wednesday, July 24, 1963.)

CIVIL RIGHTS

WEDNESDAY, JULY 24, 1963

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 5 OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to adjournment, at 10 a.m., in room 346, Cannon Building, Hon. Emanuel Celler (chairman of the subcommittee) presiding.

Present: Representatives Celler (presiding), Meader, Rogers, Donohue, Toll, Kastenmeier.

Also present: Representative Corman.

Staff members present: William R. Foley, general counsel; William H. Copenhaver, associate counsel; and Benjamin L. Zelenko, counsel.

Mr. CHAIRMAN. The meeting will come to order.

We are to hear from a number of clerics. Dr. Eugene Carson Blake, vice chairman of Commission on Religion and Race, National Council of Churches; Rabbi Irwin Blank, chairman of the Commission on Social Action, Synagogue Council of America; Father John Cronin, associate director of Social Action Department, National Catholic Welfare Conference.

I welcome you gentlemen to this hearing. I am sure that you will give us greatest enlightment on the bills before us.

STATEMENT OF DR. EUGENE CARSON BLAKE, VICE CHAIRMAN, COMMISSION ON RELIGION AND RACE, NATIONAL COUNCIL OF CHURCHES

Dr. BLAKE. Mr. Chairman and members of the committee, my name is Eugene C. Blake.

As the chairman has just said, I am accompanied by Rabbi Irwin Blank and Father John Cronin.

I should like to say that it is a very great honor for me to have been asked to present this testimony for them and the organizations which they represent. It is an unprecedented and indeed historic event that I speak for the social action and racial action departments not only of the Council of Churches, but of the National Catholic Welfare Conference and the Synagogue Council of America.

Mr. CHAIRMAN. This is very significant. I think this is the first time that it has ever happened that we have had a group of information coming from the three great religions of the country, acting together on the bills.

Dr. BLAKE. It is because of the widespread unity of conviction of the moral aspects before you that we are here and able to be here together.

I would call to your attention that the following denominations and religious organizations join in presenting this statement and have representatives at this hearing.

The American Baptist Convention; Board of Social Concerns, and the Department of Christian Social Relations of the Woman's Division of Christian Service of the Methodist Church; Church of the Brethren; Disciples of Christ; Moravian Church in America; the Right Reverend Arthur C. Lichtenberger, presiding bishop, Protestant Episcopal Church; United Church of Christ; United Presbyterian Church, United States; the National Catholic Conference for Interracial Justice—I am inserting some that were not in my mimeographed list.

The National Council of Catholic Women; the National Catholic Social Education Conference; the Catholic Conference on Civil Liberties; Southern Field Service of the National Catholic Conference for Interracial Justice.

Another protestant organization, the National Student Christian Federation, in addition to the Central Conference of American Rabbis, the National Congress of Synagogue Youths, National Federation of Temple Sisterhoods, the Union of American Hebrew Congregations; National Federation of Temple Youth, National Women's League, United Synagogue of America; Rabbinical Assembly; Rabbinical Council of America; Union of American Hebrew Congregations; Union of Orthodox Jewish Congregations of America; United Synagogue of America; United Synagogue Youth; United Synagogue of America; and Women's Branch, Union of Orthodox Jewish Congregations of America.

Those are quite a spread of organizations, but I take your time and we have an appendix to our paper which adds some who have come since, the Christian Methodist Episcopal Church. Bishop Smith hoped to be here, but is not.

The Reformed Church of America has asked to be included also. We have a number of representatives of these churches that I have read who are present.

Mr. Chairman and members of the committee, racial discrimination and segregation still continue to deny persons basic human rights in this country 100 years after issuance of the Emancipation Proclamation. There is growing determination on the part of Negroes to achieve full rights and opportunities for all people regardless of color, race, or national origin now.

Negro people, as well as the religious groups submitting this testimony, are clearly aware of the disabilities upon Spanish-speaking Americans, Indian Americans, as well as upon people of Asian background.

The Supreme Court has indicated that civil rights are "present rights." The actual opportunity to exercise these long-overdue rights must be made available to all people now. There is growing dissatisfaction with gradualism and promises of future progress. The heroic courage and suffering involved in organized direct action in many parts of the country are indications of the firm resolve to achieve these goals now.

The Nation faces the challenge to make full justice and equal opportunity for all people regardless of color, race or national origin, a reality now. This is the basis of achieving full freedom for all people.

There can be no further delay in keeping faith with the responsibility to put the principles we profess and the obligations that we acknowledge into action. Racial discrimination and segregation continue to dim the hopes and to negate the promises set forth in the Declaration of Independence that "all men are created equal, that they are endowed by their Creator with certain unalienable rights."

Now is the time to realize these hopes. Now is the time to fulfill these promises. This requires the Nation to engage all of its resources, religious, educational, political, industrial, economic, and social to deal creatively and constructively with the problem before us.

The religious conscience of America condemns racism as blasphemy against God. It recognizes that the racial segregation and discrimination that flow from it are a denial of the worth which God has given to all persons. We hold that God is the Creator of all men.

"In the image of God created He them." Consequently, in every person there is an innate dignity which is the basis of human rights. These rights constitute a moral claim which must be honored both by all persons and by the State. Denial of such rights is immoral.

Mr. CHAIRMAN. You mentioned the various important organizations which are affiliated with those for whom you speak. I would like to ask you whether a number of these organizations, religious organizations and faiths, discriminate between whites and blacks in their churches in the South.

I would like to ask you specifically if there is any evidence that the American Baptist religion discriminates or whether the Methodist Church discriminates in any section of the country, or the Episcopal or Presbyterian Church discriminates—any of the churches in the South?

Dr. BLAKE. I would say that all of us are Americans, and all of us share in the discrimination. The pattern of our life, we believe, is wrong. I think the churches have been pretty good over a 30-year period in saying all the right things. All of these churches have said, "We stand for a nonsegregated church and a nonsegregated society," but it is something like 15 percent of the churches which are, in fact, desegregated on a Sunday morning. This is not a large enough group.

I might say—I was going to say it in a few moments, but I will say it in response to your intervention, sir—that we come here not lecturing to the Congress. We come, rather, confessing that none of us has done the job in this moral issue that ought to be done.

Mr. CHAIRMAN. What is being done about it?

Dr. BLAKE. Well, we have in this past 6 months—I think two things will come out—I believe that we have tried to begin to move from merely passing resolutions to action. This means essentially the identification of the white religious leadership and the ordinary white professing believers with the Negro christianship and believers who have been carrying the brunt of trying to get these equal rights.

We have attempted to do this. We are also, as the first item of the agenda in each of the churches, attempting to change wherever we find segregated patterns in our own life.

I am familiar with the actions of a number of the bodies, of which the most recent was the united action of Christ Church in Denver, where they supported the action of their board in saying after a certain date there would be no money available for subsidization of segregated United Church of Christ churches.

Mr. CHAIRMAN. Have you met with appreciable success in this campaign to obliterate discrimination in churches?

Dr. BLAKE. We have, of course—I shouldn't indicate that we haven't done anything for a long time. All of our theological seminaries, so far as I know, have been open for many years. Most of the colleges that have any relationship.

We have the problem, as the Government does, of making effective the laws when a mass of people are not ready to change their thinking.

This is the kind of legal difficulty that a church basically faces.

My own church, for example, has relatively few churches in the Deep South but we do have some. We don't do much better than the Presbyterian Church of the United States, which is the largest Presbyterian Church in the South, but we are attempting to use our law to support those who stand the way our church as a whole has stood and to try to get leadership, at least in the mediation and the opening up of conversations between the Negro community and the white community.

This I feel personally is the most important thing that churchmen can do where the pattern has to be radically changed. We would emphasize, however, that this is not a sectional problem. It is a national problem and in each of the great cities we have certain steps to take and we are trying to find the best ways to do it.

The CHAIRMAN. Rabbi, what is the situation in the Hebrew congregations?

Rabbi BLANK. Well, actually, the number of Negro Jews is very small indeed and I know of no instance at all where any Negro Jew applying to a congregation for membership has been refused. And so this, for our congregations, has not been the problem with which we have been primarily concerned.

Father CRONIN. I think our pattern at the moment is almost one of total integration. We may have a few scattered places in Alabama, northern Louisiana and Mississippi that are segregated, but it is pretty totally integrated and has been now for 8 or 9 or 10 years.

The CHAIRMAN. And in your schools you have integration too, don't you?

Father CRONIN. Almost totally, yes.

The CHAIRMAN. Of course, I see the parallel between the churches and the international unions. Those on top will make the statements deploring segregation, but it is on the local level where you have the difficulties, like in the local union level.

Dr. BLAKE. This is our problem. I was talking to a labor leader and we were agreeing that our problems were very much alike in terms of making effective. What we are trying to do, you see, is really change the thinking of a great many people. I believe the essential part of it is that the white Christian in this country tends to think about this only once in a while. He has effectively walled himself off from realizing quite what it means to be a member of a minority race.

We have to move him into the point where he feels that this is his task and his freedom is at stake if we do not change and it is a fundamental change that we are trying to make.

Mr. CORMAN. I would like to speak briefly. I spent 9 days recently in Alabama and Mississippi. I found that the leaders, both colored and white, who were attempting to dismantle this segregation have been motivated in their churches. It is true there is more segregation

in the churches North and South than any of us want, but I think the churches can take pride in the fact, among the leaders, particularly the white leaders in the Deep South where the problem is the most difficult to face up to; they have gotten it straight and their motivation is from the pulpit and I think that the three denominations can take great pride in it, I believe.

Mr. CELLER. You may go on with your statement.

Dr. BLAKE. Thank you.

I call the attention of this committee to the National Conference on Religion and Race held in January of this year. That conference held in Chicago has no precedent in American history. Nearly 700 delegates from 67 major religious bodies, Protestant, Roman Catholic, Orthodox, and Jewish, united in endorsement of "An Appeal to the Conscience of the American People," which is also appended to this statement.

The CHAIRMAN. That statement will be filed for the record.

(Various statements by religious bodies appended to statement of Dr. Blake are as follows:)

THE CHURCHES AND SEGREGATION[1]

(An official statement and resolution adopted by the general board of the National Council of Churches of Christ in the U.S.A. in Chicago, Ill., June 11, 1952)

INTRODUCTION

As Christian disciples work together, their redemptive power in society is heightened. That power is released most transformingly when, in motive and method, it flows directly from the mandates of our Lord. In this statement, the National Council of the Churches of Christ in the U.S.A. sets forth some of the clear implications of Christ's command, "Thou shalt love thy neighbor as thyself."

I. THE PATTERN OF SEGREGATION

Segregation is the externally imposed separation or division of individual persons or groups, based on race, color, or national origin. It is practiced, with some difference of emphasis, in all sections of the country. In many places, segregation is established and supported by law. In others, it is almost as rigidly enforced by social custom and economic practices.

Segregation is an expression of the superiority-inferiority attitudes concerning race, color, or national origin held tenaciously by vast numbers of Americans. Segregation is not only the expression of an attitude; it is also the means by which that attitude is transmitted from one generation to another. Children in our society, observing minorities as we segregate them, cannot easily escape the inference that such minorities are inferior.

Moreover, segregation as practiced in the United States probably has more effect on the attitudes of the young than the formal teachings of the schools about democracy or of the churches about Christian brotherhood.

Segregation subjects sections of our population to constant humiliation and forces upon them moral and psychological handicaps in every relation of life. Still more devastating is the moral and spiritual effect upon the majority.

Segregation has meant inferior services to the minority segregated. The theory of separate but equal service does not work out in practice; segregation is always discriminatory. Discrimination sets apart those discriminated against so that in effect, they are segregated spiritually and psychologically, if not always physically.

Segregation as applied to our economic system denies to millions of our people free access to the means of making a living and sets for them insurmountable obstacles in their efforts to achieve freedom from want.

[1] "The Churches and Segregation" is a revision of an official statement titled "The Church and Race Relations" approved by the Federal Council of the Churches of Christ in America at a special meeting in Columbus, Ohio, Mar. 5–7, 1946.

At all times and particularly in great crises, segregation makes it impossible to utilize fully large sections of our manpower. It seriously limits the contributions of racial and cultural minority groups to the ongoing life of our people in every aspect of our national existence.

Segregation handicaps our Nation in international relationships. At a time when the United States has come to play a leading role among the nations of the free world, our racial practices which are publicized abroad are made the basis of charges of hypocrisy against the Nation. These charges reverberate throughout the world in a period when the largely submerged nonwhite groups are becoming self-conscious, striving for recognition of their dignity, for autonomy and equal opportunity. The world community which we are seeking to build must rest on genuine respect for the worth of persons who are created equally the sons of God.

Large numbers of our citizens are being disfranchised and discriminated against as a result of the fears and mutual suspicions engendered by the pattern of segregation. These cause unnecessary confusion in dealing with important public issues, create unreal political divisions and give rise to a type of political appeal that threatens our democracy and democratic institutions.

Segregation increases and accentuates racial tension. It is worth noting that race riots in this country have seldom occurred in neighborhoods with a racially mixed population. Our worst riots have broken out along the edges of and in rigidly segregated areas.

Above all, the principle of segregation is a denial of the Christian faith and ethic which stems from the basic premise taught by our Lord that all men are created the children of God. The pattern of segregation is diametrically opposed to what Christians believe about the worth of persons and if we are to be true to the Christian faith we must take our stand against it.

II. THE CHURCHES AND THE PATTERN OF SEGREGATION

The pattern of segregation in the United States is given moral sanction by the fact that churches and church institutions, as a result of insensitiveness and social pressure, have so largely accepted this pattern in their own life and practice.

A. Segregation in church practice

While the pattern of segregation is too common in our public education at all levels, it is even more general in the churches in worship and fellowship. There are large areas of the public education field where racial separation is not practiced and only a relatively few churches which are racially inclusive in practice.[2] Furthermore, the pattern of segregation in public education appears to be changing more rapidly than in the churches.

While there are some exceptions among the communions and in certain interdenominational agencies, notably councils of churches, nevertheless religious

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[2] Facts about segregation in the churches: "There are approximately 6,500,000 Protestant (church members among) Negroes. About 6,000,000 are in separate Negro denominations. Therefore, from the local church through the regional organization to the national assemblies over 90 percent of the Negroes are without association in work and worship with Christians of other races except in interdenominational organizations which involve a few of their leaders. The remaining 500,000 Negro Protestants, about 10 percent, are in denominations predominantly white. Of these about 95 percent, judging by the surveys of six denominations, are in segregated congregations and are in association with their white denominational brothers only in national assemblies, and, in some denominations, in regional, State, or more local jurisdictional meetings. The remaining 5 percent of the 10 percent in white denominations are members of local churches which are predominantly white. Thus, only one-half of 1 percent of the Negro Protestant Christians of the United States worship regularly in churches with fellow Christians of another race. This typical pattern occurs, furthermore, for the most part in communities where there are only a few Negro families and where, therefore, there are only on an average two or three Negro individuals in the white churches." ("Racial Policies and Practices of Major Protestant Denominations," by Frank Loescher—research study—1946. Available in manuscript form at the office of the Department of Racial and Cultural Relations, the National Council of Churches, 297 Fourth Avenue, New York 10, N.Y.)

The statistical table found on p. 68, "The Protestant Church and the Negro," by Frank Loescher, published in 1948, indicates that 860 churches out of 17,900 to whom questionnaires were sent, reported Negro participation in predominantly white churches. This indicates that 4.8 percent of the churches in six communions reported Negro participation.

In a cooperative study of 13,597 churches, 1,331 predominantly white churches in three communions reported membership or attendance by persons of one or more racial minority groups. This indicates that 9.8 percent of the total number of churches in three communions are racially inclusive in membership or attendance. (1952.) (See article titled, "Patterns of Racial Inclusion Among the Churches of Three Protestant Denominations," by Alfred S. Kramer, in Phylon, the Atlantic University Review of Race and Culture, third quarter, 1955.)

bodies are generally divided on a racial basis, in national organizations, in regional bodies, and in local congregations. The acceptance by the churches of this pattern of segregation is so prevalent that fellowship between white and nonwhite Christians in the United States is frequently awkward and unsatisfactory.

It should be noted, however, that the communions have expressed an increasing concern for the elimination of segregation from the churches and society. Since the statement titled "The Church and Race Relations" was adopted by the Federal Council of Churches in 1946, the national bodies of 20 communions have issued statements that sanction the practice of an inclusive ministry to all people without regard to race, color, or national origin. Nine of these national church bodies have renounced the pattern of segregation both in their own fellowship and in society; two have placed emphasis on the elimination of discrimination; and nine have indicated their concern for justice and opportunity for all people. In addition to defining denominational policy, these statements have served as a basis for launching denominational programs for the improvement of racial and cultural relations.

White members of racial groups other than the one to which a majority of the congregation belongs are not absolutely barred by a rule from attendance, in many local churches the self-consciousness which their presence arouses bars them from freedom to worship in fellowship, and even from the initial contact.

At the level of the local church there are some encouraging examples of pastors, church officers, and congregations who have come to grips with the dilemma of the segregated church. There are congregations and especially Sunday church schools and vacation church schools which are racially inclusive, and there are other church groups in the process of becoming so. These efforts need to be more widely known and the methods employed shared more fully with others.

A church located in a community in which the population is changing has a responsibility to serve the people of that community without regard to race, color, or national origin. National and regional denominational bdies, as well as councils of churches, should encourage local congregations to consider this responsibility and cooperate with them in achieving this type of service.

However, the local church faces the difficult, although not insurmountable, obstacle of segregated housing in both the city and the suburbs. When a church is located in a community where segregated housing limits the population to one racial or cultural group, the people whom the church serves will tend to be limited to that racial or cultural group. Churches and councils of churches should, therefore, take definite steps to help create unsegregated residential communities where normal day-to-day relationships will develop among people of all races, colors, creeds, and national origins.

B. Racial practices in church hospitals similar to those in nonchurch hospitals

The racial practices of hospitals controlled by or affiliated with communions are little different from such practices in other hospitals. Negro nurses, doctors, and patients are excluded from many church hospitals just as they are from similar institutions secularly controlled. To some degree this exclusion applies to other minority racial and cultural groups. The correction of this situation is complicated by the fact that in many instances these church hospitals have lost their close organic connection with the communions and have come more and more to accept the standards of the secular community. Some are private institutions no longer connected with the church even though their religious or denominational names still imply such a connection. However, a number still maintain a more or less definite relationship with the communions.

C. Segregation in church-related educational institutions

Church-related educational institutions established for constituencies predominantly white are somewhat less segregated than hospitals. There are church-related schools at all educational levels which have always maintained the practice of admitting students without regard to race, color, creed, or national origin and there are others which have adopted this practice. Nevertheless, there are still large numbers of our church schools which would no more depart from the practice of exclusion than would secular institutions under similar circumstances. Some of these schools resort to devices to avoid accepting qualified Negro, Jewish, or oriental students. Even after admission, some schools fail to fulfill the obligation of completely integrating members of minority racial and cultural groups into the life of the institution.

D. Theological institutions frequently practice exclusion

The changes which have been made recently by a number of theological seminaries in their policies and practices so as to admit students without regard to race, color, or national origin are commendable. However, there are still others which practice exclusion on the basis of race, color, or national origin. In view of this, it is not strange that large numbers of our white ministers are uncertain and lack concern about race relations. On the other hand, ministers who are members of minority groups frequently doubt the sincerity of their brethren of the majority group. Fellowship among ministers in this country is frequently strained and unsatisfactory. It will continue to be so as long as we practice segregation to any extent in ministerial training. Association among persons of different racial groups, in their training, should be a vital part of the education of ministers.

E. The churches and employment practices

The employment of ministers in a segregated pattern continues the strained and unsatisfactory fellowship which often exists in the theological institutions. With few exceptions, ministers who are members of racial and cultural minority groups must serve congregations which are composed of members of their own groups. This system of employment tends to perpetuate the segregated local church. Ministers should be called or appointed to churches primarily on the basis of character, ability, and qualifications set up by the communion or local church, rather than on the basis of race, color, or national origin.

Moreover, it is not customary for State, area or national denominational and interdenominational boards and agencies to employ members of minority racial and cultural groups as professional or executive staff for service at home and abroad. The exception to this is occasional employment in work involving either their own particular group or race relations. It is noted with satisfaction that the communions and the interdenominational agencies now employ persons rather generally in secretarial and clerical positions on the basis of character and ability, without regard to race, color, or national origin. What has been accomplished in this regard should be adopted as a pattern in the employment of professional or executive staff. The Christian witness of the churches which calls for fair employment practices in the community, State and Nation is immeasurably strengthened by a demonstration of fair employment practices in the life and work of the churches.

F. The responsibility of the churches to eliminate segregation

Christians in the United States, more than ever before, honestly desire that quality of Christian fellowship which brings to the total church the gifts of all for the spiritual enrichment of each. Efforts directed toward such spiritual enrichment are frequently confused and ineffectual because of the pattern of segregation which defeats good will. Many persons find themselves frustrated when they attempt to live out their Christian impulses within a racially segregated society.

The church, when true to its higher destiny, has always understood that its gospel of good news has a twofold function; namely:

To create new men with new motives;

To create a new society wherein such men will find a favorable environment within which to live their Christian convictions.

The churches in the United States, while earnestly striving to nurture and develop individuals of good will, have not dealt adequately with the fundamental pattern of segregation in our society which thwarts their efforts. This must be corrected. The churches should continue to emphasize the first function. In addition, they must launch a more comprehensive program of action in fulfillment of the second function. This is imperative now.

III. THE NATIONAL COUNCIL AND SEGREGATION

The communions and the interdenominational agencies have faced this question and taken action on it. A number of the interdenominational agencies which merged to form the National Council of Churches has renounced the pattern of segregation based on race, color, or national origin as unnecessary and undesirable and a violation of basic Christian principles. A number of the communions have adopted the 1946 statement of the Federal Council of Churches and others have adopted statements of their own on this question.

The National Council of the Churches of Christ in the United States of America, in its organizational structure and operation, renounces and earnestly

recommends to its member churches that they renounce the pattern of segregation based on race, color, or national origin as unnecessary and undesirable and a violation of the gospel of love and human brotherhood. While recognizing that historical and social factors make it more difficult for some churches than for others to realize the Christian ideal of nonsegregation, the council urges all of its constituent members to work steadily and progressively toward a nonsegregated church as the goal which is set forth in the faith and practice of the early Christian community and inherent in the New Testament idea of the Church of Christ. As proof of our sincerity in this renunciation, the National Council of Churches will work for a nonsegregated church and a nonsegregated community.

IV. THE CHURCHES SHOULD ASCERTAIN THE FACTS ABOUT THEIR OWN PRACTICES

We urge that in studying their own parctices, the churches use the following statement of principles as a standard of measurement:

A. Membership

All persons who accept Christ as Lord and Master and the doctrinal standards of the communion ought to be invited and welcomed into membership of our communion's parish churches.

B. Fellowship

Christian fellowship means that all who accept Christ as Lord and Master are united by bonds of brotherhood which transcend race, color, or national origin.

C. Worship

Worship opportunities inclusive of all groups ought to be available both regularly and frequently, so as to make such worship a normal expression of our common worship of God without self-consciousness or embarrassment.

D. Outreach of the minister

The outreach of the minister should be inclusive. This means that his services ought to be available to persons of all groups in the community without discrimination.

E. Educational and welfare services

Church-related schools, colleges, hospitals, homes for children and the aged, and other institutions have a responsibility to serve persons who are members of their communion without regard to race, color, or national origin.

Church camps, conferences, and projects conducted for the purpose of training persons for leadership or participation in the program and activities of the churches have a responsibility to serve the churches and their members without regard to race, color, or national origin.

F. Employment

Christian churches demonstrate belief in the essential worth of persons because they are the children of God when they provide full opportunities for the employment at all levels and on the same basis of character and ability, of all persons found in the membership of their communion, including those from racial and cultural minorities.

V. THE CHURCHES SHOULD ELIMINATE SEGREGATION FROM THEIR OWN PRACTICES

If the churches would remove the validity of the charge implied by the world when it says "Physician, heal thyself," they should act promptly and decisively to eliminate segregation from their own practices, taking steps to formulate plans of action based on answers to the following essential questions:

A. Membership

How many churches are there in our communion in which people are not welcome to membership because of race, color, or national origin? What actions are necessary to correct this situation?

B. Fellowship

Does racial segregation or exclusion create a chasm which places profound limitations upon Christian fellowship within the life of a geographical community? If so, what should be done to remove these limitations?

C. Worship

What is the extent of racial segregation or exclusion in the services of worship provided by our communion? What steps are necessary to correct this situation?

D. Outreach of the minister

Is the outreach of the minister inclusive of all people? Are his services available to persons of all groups in the community?

E. Educational and welfare services

What is the extent of racial segregation or exclusion in the practices of schools, colleges, seminaries, hospitals, homes, camps, young people's conferences, and similar institutions affiliated with our communion? What are the steps that should now be authorized and carried out by the responsible boards of the communion to rectify these practices?

F. Employment

Do the local, State, and area organizations, national boards and general ecclesiastical offices of our communion provide opportunities for employment on the basis of character and ability without regard to race, color, or national origin? If not, what administrative procedures should be proposed within our communion to bring employment practices within its entire life into conformity with the ideals of a "nonsegregated church and a nonsegregated community"?

VI. THE CHURCHES SHOULD HELP TO RELIEVE COMMUNITY TENSIONS

Churches, having chosen to renounce the pattern of segregation as a violation of the gospel of love which is committed unto them, and having outlined steps by which that pattern shall be eliminated from their own practices, should at the same time direct their attention to the community, at the National, State, and local levels.

In order that the community may sense the transforming power of organized religion in relieving community tensions arising from the pattern of segregation, the churches should assume responsibility for dealing with such questions as discrimination in employment, housing, education, health and leisure-time activities. We should cooperate with other organizations in the formulation and execution of a communitywide plan of action to eliminate patterns of segregation and to change the policies and practices that create tensions.

OUR HOPE AND STRENGTH

We thank God, especially in a time when so many men are estranged from Him and from one another, that He has created us "of one blood" and through Christ has brought Christians into one family. It was by God's power that Christ's disciples lived and worked in love. This faith that Christians are "one body in Christ," commits us inevitably to the task of transcending barriers of race, color and nationality in our churches and in our communities until we may, by His grace, one day demonstrate our faith that "we are members one of another."

(Published for the Department of Racial and Cultural Relations, National Council of the Churches of Christ in the U.S.A., by the Office of Publication and Distribution, 120 East 23d Street, New York, N.Y.)

STATEMENT OF THE SYNAGOGUE COUNCIL OF AMERICA ON RACE RELATIONS

"Have we not all one Father? Hath not one God created us?" Malachi 2: 10.

The ethical preachments of the prophets of Israel are universal, applicable to every human being regardless of race, religion, or creed.

Centuries ago our rabbinic sages, in commenting on the verse from Genesis describing the divine creation of man from the dust of the earth, observed that God took earth from all corners of the world with which to fashion man so that no man could claim superiority because of the color of his skin.

It is our desire to integrate human beings into a whole society, free from destructive divisiveness and delusions of superiority. Racism has no place in Jewish belief or practice.

Our all pervasive concern is the advancement of our horizon of American democratic living by providing the maximum conditions for growth, personal fulfillment and ability to contribute to the strengthening of community life to every citizen of our country. That which stultifies growth of the individual, or of our country, must be eliminated. Where there is racial or religious discrimination there is also personal suffering, a breakdown of communications, community and national stagnation and decline, economic disability and reduction of our effectiveness in the realm of international affairs.

We cannot hold out the hope of a brighter future to the oppressed people of the world, nor can we speak of the blessings of democracy to the developing nations of the world, if we are not prepared to eliminate racism and religious bigotry from our own shores.

It is our fervent hope that religious leaders of all races, will affirm and support those efforts now being made within our country to eliminate racial and religious bigotry, as well as condemn those individuals and groups who seek to perpetuate these evils.

[From the National Conference on Religion and Race, Jan. 17, 1963, Chicago, Ill.]

AN APPEAL TO THE CONSCIENCE OF THE AMERICAN PEOPLE

We have met as members of the great Jewish and Christian faiths held by the majority of the American people, to counsel together concerning the tragic fact of racial prejudice, discrimination, and segregation in our society. Coming as we do out of various religious backgrounds, each of us has more to say than can be said here. But this statement is what we as religious people are moved to say together.

I

Racism is our most serious domestic evil. We must eradicate it with all diligence and speed. For this purpose we appeal to the consciences of the American people.

This evil has deep roots; it will not be easily eradicated. While the Declaration of Independence did declare "that all men are created equal" and "are endowed by their Creator with certain unalienable rights," slavery was permitted for almost a century. Even after the Emancipation Proclamation, compulsory racial segregation and its degrading badge of racial inequality received judicial sanction until our own time.

We rejoice in such recent evidences of greater wisdom and courage in our national life as the Supreme Court decisions against segregation and the heroic, nonviolent protests of thousands of Americans. However, we mourn the fact that patterns of segregation remain entrenched everywhere—north and south, east and west. The spirit and the letter of our laws are mocked and violated.

Our primary concern is for the laws of God. We Americans of all religious faiths have been slow to recognize that racial discrimination and segregation are an insult to God, the giver of human dignity and human rights. Even worse, we all have participated in perpetuating racial discrimination and segregation in civil, political, industrial, social, and private life. And worse still, in our houses of worship, our religious schools, hospitals, welfare institutions, and fraternal organizations we have often failed our own religious commitments. With few exceptions we have evaded the mandates and rejected the promises of the faiths we represent.

We repent our failures and ask the forgiveness of God. We ask also the forgiveness of our brothers, whose rights we have ignored and whose dignity we have offended. We call for a renewed religious conscience on his basically moral evil.

II

Our appeal to the American people is this:

Seek a reign of justice in which voting rights and equal protection of the law will everywhere be enjoyed; public facilities and private ones serving a public purpose will be accessible to all; equal education and cultural opportunities, hiring and promotion; medical and hospital care, open occupancy in housing will be available to all.

Seek a reign of love in which the wounds of past injustices will not be used as excuses for new ones; racial barriers will be eliminated; the stranger will be

sought and welcomed; any man will be received as brother—his rights, your rights; his pain, your pain; his prison, your prison.

Seek a reign of courage in which the people of God will make their faith their binding commitment; in which men willingly suffer for justice and love; in which churches and synagogues lead, not follow.

Seek a reign of prayer in which God is praised and worshipped as the Lord of the universe, before whom all racial idols fall, who makes us one family and to whom we are all responsible.

In making this appeal we affirm our common religious commitment to the essential dignity and equality of all men under God. We dedicate ourselves to work together to make this committment a vital factor in our total life.

We call upon all the American people to work, to pray, and to act courageously in the cause of human equality and dignity while there is still time, to eliminate racism permanently and decisively, to seize the historic opportunity the Lord has given us for healing an ancient rupture in the human family, to do this for the glory of God.

Discrimination and the Christian Conscience

(The Catholic Bishops of America, November 14, 1958)

Fifteen years ago, when this Nation was devoting its energies to a World War designed to maintain human freedom, the Catholic bishops of the United States issued a prayerful warning to their fellow citizens. We called for the extension of full freedom within the confines of our beloved country. Specifically, we noted the problems faced by Negroes in obtaining the rights that are theirs as Americans.

The statement of 1943 said in part:

"In the providence of God there are among us millions of fellow citizens of the Negro race. We owe to these fellow citizens, who have contributed so largely to the development of our country, and for whose welfare history imposes on us a special obligation of justice, to see that they have in fact the rights which are given them in our Constitution. This means not only political equality, but also fair economic and educational opportunities, a just share in public welfare projects, good housing without exploitation, and a full chance for the social advancement of their race."

In the intervening years, considerable progress was made in achieving these goals. The Negro race, brought to this country in slavery, continued its quiet but determined march toward the goal of equal rights and equal opportunity. During and after the Second World War, great and even spectacular advances were made in the obtaining of voting rights, good education, better-paying jobs, and adequate housing. Through the efforts of men of good will, of every race and creed and from all parts of the Nation, the barriers of prejudice and discrimination were slowly but inevitably eroded.

Because this method of quiet conciliation produced such excellent results, we have preferred the path of action to that of exhortation. Unfortunately, however, it appears that in recent years the issues have become confused and the march toward justice and equality has been slowed, if not halted, in some areas. The transcendent moral issues involved have become obscured, and possibly forgotten.

Our Nation now stands divided by the problem of compulsory segregation of the races and the opposing demand for racial justice. No region of our land is immune from strife and division resulting from this problem. In one area, the key issue may concern the schools. In another it may be conflicts over housing. Job discrimination may be the focal point in still other sectors. But all these issues here one main point in common. They reflect the determination of our Negro people, and we hope the overwhelming majority of our white citizens, to see that our colored citizens obtain their full rights as given to them by God, the Creator of all, and guaranteed by the democratic traditions of our Nation.

There are many facets to the problems raised by the quest for racial justice. There are issues of law, of history, of economics, and of sociology. There are questions of procedure and technique. There are conflicts in cultures. Volumes have been written on each of these phases. Their importance we do not deny. But the time has come, in our considered and prayerful judgment, to cut through the maze of secondary or less essential issues and to come to the heart of the problem.

The heart of the race question is moral and religious. It concerns the rights of man and our attitude toward our fellow man. If our attitude is governed by the great Christian law of love of neighbor and respect for his rights, then we can work out harmoniously the techniques for making legal, educational, economic, and social adjustments. But if our hearts are poisoned by hatred, or even indifference toward the welfare and rights of our fellow men, then our Nation faces a grave internal crisis.

No one who bears the name of "Christian" can deny the universal love of God for all mankind. When our Lord and Saviour, Jesus Christ, "took on the form of man" (Philippians 2: 7) and walked among men He taught as the first two laws of life the love of God and the love of fellow man. "By this shall all men know that you are my disciples, that you have love, one for the other." (John 13: 35.) He offered His life in sacrifice for all mankind. His parting mandate to His followers was to "teach all nations." (Matthew 28: 19.)

Our Christian faith is of its nature universal. It knows not the distinctions of race, color, or nationhood. The missionaries of the church have spread throughout the world, visiting with equal impartiality nations such as China and India, whose ancient cultures antedate the coming of the Saviour, and the primitive tribes of the Americas. The love of Christ, and the love of the Christian, knows no bounds. In the words of Pope Pius XII, addressed to American Negro publishers 12 years ago, "All men are brothered in Jesus Christ; for He, through God, became also man, became a member of the human family, a brother of all." (May 27, 1946.)

Even those who do not accept our Christian tradition should at least acknowledge that God has implanted in the souls of all men some knowledge of the natural moral law and a respect for its teachings. Reason alone taught philosophers through the ages respect for the sacred dignity of each human being and the fundamental rights of man. Every man has an equal right to life, to justice before the law, to marry and rear a family under human conditions, and to an equitable opportunity to use the goods of this earth for his needs and those of his family.

From these solemn truths, there follow certain conclusions vital for a proper approach to the problems that trouble us today. First, we must repeat the principle—embodied in our Declaration of Independence—that all men are equal in the sight of God. By equal we mean that they are created by God and redeemed by His Divine Son, that they are bound by His law, and that God desires them as His friends in the eternity of heaven. This fact confers upon all men human dignity and human rights.

Men are unequal in talent and achievement. They differ in culture and personal characteristics.

Some are saintly; some seem to be evil; most are men of good will, though beset with human frailty. On the basis of personal differences we may distinguish among our fellow men, remembering always the admonition: "Let him who is without sin * * * cast the first stone * * *" (John 8:7). But discrimination based on the accidental fact of race or color, and as such injurious to human rights regardless of personal qualities or achievements, cannot be reconciled with the truth that God has created all men with equal rights and equal dignity.

Secondly, we are bound to love our fellow man. The Christian love we bespeak is not a matter of emotional likes or dislikes. It is a firm purpose to do good to all men, to the extent that ability and opportunity permit.

Among all races and national groups, class distinctions are inevitably made on the basis of likemindedness of a community of interests. Such distinctions are normal and constitute a universal social phenomenon. They are accidental, however, and are subject to change as conditions change. It is unreasonable and injurious to the rights of others that a factor such as race, by and of itself, should be made a cause of discrimination and a basis for unequal treatment in our mutual relations.

The question then arises: Can enforced segregation be reconciled with the Christian view of our fellow man? In our judgment it cannot, and this for two fundamental reasons.

1. Legal segregation, or any form of compulsory segregation, in itself and by its very nature imposes a stigma of inferiority upon the segregated people. Even if the now obsolete court doctrine of "separate but equal" had been carried out to the fullest extent, so that all public and semi-public facilities were in fact equal, there is nonetheless the judgment that an entire race, by the sole fact of race and regardless of individual qualities, is not fit to associate

on equal terms with members of another race. We cannot reconcile such a judgment with the Christian view of man's nature and rights. Here again it is appropriate to cite the language of Pope Pius XII: "God did not create a human family made up of segregated, dissociated, mutually independent members. No; He would have them all united by the bond of total love of Him and consequent self-dedication to assisting each other to maintain that bond intact." (September 7, 1956.)

2. It is a matter of historical fact that segregation in our country has led to oppressive conditions and the denial of basic human rights for the Negro. This is evident in the fundamental fields of education, job opportunity, and housing. Flowing from these areas of neglect and discrimination are problems of health and the sordid train of evils so often associated with the consequent slum conditions. Surely Pope Pius XII must have had these conditions in mind when he said just 2 months ago: "It is only too well known, alas, to what excesses pride of race and racial hate can lead. The Church has always been energetically opposed to attempts to genocide or practices arising from what is called the 'color bar'." (September 5, 1958.)

One of the tragedies of racial oppression is that the evils we have cited are being used as excuses to continue the very conditions that so strongly fostered such evils. Today we are told that Negroes, Indians, and also some Spanish-speaking Americans differ too much in culture and achievements to be assimilated in our schools, factories, and neighborhoods. Some decades back the same charge was made against the immigrant, Irish, Jewish, Italian, Polish, Hungarian, German, Russian. In both instances differences were used by some as a basis for discrimination and even for bigoted ill treatment. The immigrant, fortunately, has achieved his rightful status in the American community. Economic opportunity was wide open and educational equality was not denied to him.

Negro citizens seek these same opportunities. They wish an education that does not carry with it any stigma of inferiority. They wish economic advancement based on merit and skill. They wish their civil rights as American citizens. They wish acceptance based upon proved ability and achievement. No one who truly loves God's children will deny them this opportunity.

To work for this principle amid passions and misunderstandings will not be easy. It will take courage. But quiet and persevering courage has always been the mark of a true follower of Christ.

We urge that concrete plans in this field be based on prudence. Prudence may be called a virtue that inclines us to view problems in their proper perspective. It aids us to use the proper means to secure our aim.

The problems we inherit today are rooted in decades, even centuries, of custom and cultural patterns. Changes in deep-rooted attitudes are not made overnight. When we are confronted with complex and far-reaching evils, it is not a sign of weakness or timidity to distinguish among remedies and reforms. Some changes are more necessary than others. Some are relatively easy to achieve. Others seem impossible at this time. What may succeed in one area may fail in another.

It is a sign of wisdom, rather than weakness, to study carefully the problems we face, to prepare for advances, and to bypass the nonessential if it interferes with essential progress. We may well deplore a gradualism that is merely a cloak for inaction. But we equally deplore rash impetuosity that would sacrifice the achievements of decades in ill-timed and ill-considered ventures. In concrete matters we distinguish between prudence and inaction by asking the question: Are we sincerely and earnestly acting to solve these problems? We distinguish between prudence and rashness by seeking the prayerful and considered judgment of experienced counselors who have achieved success in meeting similar problems.

For this reason we hope and earnestly pray that responsible and sober-minded Americans of all religious faiths, in all areas of our land, will seize the mantle of leadership from the agitator and the racist. It is vital that we act now and act decisively. All must act quietly, courageously, and prayerfully before it is too late.

For the welfare of our Nation we call upon all to root out from their hearts bitterness and hatred. The tasks we face are indeed difficult. But hearts inspired by Christian love will surmount these difficulties.

Clearly, then, these problems are vital and urgent. May God give this Nation the grace to meet the challenge it faces. For the sake of generations of future Americans, and indeed of all humanity, we cannot fail.

How You Can Help Secure Justice Between All Men

Respect the rights of each other man in your everyday life in church, at home, in your neighborhood, and at work. Christ's great commandment was that we truly love our fellow man, whoever he may be.

Join your local Catholic human relations organization—many parts of the United States have Catholic Interracial Councils or Catholic Councils on Human Relations. Such organizations are found from New Orleans to Chicago; from Boston to San Diego.

Support other organizations working to secure lasting and wholesome integration.

The work of the National Catholic Conference for Interracial Justice, in its many services and special projects, reaches throughout the United States and overseas.

(For information, please write the National Catholic Conference for Interracial Justice, 21 West Superior Street, Chicago, Ill.)

Resolution—The Right to Vote

(Approved by the general board of the National Council of Churches, Feb. 23, 1961)

THE RIGHT TO VOTE

It is a clear teaching of the Christian faith that human rights, far from being granted by human authorities are inherent in man as fashioned in the image of his Creator and should be thus honored by society. The Christian faith also affirms the belief that men have a corresponding responsibility to exercise these rights. The responsible society affords all men the opportunity to do so.

As Christians in the United States we believe that local, State, and National Governments deriving "their just powers from the consent of the governed," are responsible to God and to the people to maintain the freedom of all men under their respective jurisdictions to exercise these rights with due regard for the rights of others and for public order.

The right to vote is guaranteed by the basic law of the land. Whatever qualifications are made by State laws, the 15th amendment to the Constitution of the United States specifically provides that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or any State on account of race, color, or previous condition of servitude."

Yet it is a fact that thousands of citizens are denied the opportunity to exercise the right to vote because of race or color. In many communities Negroes are denied the opportunity to register or, having been registered, have had their names removed from the registration rolls, or do not vote because they fear bodily harm, the loss of jobs, or other economic pressures. It is noteworthy that courts have declared unconstitutional State laws designed to deny the opportunity to register and vote on the basis of race or color.

The denial of the right to vote contradicts the professed ideals and undermines the democratic heritage upon which this Nation is founded. It is a violation of justice that prevents the exercise of responsible citizenship which is necessary to the creation of the good society: Therefore be it

Resolved, That the National Council of Churches:

1. Commits itself to work to assure the opportunity for all citizens regardless of race or color, to exercise their right to vote:

(a) by moral suasion;

(b) by social education and action;

(c) by supporting public officials and Government agencies in the enforcement of existing laws guaranteeing the opportunity to register and vote; and

(d) by supporting in principle through appropriate means additional legislation which may be necessary to guarantee to all citizens regardless of race or color, full opportunity to register and vote.

2. Calls upon the member denominations, their churches, councils of churches, and individual Christians to work to assure to all citizens, regardless of race or color, the opportunity to register and vote.

3. Urges church groups and individual Christians:

(a) to discover the facts about registration and voting in their communities;

(b) to acquaint themselves with State laws and practices effecting registration and voting and with the provisions of the Federal Civil Rights Acts of 1957 and 1960;

(c) to develop programs such as citizenship conferences and voter's clinics to encourage all citizens to register and vote intelligently and responsibly;

(d) to support and cooperate with similar programs carried on by community organizations;

(e) to support persons in their efforts to register and vote in communities where the opportunities are denied or restricted because of race or color;

(f) to support public officials and Government agencies in the enforcement of Federal and State laws that protect the right to register and vote;

(g) to support the enactment of additional Federal and State legislation necessary to guarantee the franchise to all citizens; be it further

Resolved, That the general board authorize representatives of the National Council of Churches to testify at public hearings along the lines indicated above.

THE NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE U.S.A.

(Approved by the general board on March 11, 1953, under the title of "A Guiding Principle for Meetings and Conventions.")

Justice, good will, and a racially inclusive fellowship, both in the church and in the community, are among the major concerns of the Christian Churches. This affirmation finds its origin in the inclusive fellowship required by the Christian Gospel. " * * * there cannot be Greek and Jew, circumcised and uncircumcised, Barbarian, Scythian, slave, freeman, but Christ is all, and in all." This concern is defined in a pronouncement titled "The Churches and Segregation," adopted by the National Council of the Churches of Christ in the United States of America.

Many denominations, recognizing patterns of segregation in the churches and the community to be a violation of the basic Christian principles of inclusive fellowship, have solemnly committed themselves to work unrelentingly for a nonsegregated church in a nonsegregated society.

Acknowledging the spiritual and moral obligation of the churches to practice racial inclusiveness, it is appropriate for the national council to state the following guiding principle which will help to assure the full participation of all racial groups in its meetings and conventions:

1. National and regional meetings of the national council or any of its units shall be held only where there are facilities (in hotels or other places of meeting) that are open to all participants without regard to race in accordance with the following:

(a) No segregation of racial groups shall be made in room assignments.

(b) No discrimination shall be practiced against any participant in the use of meeting places, building, or hotel entrances, lobbies, elevators, dining rooms or other building or hotel services.

(c) The procedures in making reservations shall be the same for all participants.

(d) When the name of the national council or that of any of its units is used as a sponsoring or cosponsoring organization in regional, State, or local meetings, the national council, its units or staff, as the case may be, shall make certain that the above principle is accepted for all such meetings before agreeing to sponsorship or cosponsorship.

(e) Where local conditions are such that the national council does not permit its name or that of any of its units to be used as sponsors or cosponsors of a meeting, the decision as to whether or not staff services shall be rendered in connection with the project shall be the responsibility of the unit of the national council involved.

("The Churches and Segregation," a policy statement adopted by the National Council, contains relevant considerations with regard to this question.)

2. In the light of the above stated principle it is recommended that—

(a) The national council shall immediately institute through all of its units a nationwide campaign of education to make effective the above stated principle.

(b) The general board of the national council appoint an advisory committee to counsel in the situation where there is uncertainty as to whether local conditions meet the specifications of the principle set forth above.

SUGGESTED PRACTICAL PROCEDURES

The following practical procedures for implementation are suggested by the department of racial and cultural relations:[1]

A. Local arrangements committee for meetings initiated or sponsored by the national council—

1. A local committee should participate in making arrangements for convention or meeting facilities. This committee should be racially inclusive in character. Such a committee should have or seek knowledge of the best practices for achieving the integration of racial groups.

2. In the absence of a local committee, the national committee or the representatives of the national council responsible for planning the meeting should consult with several persons in the community, including persons of racial minorities, who have experience and understanding in the field of race relations.

3. The agreement made by the local committee, the national committee, or the representatives of the national council with the management of each place of meeting or residence should include guaranties that the facilities will be accessible to all participants in the meeting on the same basis and that the management will instruct its employees as to the nondiscriminatory treatment of all participants.

B. Places of meeting

1. Experience shows that racially inclusive meetings can be held in many places where it has been assumed that they are not possible. It is well to remember that there are places to meet other than hotels. In an effort to secure a place where such meetings can be held, a canvas should be made of all available meeting places in the community—churches, community centers, private schools, or colleges, etc.

2. Two or more nonsegregated meetings can be conducted simultaneously in different places wherever it is impossible to find a hall or a meeting place which will accommodate the entire group on a nonsegregated basis.

3. In areas where segregation is enforced by law, it is often difficult to have a nonsegregated meeting in halls or meeting places controlled by local municipalities or counties. However, even though it is necessary to decline the use of these facilities if segregation is required, there is educational value in making repeated efforts to obtain their use on a nonsegregated basis.

4. When the convention bureau of the chamber of commerce or the hotel association is approached for help in locating places to meet, the racial inclusive character of the meeting should be made known.

C. Housing and meals

1. The local planning committee, the national committee or the representatives of the national council should see that plans are carefully made in advance for each participant to be housed on a non-segregated, nondiscriminatory basis.

2. It is believed that in the present climate of public opinion, an increasing number of hotels will be made available for racially inclusive meetings. Where hotels will not accommodate all participants in the meeting on a nondiscriminatory, nonsegregated basis, it is hoped that they will not be used by any participant. Listings of these hotels should not be included in conference promotion.

3. Careful plans should be made so that all persons attending the meeeting can share in the fellowship at mealtime without discrimination or embarrassment. The process outlined in section A–3 above should be used in dealing with hotels. Where some restaurants are available on a nonsegregated basis for small groups, it is important to determine by conference with the managers prior to the meeting which ones follow this practice.

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[1] "The National Council of the Churches of Christ in the U.S.A. in its organizational structure and operation, renounces and earnestly recommends to its member churches that they renounce the pattern of segregation based on race, color, or national origin as unnecessary and undesirable and a violation of the Gospel of love and human brotherhood."—(Quoted from "The Churches and Segregation," p. 11.)

D. Transportation

Transportation is sometimes very difficult for racial minorities in communities where segregation is enforced by law. In addition to being segregated in buses or trolley cars, persons belonging to racial minorities often are subjected to discourteous treatment. In some places they are permitted to use a taxicab only when it is operated by a person of their own race, and in other places they are subjected to discriminatory and discourteous treatment by taxicab operators. If any of these conditions prevail, those planning the meeting should arrange to have private cars or buses provided for the use of all participants. When this is not possible, it may be necessary to locate the meeting where transportation facilities make the meeting accessible to all who plan to attend.

YOU CAN ACT

Statements of this type have been adopted by many denominations which are affiliated with the National Council of Churches, as well as by a number of other organizations. The availability of public accommodations such as hotels, restaurants, and places of meeting to all people regardless of racial or national origin is a necessity for the implementation of this policy. This immediately involves the practices of States and local communities (both customary and legal) with regard to the above-named accommodations.

Individuals and groups can play a significant role in determining what local practice actually is. Also, they can bring to bear their influence toward making these accommodations available to all people on the basis of their need and ability to pay.

Facts are necessary. Do you know whether or not there are laws regarding public accommodations in your State or local community? Write to the proper officials in your State or city for this and other additional information on laws with reference to public accommodations.[3] Regardless of what the laws are in your State or local community you should find out the prevailing practices with regard to the availability of hotels, restaurants, and places of meeting. Information can be procured from the chamber of commerce, the hotel association and the restaurant association.

The following suggestions will provide a framework for an approach to the problems:

1. Determine what local community groups already have or might have a concern in this area of community life.
2. Use whatever interagency channels for cooperation that may be available in order to get this concern into the thinking of both leaders and members.
3. If a representative group or committee can be evolved from the various agencies, then confer and, among other things, plan to gather all available facts—
   (*a*) about the laws of your community;
   (*b*) about the practices of specific hotels, restaurants, and managers of places of public meeting. Include all types of practice found to exist.
4. Seek further conferences with the associations whose members are in business to provide public accommodations as indicated above.
5. Provide your fellow citizens with accurate information based on the findings (as indicated in number three above).
6. See that your community is well informed as to present laws against discrimination in places of public accommodation. Prepare and distribute a pamphlet describing these laws against discrimination.
7. Encourage the planning of discussion groups using some of this literature and information for study purposes.
8. Wherever possible community agency representation should seek to work closely with the planning committees of coming conventions.
9. Plan intrastate conferences with similar interest groups in neighboring cities.

The following is a list of States which now (as of spring, 1953) have or are considering bills pertaining to public accommodations in their respective States: Arizona, Connecticut, Indiana, Massachusetts, Montana, New Hampshire, New Mexico, New York, Oregon, Washington, West Virginia.

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[3] A very well arranged and useful chart titled, "Check Lists: State Anti-Discrimination and Anti-Bias Laws" was published under date of March 1953 and is a revision of a 1948 edition. The current revision refers to 386 laws as over against 220 laws referred to in the earlier edition. The list reveals a wide range of differences among the States with reference to civil rights laws.

Of these 11 States above reported as having or considering (as of spring, 1953) legislation to insure use of public accommodation [3] without regard to racial or nationality origin or religious belief, there are 7 which were not reported as having any such laws as of September 1, 1949.[4] This source also indicates in chart I of appendix 7, that there were only 18 States which had laws against discrimination in the use of public accommodations as herein defined. Assuming then that the 7 States which are considering the passage of such bills for the first time, actually enact them into law, there will then be 25 or about half of the States providing legal protection of the right to the use of public accommodations [3] without discrimination because of race, nationality, or religion.

STATEMENT ADOPTED BY THE GENERAL BOARD, NATIONAL COUNCIL OF CHURCHES, MAY 19, 1954, CHICAGO, ILL., RE DECISION OF THE U.S. SUPREME COURT ON SEGREGATION IN THE PUBLIC SCHOOLS

The unanimous decision of the Supreme Court that segregation in the public schools is unconstitutional gives a clear status in law to a fundamental Christian and American principle. The decision will have far-reaching effects in the whole Nation and the world.

It offers the promise of further steps for translating into reality Christian and democratic ideals. The decision is a milestone in the achievement of human rights, another evidence of the endeavor to respect the dignity and worth of all men.

The complexity of implementing the decision is recognized by the Court which has set the cases for further reargument on the formulation of the decrees. To put the decision into effect will test the good will and discipline of people in many communities. Adjustments will be more difficult in some localities than in others. In the period of transition from one pattern to another (whatever the length of the period to be prescribed by the Court), we know that the churches and individual Christians will continue to exert their influence and leadership to help the authorized agencies in the several communities to bring about a complete compliance with the decision of the Supreme Court. The law of neighborliness is the great guide available to Christians as they deal with this situation in their local communities. "Thou shalt love thy neighbor as thyself." The second part of the Great Commandment contains the potential for lifting men to a new level of social responsibility and for creating new dimensions of human brotherhood.

NAMES OF REPRESENTATIVES

The Reverend Ray Gibbons, director, the Council for Christian Social Action, United Church of Christ.

The Reverend George Earl Owen, Disciples of Christ, Coordinating Committee on Moral and Civil Rights.

The Reverend Duane Ramsey, Church of the Brethren.

The Reverend Cornelius C. Tarplee, Associate Secretary in the Department of Christian Social Relations, National Council, Protestant Episcopal Church.

The Reverend Dudley Ward for Board of Social Concerns and the Department of Christian Social Relations of the Woman's Division of Christian Service of the Methodist Church.

Dr. Eugene Carson Blake, acting chairman, Commission on Religion and Race, National Council of Churches; stated clerk, United Presbyterian Church, U.S.A.

Bishop B. Julian Smith, Christian Methodist Episcopal Church.

ADDITIONAL DENOMINATIONS JOINING IN TESTIMONY

Christian Methodist Episcopal Church.

STATEMENTS BY RELIGIOUS BODIES

African Methodist Episcopal, Council of Bishops, February 15–18, 1956

* * * In this struggle for universal acceptance of an integrated society, the Negro church plays an increasingly vital role. We have witnessed instance after

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[3] "Public accommodation" as used in this statement is confined to the following specific types of accommodations: Auditorium, assemblage, hotels, inns, public conveyances, restaurants, and taxicabs.

[4] Murray, Pauli, "States' Laws on Race and Color." Cincinnati, Ohio: Literature Headquarters; the Methodist Church, 1951.

instance of sacrifice, toil, and even bloodshed by ordained ministers of the Gospel determined to make a reality out of the professions of Democracy * * *.

Our people must know that all men are created equal and that any divergence from this principle is hypocrisy, in fact, immoral. The people must likewise know that the law of the land is second only to the law of God and that to openly flout the dictates of the highest tribunal is flirting with tragedy * * *.

American Baptist Convention, May 17, 1963

Recognizing that segregation and discrimination separate men, and aware that being reconciled to God we are brought close to all men in the fellowship of Jesus Christ, we urge local churches to attack all forms of alienation with courage and dispatch.

We reaffirm our stand that not only should all American Baptist churches be open to all followers of Jesus Christ regardless of their race but that we should earnestly and actively seek to win all unchurched persons within our community to Christ and to the fellowship of the church. We reaffirm our belief that all persons should be given the opportunity to develop the knowledge and skills needed for church leadership and that all positions of leadership within the local church and on area and national levels should be open on the basis of qualification without regard to race * * *.

American Baptist Home Mission Societies, March 23, 1960

In obedience to the imperative of the Gospel of Jesus Christ which recognizes no barriers to fellowship, we oppose racial segregation in all forms, and in all places. We affirm our opposition to the denial of the rights of Negroes or any minority group in matters of voting, housing, library privileges, and the facilities of lunch counters. Wherever segregation appears, whether in the north or south, the east or the west, in a church or at a lunch counter, there is a denial of Christian love and justice and of the democratic rights of citizens. To affirm this is to presume to judge others but to acknowledge a moral principle rooted in our Biblical faith by which all are judged. * * *

Christian Methodist Episcopal, annual conference, 1958

* * * Commitment to the conviction that the best form of government is a government of the people, by the people, and for the people and dedication to the determined effort to secure for every American citizen full political franchise and freedom from fear and want * * *.

That every attempt be made to arouse the conscience of America to her responsibility of practicing at home the democracy she preaches abroad, of making possible and guaranteeing to all minority groups at home the freedom she offers the oppressed peoples of other lands, of assuring those victims of prejudices, discrimination, and oppression within her own borders the same opportunities she affords the refugees from the lands of the Iron Curtain * * *.

That we use techniques based solely on passive resistance such as work stoppage, economic boycotts, slowdowns, sitdown strikes, picket lines, mass demonstrations, and political unity wherever there is a threat or attempt to deprive our people of enjoying their full rights as citizens of our Nation * * *.

Church of the Brethren, General Brotherhood Board, March 24, 1960

Therefore, we the General Brotherhood Board

Resolve, 1. That we believe discrimination against racial, cultural, and religious minorities is morally wrong;

2. That action to remove this discrimination is imperative, both in the light of the Christian ethic and in the spirit of our democratic tradition;

3. That we see our first obligation to seek change through honest discussion and negotiation, but, such methods failing, we regard peaceful nonviolent direct action as an appropriate Christian witness for those whose consciences so lead them; * * *.

Disciples of Christ, United Christian Missionary Society, Board of Trustees, June 1960

Fundamental Justice versus Legality.—The question is not one of mere legality, however. One must raise the question of the fundamental justice of the issue which lies beyond the sit-ins. Do not Negroes have the same right to be treated with the dignity and decency as whites? Are we not all, Negro and white, brothers and neighbors under God's creation and does not our master say to us: "Thou shalt love they neighbor as thyself?" Are we not then, as Christians, committed to the principle of equitable treatment of all people regardless of

race? Must we not therefore, not only admit, but insist upon and work toward the rapid removal of the patterns of segregation which deny fundamental dignity as human beings to certain persons because of accidents of birth. The plain fact is, however, that Christians on the whole have done almost nothing to alleviate the situations in which Negroes have found themselves. We have, furthermore, by our own acquiescence and silence supported those who by restrictive legislation and intimidation have stood in the way of Negroes achieving equality of opportunity. One might wish, as some have, that this whole issue had never arisen—that Negroes had been content to accept an inferior status in our society—that they had not upset the even tenor of our privileged white existence. One might wish that they had never heard of nonviolent resistance to evil, but they have. Now Christians must face the issue where it is and decide whether the fundamental justice of their protest overrides possible questions of legality.

Evangelical United Brethren, General Conference, October 9–17, 1958

As Christians we are ashamed of the treatment accorded minority races in our Nation. The New Testament teaches that God is no respecter of persons, and men are to be treated with respect and dignity.

We, therefore, unalterably oppose all practices of racial segregation.

Christian love is more than sentiment. It is active good will, redemptive kindness, patient goodness. We desperately need this Christian love in this present hour of friction and distrust among the races. * * *

The Five Years Meeting of Friends, July 14–21, 1960

We humbly recognize that our society as a whole has not been true to this basic Christian belief. Too often pioneering in racial equality has been left to the few. But in this day of racial crisis every member of the Society of Friends should be concerned that all races have equal opportunity to participate with one another in worship, education, housing, employment, and voting, and to join in our fellowship.

The Christian way to combat injustice is to act in the spirit of love and forgiveness which Christ both lived and taught, admonishing us "Love your enemies, bless them that curse you, do good to them that hate you, and pray for them that despitefully use and persecute you" (Matthew 5:44). In recent months and years our Negro brothers in Christ have practiced to a remarkable degree these precepts of the Master as they have opposed injustice nonviolently and in the spirit of Christian love. We are grateful to them for their leadership in demonstrating the relevance of Christ's teaching in our time and in our own communities.

Race prejudice and hatred are spiritual and moral diseases not confined to any one section of one country or to any one nation. In God's world there is no place for discrimination or prejudice because of racial or national origin, economic circumstance, or religious belief. We believe that there is something in every man which can respond to the love of God, and that every man has the God-given right to walk over the earth in dignity and self-respect. We have the opportunity and the obligation to help secure this right for all.

The Methodist Church, General Board of Christian Concerns, Division of Human Relations and Economic Affairs, March 16, 1960

We believe that God is Father of all peoples and races, that Jesus Christ is his Son, that all men are brothers, and that man is of infinite worth as a child of God.

To discriminate against a person solely upon the basis of his race is both unfair and un-Christian. Every child of God is entitled to that place in society which he has won by his industry and character. To deny him that position of honor because of the accident of his birth is neither honest democracy nor good religion.

The Methodist Church, Woman's Division of Christian Service of the Board of Missions, January 1962

We believe:

1. We believe that God is the Father of all people and all are His children in one family.

2. We believe that the personality of every human being is sacred.

3. We believe that opportunities for fellowship and service, for personal growth, and for freedom in every aspect of life are inherent rights of every individual.

Moravian Church in America, Southern Province, Provincial Synod, 1959

The church as a brotherhood.

The Church of Jesus Christ, despite all the distinctions between male and female, Jews and non-Jew, white and colored, poor and rich, is one in its Lord. The Unitas Fratrum recognizes no distinction between those who are in the Lord Jesus Christ. We are called to testify that God in Jesus Christ brings His people into being out of "every race, kindred, and tongue," pardons sinners beneath the cross and brings them into one body. We oppose any discrimination in our midst because of race or standing, and we regard it as a commandment of the Lord to bear public witness to this and to demonstrate by word and deed that we are brothers and sisters in Christ.

National Baptist Convention, U.S.A., Inc.

Almost any American tourist of Europe and other eastern countries meets with the question of the attitude of America toward the intermingling of the races composing the population of the United States.

Some of these peoples are quite "scathing" in their remarks concerning the American claim of democracy and Christianity on the one hand and the treatment America permits to be accorded her minority peoples on the other.

For many years Negroes have been puzzled as to the attitude they should adopt regarding the sincerity of the American claim of the policy of "justice to all and special privilege to none."

When, however, the Supreme Court issued her memorable decision outlawing segregation in the public schools, the race took heart and reorganized her thinking with regard to America being in truth "the land of the free and the home of the brave."

Negroes love America and entertain no bitterness toward her despite the vicious wrongs some commit against them in certain sections of the country. They have too long agonized in prayer for her security. They have given too freely of their blood to vouchsafe her institutions—not to love her with undying devotion. They believe the Supreme Court on May 17, 1954, justified the faith, the hope, and the love they exercise toward this country.

Philadelphia yearly meeting of the Religious Society of Friends, 1961

The Religious Society of Friends recognizes the divine spark in every human being and we are deeply concerned with the racial and religious discrimination that exists in our local communities. We are equally concerned with the suffering, the waste of talents, and the antagonisms which result from segregation and which block spiritual and cultural growth. Under these conditions, the majority group as well as the minority group suffers.

In our country today, individuals and groups are set apart from the main stream of American life on the basis of their religious background, the color of their skin, or the country of their birth. In large ways and small, such persons are denied full participation in our community life.

We believe that everyone should have real equality of opportunity in securing an education, in finding employment best suited to their abilities, or in buying or renting a home. In all of these areas of life, minority groups now repeatedly experience frustration and humiliation. If American society is really motivated by religious and democratic ideals, there is no place for discrimination * * *.

Presbyterian Church in the United States, General Assembly, May 4, 1960

III. Rights of Citizens.— * * * recognizes the dignity of every human being and encourages the concept of life, liberty, and the pursuit of happiness for all peoples, the assembly strongly urges laymen and ministers, as Christian citizens, to redouble their efforts to right the wrongs, presently suffered by individuals and groups because of race, creed, or nationality * * *.

National council of the Protestant Episcopal Church, February 1961

V. It is the function and the task of the church to set spiritual and moral goals for society, and to bear witness to their validity by the witness of her own life. The church should not only insure to members of all races full participation in worship everywhere; she should also stand for fair and full access to education, housing, social and health services, and for equal employment opportunities, without compromise, self-consciousness, or apology. In these ways the church will demonstrate her belief that God hath made of one blood all nations of men for to dwell on the face of the earth.

Reformed Church in America, credo on race relations, General Synod, June 7, 1957

I. We believe that the problem of race is a problem of human relations. We believe that the Scriptures of the Old and New Testament provide the final authority for all matters of human relations. We believe that all problems of human existence are resolved in the love for God above all, and for our neighbor as ourselves. We further believe that such love has been fully revealed to us in the life and work of Jesus Christ, our Lord and Savior; and that the grace to participate in that love is readily available through the Holy Spirit by faith. We believe that the primary function of the Church of Jesus Christ is to witness to that love to all people in every walk of life.

Southern Baptist Convention, Christian Life Commission, February 29, March 1, 1960

* * * The commission wishes to again reaffirm its historic emphasis upon the biblical principle of the value of human personality as taught by our Lord. In the light of recent efforts on the part of Negro citizens in many areas in securing equal rights, especially the right to vote, the commission urges our Southern Baptist people to make use of every opportunity to help Negro citizens to secure these rights through peaceful and legal means and to thoughtfully oppose any customs which may tend to humiliate them in any way.

United Church of Christ, General Synod, July 1961

* * * We call upon our churches and their members to pray and work for the elimination of segregation and discrimination in every aspect of our common life, beginning with each local church, but also devoting special efforts to desegregate church-related institutions, all public housing, public accommodations and services; and to guarantee to all our people equal access to the polls, to employment opportunities, and to legal justice.

United Lutheran Church in America, Board of Social Missions and Executive Board, 1952

1. God the Father is the Creator of all mankind. We are made in His likeness. In the light of the common creation of all men, differences in physical characteristics or social background are only of incidental importance.

2. God condemns all injustice, all hatred, all abuse, and persecution of men. His judgment is revealed in the moral sickness of all men and in the torn fabric of our common lives.

3. God's atoning grace embraces every man. Through His Son, Jesus Christ, God offers redemption to all. Christ died for all mankind. All men have equal worth in God's sight. * * *

United Presbyterian Church, U.S.A.

Standing Committee on Church and Society, May 22, 1962

* * * The 174th General Assembly—

> Calls upon every United Presbyterian to search his heart and with God's help seek to root out every trace of prejudice bias, and hostility to other men who are different in race or culture from himself, and to bring a new attitude of loving acceptance not only into the pew on Sunday but into the office, shop, school, and neighborhood on Monday; * * *

National Catholic Conference for Interracial Justice

August 27, 1961

Civil rights.—God created man a social being. By His will, our Government exists to protect the common good and the basic rights of man. We find that some of our countrymen in weakness sometimes deny these rights to others.

Be it resolved, That, as the right to vote is a fundamental instrument of citizenship in our democracy, we condemn the denial of that right on the basis of race, creed, or color, whether openly or by governmental subterfuge, as mockery of our Constitution.

Dr. BLAKE. Thank you.

These delegates left Chicago firm in the resolution that churches and synagogues stand as one in their determination to bring about full justice and equal opportunity for all people regardless of race in the United States of America. Since the conference, activities being carried on in more than 30 cities as well as expanded and intensified inter-

racial programs being conducted by many church and synagogue organizations are indications that this determination is being implemented.

Those human rights which men look to Government to protect are called civil rights. The churches and indeed our free society as a whole, look to the State to incorporate these rights into its legal system and to insure their observance in practice.

The message of the President of the United States on civil rights, delivered to the 88th Congress on June 19, 1963, recognized the necessity to protect certain civil rights by enacting legislation. This message clearly sets forth the need for legislation to guarantee the availability of voting rights; to assure equal accommodation in public facilities; to facilitate desegregation of schools; to achieve fair and full employment and to establish a community relations service.

Also the President submitted to the Congress a proposed act, the Civil Rights Act of 1963. This is a bill—

To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in education, to establish a Community Relations Service, to extend for 4 years the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

As churches, synagogues, and religious leaders, our concern is with the purpose of civil rights legislation and with the moral principles that indicate the necessity of enacting such legislation. The knowledge and judgment of the Congress and particularly of the committees that have heard extensive testimony, will enable them to work out the details of legislation which will insure the civil rights of all people in the Nation.

Therefore, we shall discuss the purposes and principles which we believe should underlie the enactment of the legislation proposed by the President of the United States.

Religious people are committed to the belief that in this Nation, local, State, and National governments deriving "their just powers from the consent of the governed" are responsible to God and to the people to maintain the freedom of all men under their respective jurisdictions, to exercise human rights with due regard for the rights of others and for the public order.

The right to vote is a human right which is guaranteed by the basic law of the land. The 15th amendment to the Constitution of the United States specifically provides that—

The right of citizens of the United States to vote shall not be denied or abridged by the United States or any State on account of race, color or previous condition of servitude.

Yet it is a fact that on the basis of color or race hundreds of thousands of citizens are denied the opportunity to register and to exercise the right to vote. Therefore, we welcome and support legislation which will provide realistic guarantees for all citizens regardless of race or color, the full opportunity to register and to exercise the right to vote. Moreover, we believe that the proposals for legislation set forth by the President of the United States on this subject are an important step in this direction.

For many years most national religious bodies have by official action held their meetings only where all public accommodations and facilities in hotels or other places of meetings are open to all participants without regard to race or color.

Specifically this means that room assignments, building or hotel entrances, meeting rooms, lobbies, elevators, dining rooms, and all building or hotel facilities or services must be available to all people regardless of race or color. Therefore, these church bodies have not been able to meet in places or localities which practice racial discrimination in public accommodations.

This experience of our own, along with concern about the immorality of racial segregation and discrimination stated above and the increasing mobility of the American people cause churches, synogogues, and religious leaders to highlight the importance of equal access to facilities serving the general public. These include stores, restaurants, theaters, retail establishments, service shops, places for amusement and recreation, as well as hotels, motels, and lodging accommodations.

In many States and cities, discrimination in such facilities is currently prohibited by law. The broadening of such prohibition by a Federal law is not a drastic step. Nor is it an invasion of property rights as some have claimed, for neither law nor morality sanction the concept of the absolute right of property. Both insist that the property owner must use his property in a socially responsible fashion.

We have zoning laws, traffic ordinances, license and inspection requirements, as well as scores of other rules and regulations that currently enforce this concept of socially responsible ownership.

If we can protect citizens against the injury caused by blaring television sets surely we can give equal protection against the deep affront and humiliation caused by racial discrimination in public accommodations.

Mr. CHAIRMAN. You will feel the hot breath of these colored TV stations, won't you?

Dr. BLAKE. Just so that it is kept down after 10 o'clock, I think that it is all right.

The churches and synagogues have repeatedly affirmed the right to full and equal opportunity for all people to participate on a nonsegregated basis in public schools and colleges.

Many religious bodies hailed the U.S. Supreme Court decision rendered in 1954, declaring racial segregation in public schools unconstitutional, hailed it as an important step in achieving fuller human rights for all people in our Nation.

But they are dismayed at the slow pace of implementing the decision in the 9 years since it was rendered. The proposals in the Civil Rights Act of 1963 for assistance to facilitate desegregation of public schools are positive, creative, and constructive steps designed to aid school boards as well as other State and local governmental units concerned with public education to step up the pace of desegregation.

Provisions of this type need to be enacted into law if the inequalities in educational opportunities based upon color or race as well as the resulting social, economic, psychological, cultural handicaps to the people discriminated against and to the Nation as a whole, are to be eliminated.

Moreover, the continuance of racial segregation and discrimination in public schools cause religious bodies to be concerned over the fact that parents, many of whom have meager financial resources at their disposal, must bear the costs of legal proceedings to obtain equality of educational opportunity for their children.

The ability or inability to obtain the opportunity to exercise civil rights must not be, in our judgment, made dependent upon the financial resources at a person's disposal. We believe that all persons unable to bear the costs of legal proceedings should be relieved of the financial burden of securing rights which are theirs by virtue of their citizenship but which are illegally an immorally denied.

Therefore, we support the proposal which authorizes the Attorney General of the United States to institute civil actions in the name of the United States in district courts upon receiving a signed complaint; upon the determination that the signer or signers of the complaint are unable to initiate and maintain appropriate legal proceedings for relief, and upon determination that such action will materially further the orderly process of desegregation of public schools.

The goal of the Nation is clear. Every person must have the opportunity to exercise the civil rights guaranteed by the Constitution of the United States. Agencies or instrumentalities are needed to carry on activities designed to implement the above-stated goal in order to achieve progress in race relations.

While there are many State and local organizations, both public and private, an agency at the Federal Government level is needed to cooperate with these State and local groups. Such an agency could render valuable services to State and local groups and would provide insights into the nature of the problems confronting the Nation which would stimulate these groups to coordinate voluntarily their efforts in order to deal more effectively with the problems of race relations.

The CHAIRMAN. I imagine the churches would play a very important part.

Dr. BLAKE. At the present time there is a considerable amount of liaison in response to the President's initiative, asking the churches, as well as the other organizations, businessmen, labor and so on. We are attempting, while keeping our proper independence of actions in every way we can, in liaison with the efforts to make this change as orderly, as legal, and as rapid as possible, and we certainly would pledge our effort to try to do this in every way we can.

The CHAIRMAN. Some of these changes are tentative on considerable disorder.

Dr. BLAKE. That is true. We have the feeling there the Negro demonstration activity has been, on the whole, very well led in that they have clearly attempted, first, to establish facts of injustices, then to negotiate. This is where, in many communities, it has broken down. They just can get no one to pay any attention. Then the demonstration comes next, but in any community the real leaders of that community will be willing to talk to the real leaders of the Negro community. It is my own conviction that as in Cambridge, Md., even a most difficult situation——

The CHAIRMAN. Do I understand correctly that you participated in one of these demonstrations yourself?

Dr. BLAKE. Not myself in Cambridge, although there have been churchmen in the negotiations right along there, but this possibility, the one where I was demonstrating, myself, was outside of Baltimore at the amusement park and we understand that agreement has been made since then, that this amusement park will be open this summer on a nondiscriminatory basis and that the charges are going to be dropped against everybody who broke the Maryland trespass law, which I had a personal interest in.

The CHAIRMAN. I am sure that you will agree that because of the very serious grievances, trampling of their rights, of the Negroes, these demonstrations are understandable, but it is hoped that wise leadership will contain those demonstrations so that they may not burst into disorder and violence.

Dr. BLAKE. This is our hope. However, if the demonstration does not early bring, as I say, negotiation, serious negotiation, I do not believe the demonstrators can ultimately be blamed for the disorders, unless they are a disorderly demonstration, but on the whole, both because of the nonviolent type of leadership that the Negroes have so far followed, it has been, it seems to me, those who were attempting illegally to keep the status quo who have tended to start the violence.

For instance, when we were at the amusement park in Baltimore, my own judgment on the first day was that the crowd was not hostile to us. There was, oh, some talking, but there were other comments which were heard also which were supportive. But the next day, or the Sunday I think following, when there was further demonstration, there was a group of people who were there to counterdemonstrate and this is where the violence then became possible and dangerous. I think the same thing is happening in New York City, as far as I am able to see. There we have the situation of too many young people without jobs who have got nothing better to do than to go where there is some excitement. This is not going to be solved until more young people who are dropping out of school too early are really dealt with, which is another legislative problem to the one we are facing this morning, but which I hope basically we can face because these great cities are going to be scenes of violence if we are not able to change the basic pattern, particularly, I believe, of employment in the cities.

The CHAIRMAN. One of the rights of peaceful assembly is in effect to address grievances. The Negroes have a perfect right to demonstrate and hold these parades and so forth. In New York, of course, we have had considerable difficulty in the construction industry. We have had citizens, as it were, preventing the ingress and egress of trucks on building constructions which necessitated the calling in of the police and the arresting of several young people. That is most unfortunate.

I think that those who were in that demonstration, the leaders, had the right to go, but they used the wrong method. I suppose these demonstrations are necessary to jog the Nation out of its apathy. There has been too much apathy throughout the Nation and unilaterally, as a result of these various demonstrations and even the horrendous acts, including murder, has the conscience of the Nation been pricked.

The Nation has realized that something must be done here.

Dr. BLAKE. Rabbi Blank would like to comment on that.

Rabbi BLANK. In most of these instances where disorderly demonstrations have evolved, they have evolved as a result of a refusal to discuss or negotiate. I think it is also a shocking experience for an American citizen to see existing laws used to enforce patterns of segregation and to have State troopers or local police enforce laws which in effect do perpetuate patterns of segregation such as in eating establishments or in the amusement park mentioned by Dr. Blake. This certainly is a shocking experience for an American citizen to undergo to see the laws used for this purpose. This is particularly why we are interested in legislation which will overcome these patterns of segregation which now can be enforced by law.

The CHAIRMAN. I thoroughly agree with you. I am quite sure that the members of the committee do.

Dr. BLAKE. May I continue, sir?

The CHAIRMAN. Yes.

Dr. BLAKE. The proposed Community Relations Service can facilitate improved race relations through the services and aid it could render to State and local groups in improving cooperation, conciliation, mediation, and communication among the races.

I think those four words are rather important here. This is the purpose and it is the only solution as far as I know; there are no objective solutions of this, but it is human talk which ultimately, under our laws, I believe, can find acceptable patterns.

It should be noted that one of the more successful agencies of the Federal Government over the years has been the Federal Mediation and Conciliation Service. It has done much, along with State, local, and private groups to insure labor peace. In a similar fashion, staff skilled in the methods of intergroup relations can do much to insure creative and constructive adjustments among the races where they are needed, and they are needed everywhere.

Mr. FOLEY. Will you comment on this particular aspect: Look at title IV, which establishes a Community Relations Service. In section 402 it states:

> It shall be the function of the service to provide assistance to the communities and persons resolving disputes, disagreements or difficulties relating to discriminatory practices based on race, color, or national origin which impair the rights of persons in such communities under the constitutional laws of the United States or which affect or may affect interstate commerce.

Notice the absence of the word "religion" to that.

Now, turning next to title II of the bill, and particularly which deals with public accommodations, we find there discrimination, including race, color, religion, or national origin and in section 204(d), where the action of the Attorney General in enforcing this particular title refers to a referral to the Community Relations Service established under title IV. I wonder if any one of you would care to comment on the absence of the word "religion" in a Community Relation Service function?

Dr. BLAKE. I will ask Father Cronin, if he will comment on it.

Father CRONIN. I don't know enough of the history of the bill to know the reason for this absence, but it seems to me in terms of a moral principle that discrimination is equally immoral, whether it is on the basis of race, religion, national origin and since we are here testifying in favor of a moral principle of the equality of all men under God,

certainly we would favor the maximum extension of any kind of principle of denying discrimination or inhibiting discrimination by law, so certainly I would feel that we would not exclude religion from the work of any kind of conciliation service.

Mr. FOLEY. At that point, Father, may I raise this issue? The Community Relations Service, being a governmental agency, and in an attempt to conciliate or negotiate a violation of an individual's constitutional rights—and that is what you are dealing with here basically—as lawyers would not the question arise if the Federal Government, through this agency, intervened and attempted to conciliate or negotiate any dispute involved in religious discrimination and, therefore, possibly lend its effort toward the establishment of a particular religion, I raise the issue there of separation of church and state.

Father CRONIN. Much would depend on the concrete situation; where it arises in practice most frequently is in job discrimination under State laws and city ordinances and there has never been any question of establishment or the interference with rights of religion when you enforce, as you might in New York State, a requirement that a job application do not contain any reference to religion or that with certain legitimate exceptions that no discrimination may be made in employment on the basis of religion.

Mr. FOLEY. I agree with you, Father.

Let me pose this problem: Suppose you had a problem which involved Catholic parochial schools and it became a community problem because of this question of religion. Could it not be said that by coming in as a community relation service under this proposal and attempting to negotiate and conciliate, that the Government was lending its support to the Catholic school parochial system?

Father CRONIN. I doubt it any more than you would have a similar situation if we had, say, a cemetery strike and the local State mediation service came in and tried to help settle the strike.

What you are concerned there with is not religious belief as such, but the civil impact of this particular situation that you envisage and for the general welfare of the community you step in to conciliate that particular civil disturbance which arises from a religious situation.

Mr. FOLEY. Let me say this, Father: I draw a distinction between the right of an individual as guaranteed by the Constitution and laws of the United States, which includes freedom from discrimination because of my religious conviction, but I also say that where the Government lays its efforts toward ameliorating in addition, not as to the individual right, but as to the religious community as such.

Then you would have to look at that problem, I think, of the first amendment and I think you must be clear in drawing the distinction between the efforts of the Government to protect individuals to practice religious freedom and the efforts of the Government to conciliate a local problem which involves the religious community as a body whole.

Father CRONIN. Yes; I think the whole problem is whether or not you go into beliefs. It brings up court matters involving disputes among religious groups. The general tendency in the United States is to accept the internal law of that church body, so that if the question arose as to ownership of a church where there is a dispute with a congregation, normally our courts will take the internal legal pro-

cedure of the church body as binding. I think that happened recently with regard to the orthodox churches and some claim about a Russian domination as against American, so I think these things have been handled before in law and generally speaking our law tends to protect the general rights of citizens and even of church parties, but keeps away from interorganization belief.

Mr. FOLEY. Do you think there is a need based upon experience to have this Community Relations Service broaden its function so as to include religious discrimination?

Father CRONIN. I don't believe that need is very pressing at this time. There are remnants of religious discrmination in the United States, but compared to the instant problem before us, of the civil rights of the Negro community, these are very, very minor and peripheral and I would not have any feeling that this should be broadened; no.

Mr. FOLEY. So, actually, when we weigh the possibility of something arising in the future, regarding the question of the separation of church and state with the actual need for inclusion of that particular word in the function of the community service, now, is it your opoinion that it is better to omit it at this time?

Father CRONIN. I would think so.

Mr. FOLEY. Thank you.

Dr. BLAKE. I would like to agree with Father Cronin in that too because one of the happy things that our joint testimony indicates is that the communications among the religious bodies have opened up in a very favorable way worldwide and certainly in the United States, and all of us are looking to solving some of our problems and perhaps give you some help with yours because we are doing and talking directly together, because it is the isolation of groups from each other that it seems to me is one or the real dangers and we are making real progress, we believe, on the three-faith interreligious cooperation in this matter, and we hope in some others for the public good.

Mr. MEADER. Mr. Chairman.

The CHAIRMAN. Yes.

Mr. MEADER. I wonder if I got the correct impression from Father Cronin's statement and the agreement of Dr. Blake with him, that so far as your experience is concerned there is very little discrimination on the basis of religion in this country today in any field?

Father CRONIN. Since I mentioned it first, that would be my experience, yes, that the amount of religious discrimination in say, employment, public accommodations is very, very slight.

Where you do have religious discrimination, it might be at certain high levels of employment, but even there it is not easy to pin down and sometimes favoritism that may be based on the happy circumstance of marrying the boss' daughter might appear to be religious discrimination whereas in fact it is just nepotism.

There are certain clubs, of course, which we know discriminate, but I would say that the area has narrowed to a point which it seems to me not to be a matter of public concern.

It is almost a matter of private injustice or private wrong rather than anything that involves public law.

Mr. MEADER. In the light of your statement that you believe that it would be better not to include the word "religion" under title IV, what would be your attitude toward deleting it from title II?

Father CRONIN. I wouldn't care personally. I say the amount of religious discrimination in public accommodations is, to me, relatively slight.

Mr. MEADER. As far as I am aware, I don't recall reading cases where a person is denied a hotel room because of his religion. Maybe it is widespread and I just don't know about?

Dr. BLAKE. There has been, sir—I think that has to do with the Jewish discrimination against anti-Semitism and that is not dead, unfortunately. There have been tendencies in resort areas and so on to do this. I would think that——

Mr. MEADER. Perhaps we should have addressed the question to Rabbi Blank. What is your comment on the omission of "religion" in either title IV or title II?

Rabbi BLANK. It would be my impression along with Father Cronin that those agencies in Jewish life which have taken on the responsibility of dealing with questions of anti-Semitism and discrimination have been reporting of late a very significant decline in this kind of religious discrimination.

At the moment it does not appear to be along the lines of Father Cronin's discussion, the kind of pressing problem that we are dealing with in most of the bill which we are discussing, so that I do not think of this as being a significant omission at this point.

Mr. MEADER. But with respect to the question in title II, you would prefer not to see "religion" added there?

Rabbi BLANK. Right, but certainly in terms of title II use of the word, it seems to be in order and I would not——

Mr. MEADER. And you think it should remain there?

Rabbi BLANK. And I would not delete it.

Mr. FOLEY. On that point, may I make this comment in line with my comments to Father Cronin?

I think we should draw a distinction here. In title II where "religion" is used, the individual, it is agreed, has the right to bring his own action against the person violating that section and it is only when the Attorney General brings it that the community relationship comes in and that brings me back to the original position of separation of churches. I think we should keep that in mind.

Rabbi BLANK. I think the problems you have outlined would certainly lead us to believe that in title IV it should not be included.

The CHAIRMAN. You were reading at page 7?

Dr. BLAKE. Yes.

The Commission on Civil Rights has already rendered distinguished service in investigating and determining the facts about the denial of civil rights by reason of color, race, religion, or national origin in such areas as voting, housing, employment, the use of public facilities, transportation and the administration of justice. The reports of the Commission are exceedingly valuable in informing both Government and private agencies of the actual situation confronting the Nation regarding civil rights.

Many of its recommendations have been guidelines for creative and meaningful action in the area of race relations. On the basis of its

performance and of its potential service in the future, the life of the Commission on Civil Rights should be extended for 4 years.

In regard to nondiscrimination in federally assisted programs we state a principle set forth by the President of the United States in his message to the 88th Congress:

> Simple justice requires that public funds to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination.

We believe that this principle should be enacted into law.

I might say that a number of the churches are looking at their own expenditures in this light and there was some billions of dollars of construction by churches last year and we hope that this is one of the places where we can contribute privately, as we would hope the law would on the Federal Government's own action.

The Federal Government has taken leadership in preventing discrimination against employees or applicants for employment because of race, color, religion, or national origin by Government contractors. Also, it has assumed leadership in preventing the same type of discrimination in Government employment. Many church bodies recognize the importance of this leadership because one of the rights connected with the dignity of the human person is the right to work. They acknowledge that this leadership is important if the Nation is to make full use of all of its manpower resources to create a country in which all people may live best and serve most on a continuing and growing basis.

Also, many religious leaders are knowledgeable about the valuable work of the Committee on Equal Employment Opportunity which was created by a Presidential Executive order. They believe that this work should continue and be expanded on a permanent basis. Therefore, they support the enactment of legislation which would give the Commission on Equal Employment Opportunity a statutory basis.

The CHAIRMAN. Doctor, Negroes constitute about 12 percent of the population. Do you believe that 12 percent of employees should be Negroes in all phases of American life, Dr. Blake?

Dr. BLAKE. No; most people are fearful of an attempt at a quota which when it becomes a minimum almost becomes a maximum. This is a very difficult thing.

I rode over in a taxi with a member of a minority race who has just resigned a job with the Federal Government I will not say what department it was. He said, "I was suspicious when I went there that almost all of those who were employed were Negroes." He resigned his job because of overwork, overtime, no extra pay was being paid in this particular situation.

It is the kind of thing that only is going to be corrected if there is a general change in pattern that the best man gets employed who is qualified and that the best man is advanced.

He indicated that all of the workers in this particular section of Government were Negro and all of the supervisors white. This, he has decided—he is driving a taxi now. He decided to go back to school because he said, "I have got to get out of this situation."

That is the kind of thing in this that I think is important and it is—well, our magazine in my church was one of the leaders in

my church in integrating its employment and the general manager of that magazine made the point which I think is one that ought to be made. He said, "You haven't integrated your employment policy when you hire your first Negro. You have integrated when you fire your first Negro."

When anybody is not able to produce, he has to be treated the way anybody else is, when he is not able to produce, but the opportunities must be given and it is this kind of thing that we feel is very difficult to put into law that is universally enforcible, but the law should be there so that management, whatever, whether Government, private, management should be able to put its creative talents on it, and where it has the job can be done successfully.

The CHAIRMAN. Some of those, it was realized in the Post Office that more than 12 percent of the employees are Negroes, so if you were to apply the quota system to post offices, you have to dismiss many, many thousand Negroes because they are far beyond their so-called quota.

Dr. BLAKE. This may be—I don't know whether that means that the Post Office employment policy cannot attract white people. If so, this would be one of the kinds of things that ought to be looked at, but it is, generally speaking, that people do not believe that a matter of quota in a matter of race is a hopeful thing. It is open employment and the chance to rise, it seems to me, are the two things that are most important.

But many church and synagogue bodies go beyond this. They support the enactment of Federal legislation covering both employers and labor unions which provides for employment on the basis of ability and qualifications without regard to race, color, religion, or national origin. Some religious groups have given careful thought to many aspects of fair employment practices. Some of these groups believe that such legislation should cover upgrading or promotion on the basis of ability and apprenticeship training. They believe also that such legislation should provide counseling services and placement services as well as training and retraining in skills to people of minority racial and other economically deprived groups. This is necessary by virtue of long denial of such opportunity. Moreover, the current critical situation indicates that such legislation must have adequate enforcement provisions if it is to be effective.

Mr. Chairman and gentlemen, we hope that this committee will report favorably on the proposals for civil rights legislation which were made by the President of the United States. We hope also that Congress will enact them into legislation as a necessary step in the process of securing for all people the opportunity to exercise the rights guaranteed by the Constitution of the United States.

In conclusion, we would like to stress the urgency of legislative action now. It is both a moral and legal principle that once it is demonstrated that basic rights are being violated, the situation should be remedied at once. Equally clear is the demand that fundamental opportunities and privileges should be accorded to all and without delay.

In spite of these principles, there have been times in history when even men of good will were compelled to move slowly in securing rights and privileges. No such attenuating circumstances exist in this country today. We are in the midst of a social revolution.

Please God it will remain a social revolution and not degenerate into civil chaos in this country. Let us not underestimate the demand for justice regardless of color, race, or national origin. What is right, both in terms of basic morality and in terms of our democratic ideals, must be granted without delay.

The time is past, we believe, for tokenism or demands for endless patience. We must move firmly, rapidly, and courageously toward goals which our consciences assure us are right and necessary. We can do no less for God and country.

Mr. MEADER. Dr. Blake, I would like to return to the paragraph at the top of page 9 of your statement. I am not quite clear just how far you would go in having the Federal Government set up an agency to determine employment and promotion practices of private businesses. You say "some groups go beyond this." I am not sure whether you included yours as one.

My point is this: That when you have a Federal agency inject itself into the discretionary area which is normally under our system thought to be either in management or in collective bargaining and you do it for the purpose of preventing discrimination, there may be a number of knotty problems that arise. I mean a Negro worker, for example, can say that he is not promoted because he is black, but maybe he isn't promoted because he doesn't have the ability. It seems to me that you are suggesting here that a Federal agency should undertake to make the decision whether this man had the proper ability to discharge the duties of a position which is above the one he is then occupying and that when you do that you are assuming a management function on the part of the Government.

If this is very widespread, I can see that it might make a different country for us to live in.

Dr. BLAKE. I would have to say that, at the top of page 9 you will notice that we are not saying in the same force that we were in most of the rest of the testimony, "This ought to be done in this way." We are saying that certainly what is on the bottom of page 8 we are for and then the indication that some feel that that will not be enough.

I think all of us would want to say to you gentlemen that what is legally possible and administratively workable, I think you men have to judge better than we can.

We do say that this is a moral problem, a problem that is a very difficult one to determine what the facts are.

I think probably, as we move along in development of this—and I hope that it will be rather rapid progress, that we will get to the point where, because the racial pattern at the various levels of employment is normally mixed, that then you have the presumption that people are promoting on account of ability, whereas, if you don't ever find anybody but one particular type, whether it be Protestant or Catholic in a large thing of the management type or Jewish or Christian, the presumption is that there is some nepotism or something going on.

I personally have no insight as to how far effective legislation can go in this field. I think that the moral problem is there.

Mr. MEADER. I would like to ask a more general question which I think fits this subject we have been discussing.

Obviously, if you grant no additional authority to the executive branch of the Government, they are not going to accomplish anything

in this field. On the other hand, it would be possible in the name of accomplishing a laudable objective, to invest such vast power in the bureaucracy that we wouldn't be living under the same kind of a system that we have in the past. Secretary Celebrezze testified the other day on section 6, authorizing the withholding of grant-in-aid funds from those guilty of discriminatory practices.

He testified in his Department alone there were 128 programs totaling $3.7 billion a year and he was asking that Congress give to him complete and unreviewable discretion to withhold or not to withhold those funds.

I ask you if you don't regard that as rather vast authority, Governmentwide, with respect to all our grant-in-aid programs?

RABBI BLANK. It seems to me that both of these questions are qualitatively similar to the question raised earlier about the quota kind of approach.

Although we would not agree on any one formula at this particular moment, I think that this note included in our testimony primarily for information purposes indicates an awareness that by virtue for the fact that the Negro has for so many years been excluded from normal areas of employment that at this point some kind of special kind of action is required in order to introduce him to these areas of employment.

What formula that would be is certainly a problem as revealed in our discussion of the quota approach and the kinds of problems which you are now raising, but certainly I think there is a general feeling that whatever legislation ultimately evolves will have to evolve some kind of special effort to introduce the Negroes of the Negro community into areas of employment which for many years were closed to them.

Mr. MEADER. Would you agree that we should grant no further power to the executive branch of the Government than is reasonably necessary to accomplish the objective?

The CHAIRMAN. I would like to ask you gentlemen the following:

Mr. MEADER. I have a question.

The CHAIRMAN. Excuse me.

Dr. BLAKE. It seems to me that that is obvious. I don't think that that is a loaded question. Enough power but not any more.

The CHAIRMAN. Some of the Negro leaders have objected to having an illiteracy test, which is on page 5 of the bill, H.R. 7152. That is laid down on page 5 and is applicable in order to develop and in order to have a presumption of literacy, the applicant must have completed sixth grade in a public school where instructions are carried on predominantly in the English language.

Some of these leaders feel that that should be omitted and that we should have no restrictions of that sort. If an applicant is, say, 21, able bodied and is not incompetent, why he should have the right to vote, regardless of literacy. What do you think about that?

Dr. BLAKE. In principle I would——

The CHAIRMAN. Excuse me. They go on further to say that most of the Negroes, when they become almost knee-high to a grasshopper, they have to go out and work. They have no opportunity for schooling whatsoever, and haven't finished the sixth grade. Therefore, I think the estimate was made that that position would only admit about 100,000 additional Negroes to vote.

Dr. BLAKE. There is, of course, the provision, in addition, that a person who hasn't attended school, if he can pass a literacy test, can vote, is there not?

The CHAIRMAN. That is right.

Dr. BLAKE. I am not qualified particularly to comment on that, except to say this, that literacy, as such, is certainly one of the things that enables a citizen to exercise his voting privilege responsibly. Although radio has changed that situation a great deal.

In Africa it is possible to have some forms of self-government because of the widespread radio much more than newspapers. We have been in print and then moved into the area of audio and visual hearing.

I think the problem, as you know, sir, is that these tests of all kinds have been used to discriminate on account of race.

If any sovereign State really threw out all the illiterates equally, I don't think there is an issue here; but the fact is that the various kinds of tests, apparently by their result, when a Negro college graduate can't pass one and someone who hasn't gone to school at all, who happens to be of the majority race can without any difficulty, this is the real problem, but I have no insight into how to make these effective or how much literacy there ought to be.

The CHAIRMAN. For example, the provision, as we have in the proposals, will only give 100,000 Negroes the right to vote. There is not much efficacy, is there?

Dr. BLAKE. No, if that is the fact, it is not.

The CHAIRMAN. On the other hand, should we give the Negro the right to vote without any kind of tests at all?

Rabbi BLANK. I think the kind of question we are now considering underscores precisely the need for a total and integrated approach to these problems that we are dealing with.

The fact that the bill does include provisions with reference to employment, education, public accommodations, all of which represent an integrated approach to this problem, certainly is underscored by the kind of question which you are now raising.

I think that most of us assume that the right to vote also involves the sense of responsibility and a reasonable awareness of what is involved when one registers his vote as a responsible citizen.

I don't know particularly where the 100,000 figure comes in or how it could be demonstrated.

The CHAIRMAN. One of the leaders in a television program the other night expressed himself that way. He wanted universal suffrage without any literacy test. There are some States, however, that do not have literacy tests.

Mr. FOLEY. Only 16 States today require a literacy test.

Rabbi BLANK. I think it is our assumption that if we adopt an integrated approach to this problem, involving employment and education and all the other facets of the bill that this would not, over a period of years, be the kind of problem which is now posed, where we have this kind of dropout before the sixth grade and a low level of educational achievement.

But, as I understood there was another kind of problem involved and that was the use of the word "presumption" rather than sixth grade being a decisive factor in establishing the right of the voter to register.

Certainly I think this is a problem which, as of now, I understand has not been resolved, but which has been raised for the consideration of this committee.

The CHAIRMAN. In other words, the criterion for the applicant to vote must possess sufficient literacy, comprehension and intelligence to vote. As you say, the completion of the sixth grade in a school is only a presumption that he possesses that, so that the voting registrars could pry into his mind still further and deny him the right to vote on the ground that, overall, he doesn't possess the comprehension and intelligence to vote.

Doctor, we will place the balance of your statement in the record. You have sent up a number of pamphlets. Do you want us to file those pamphlets for the record?

Dr. BLAKE. It is at your pleasure, sir. We wanted them available to you as the groundwork.

The CHAIRMAN. We will keep those in the file and not the record. The appendix will go into the record.

Dr. BLAKE. Yes.

The CHAIRMAN. We are very grateful to you gentlemen for the very interesting statement you have made and it is very responsive.

Thank you very much.

Dr. BLAKE. We thank you for your courtesy, sir.

The CHAIRMAN. The next witness is Mr. Sidney Zagri, legislative counsel of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America.

Mr. Zagri, will you indicate the gentelmen at the right for the record?

Mr. ZAGRI. Albert Fuentes, Jr., State executive secretary, PASO of Texas. He is here to answer any questions pertaining to the civil rights problem for his State for Spanish-speaking Americans and he has prepared a statement which I would like to be inserted in the record.

The CHAIRMAN. The Chair wishes to put in the statement by Albert Fuentes, Jr., State executive secretary, PASO of Texas.

(The statement referred to follows:)

TEXAS HISTORY HAS BEEN MADE—CRYSTAL CITY STORY

April 2, 1963.—History was made on this day. Time magazine called it the revolt of the Mexicans. Newsweek called it the day of the Anglo minority. Albert Fuentes, Jr., executive secretary of PASO clearly defined the true definition of the day "On election day (April 2) the Mexicans have learned all south Texans are equal."

It was on April 2 in Crystal City that a record 1,752 votes were cast in the city election—95 percent of the total eligible voters went to the polls. This, in itself, is a history-making statistic, for in elections with more national significance it is unusual to have more than a 50-percent voter turnout.

And, when the dust had settled from in front of the only polling place in Crystal City on election night, a fresh breath of promise was breathed into every Texas citizen of Latin American descent. The Citizens Committee for Better Government was announced the victors. The five members of this winning ticket, all of Mexican extraction, stand as a beacon to all others like them, struggling in the morass of discrimination and inequality. For the first time in south Texas the true majority ruled.

How had it happened? How had five political unknowns—and Latin Americans at that—unseated an Anglo-controlled city council which had held unswerving rule in Crystal City for 36 straight years without change?

On April 2, 1963, with Texas Rangers standing by to keep order, hundreds of dedicated citizens of Latin descent stood in line in front of Crystal City's municipal building for hours in order to cast their vote for representative government. Their decision was firm and final. They outnumbered the Anglos 2 to 1. They had bought a poll tax. They banished fears brought on by terrorism, loss of jobs, and threats. And history was made. Here was democracy in action.

While their victory was brought to a climax on election day, April 2, it started more than 3 years prior to the election, taking its roots in the Viva Kennedy Clubs, and being followed up with the organization of the Political Association of Spanish-speaking Organizations—with poll tax drives and meetings and more poll tax drives and voter education and get-out-the-vote campaigns. (The following are the men who made this "Second Emancipation" a reality in south Texas.)

As State chairman of PASO, Bexar County Commissioner Pena has repeatedly put his own personal political considerations second to his desire that his people should have equality and an honest shake. In a letter to the people of Crystal City on the eve of the election, Pena pointed out that there was no representation in the Crystal City Police Department, and that the opposition had been bragging that the citizens committee for better government could be bought off. Later, when accused of using steamrolling tactics in the election, Pena declared, "Our only aim there or anywhere else was to encourage the people to take an interest in local government. We were happy to see a 95-percent vote. If this is a steamroller, then we need steamrollers all over the country, because this is democracy in action."

Ray Shafer, area director of the Teamsters Union, with headquarters in San Antonio, was concerned with conditions affecting Latin-Americans in Crystal City because many of them are members of his union there. They worked at a huge packing and canning factory just outside the city limits. Three of the workers were fired for alleged political activity at the plant. The union swiftly came to their aid and reinstated them.

Carlos Moore, a teamster official was instrumental in seeing that Crystal City officials adhered to the election code. "Many people thought he was a lawyer," Albert Fuentes commented, "Because he wore a suit and carried a copy of the election code. He would always start writing something down and say he thought we would have to go to court." Because of Moore's sharp legal eye the balloting procedure was changed from being completely in the open—a prime violation of civil and constitutional rights—to the rightful system of secret ballot.

Henry Munoz, Jr.—formerly with the Bishop's Committee for the Spanish-Speaking in San Antonio, an organization dealing with the retraining of migrant labor. He is now San Antonio parks foreman, in charge of personnel administration. Among the problems he encountered in the election was the firing of candidate Manuel Maldonado. An assistant manager at a hardware and chemical store, Maldonado was fired just after the election.

Martin E. Garcia is district director of PASO in the Kingsville and Corpus Christi area. A student of political organizing, he, along with Albidress, Shafer, Moore, Munoz, and Albert Fuentes, Jr., worked diligently in Crystal City, to promote the sale of poll taxes. At the same time they politically educated the Crystal City Latins, showing people who had never before voted the value of freeing themselves through the ballot box.

Charles Albidress, Jr., chairman of Bexar County PASO, and attorney at law in San Antonio, was very helpful in legal instruction on rights of poll supervisors and as speaker at rallies.

Other speakers in Crystal City included Jake Johnson, State representative from Bexar County and John Alaniz, district director of PASO also a State representative from Bexar County.

Pena said history has been made; and the history books will record it, and history books will also record that when the PASO forces, teamsters, liberals, and everybody interested in bringing equality to Texas and the Nation were summoned together, they responded. They worked when no one else really believed there was a chance to succeed. And succeed they did.

Here's the reason:

"Crystal City stuck out as a place with typical problems of the Latin American—low-paid farm labor, mistreatment of Latin Americans by policemen, slum areas, unpaved streets, and nobody listening to their grievances." We listened and we worked for 3 years to see that a majority of the Latin Americans bought their poll taxes. Then we gathered the best qualified men in the field to help educate these people politically.

"I never accepted a penny for the work I did in Crystal City," Fuentes avowed. The director of the Texas Government Research Bureau, Funentes next plans to work with the people of the Rio Grande area from El Paso to the valley where the 'minority' actually constitutes the majority—to bring real equality back into the American system. As he said in Time magazine: "We have done the impossible. If we can do it in Crystal City, we can do it all over Texas. We can awake the sleeping giant."

Since the Crystal City election the council moved to replace the city manager. This replacement in itself made history. Mayor Cornejo and his councilmen appointed George Ozuna, civil engineer, from San Antonio as city manager. He is the only Latin American in the State of Texas and possibly the United States to serve in that capacity. Together they have already initiated and issued contracts for street and sewer improvements totaling a half million dollars. This is truly progress.

WHAT IS PASO?

[Telegram]

HYANNISPORT, MASS.

Hon. ALBERT PENA,
Bexar County Courthouse, San Antonio, Tex.:

Congratulations on the magnificent job turned in by the Viva Kennedy Clubs in Texas. The margin of victory in Bexar, Nueces, El Paso Counties and the Rio Grande Valley was a prominent significance in carrying Texas.

Best personal regards,

JOHN F. KENNEDY,
U.S. Senator.

In answer to the question: "What is PASO?" the foregoing telegram from the then President-elect John F. Kennedy is self-explanatory. In referring to the vote-getting power of the Viva Kennedy Clubs (direct forerunner of PASO) he said: "The margin of victory in Bexar, Nueces, El Paso Counties and the Rio Grande Valley was of prominent significance in carrying Texas." It went without saying that with the Viva Kennedy Clubs' help in carrying Texas, President Kennedy was able to carry the Nation, so close was the election in 1960.

The Political Association of Spanish-Speaking Organizations (PASO) as the name implies, is strictly a political action group. It is not the machine-patron type of politics where a "boss" calls all the shots. It is not the for-sale-to-the-highest-bidder type of politics.

There are no "vendidos" or "Tio Tomases" in PASO.

PASO is a nonpartisan, independent political movement, tied to the apron strings of neither the Democratic nor Republican Parties.

With membership open to all American citizens, regardless of their race, color, or creed, PASO is organized to correct problems peculiar to the Latin American people. This is not a new concept. Many social and economic groups have the same or similar political action groups—doctors' groups, lawyers' groups, Negro groups, and many others have organized politically—all for reasons peculiar to their group.

Having established what PASO is, we come to the question: "Why is there a PASO?" and "How does it work?"

Why, for instance, did PASO work with the Latin Americans of Crystal City, to help them win the election there? Let us see. There are almost 4 million persons of Spanish-Mexican descent in the Southwestern United States, the vast majority of whom are citizens of this country. As an Indian, many were here from time immemorial, long, long before John Smith and his fellows pioneered in Virginia. In other words, historically and culturally he belongs here.

If historical precedence is the criterion, our rights and needs have priority over those of other "nationality groups." Our loyalty to America has been demonstrated time and again in war and peace. Yet, when it comes to such matters as wages or decent streets, playgrounds, education, and opportunity following in the wake of these things, the Mexican-American is the "forgotten man." The very public officials who owe their elections to Mexican-Americans often completely forget election promises and shut their eyes to their responsibilities.

This, then, answers why there is a PASO: To seek out the candidates for public office on all levels—regardless of their party, race, or creed—to seek out men who will work to give the Mexicano a chance to be a good American. He asks not for charity or abundant welfare. Only for a chance to help himself. A chance for better pay and better education and decent medical care are three major steppingstones.

Thus PASO tends to support candidates who support medicare, Federal aid to education, and strong labor laws. This is because we are not so much worried about Federal or union control—rather we are concerned that our people have a chance for life.

We proved that PASO could carry elections in the days of the Viva Kennedy Clubs. In the 1962 gubernatorial race in Texas PASO supported Price Daniel in the primary after a State convention where PASO groups divided their support on a split vote. He lost the primary but he carried approximately 87,000 votes in south Texas, not including Bexar County. In the runoff, Don Yarborough received an increase over his primary vote of approximately 87,000 votes in south Texas not including Bexar County. PASO supported Yarborough in the runoff. Where did his additional (and almost election-winning) 87,000 votes come from? The answer, it seems, is apparent.

With the election in Crystal City, and the attendent national publicity, now a feather in the PASO cap, we face a bright new era for the Latin American in south Texas. What PASO helped accomplish with poll tax drives and intensive voter education in Crystal City, so can PASO accomplish in a wide belt along the entire Rio Grande area from El Paso to the valley, to the Gulf Crescent.

Several congressional districts are within our grasp if we work hard for them. In numerous counties throughout south and southwest and southeast Texas, minority anti-Latin Anglo-American populations dominate city and county politics and elect officials to the State legislature and to Congress. These officials often completely forget the problem or never try to solve the problems peculiar to our ethnic group when they are firmly entrenched in office. It is not that PASO wants segregation in reverse, as some of our enemies charge, or that PASO finds fault with Anglo-Americans as a whole. (They are invited to join us.) As a matter of fact PASO has endorsed Anglos against Latins, we have endorsed more Anglos than Latins. It is just that the Latin American needs and deserves representation in areas where he is in the majority or near majority. He is tired of being treated as part of a minority—of being kicked around like a political football.

And he has reached the point where he will be heard; a point where, through PASO, he will elect local, State, and National representatives. The "sleeping giant" is fast awakening. Never will he sleep again.

PASO, in other words, shall be the medium by which our people may—

Obtain representation in its government, either by election or by appointment to government positions.

Work toward the elimination of the poll tax and establishment of an adequate registration system and by so doing increase the participation of more citizens, regardless of race, color, or creed, in their government.

Genuinely open the door of equal opportunity the education for our young people, and the retraining of the laboring men displaced by automation, so that he may better provide for his family and their future.

Improve the general economic conditions by working for establishment of a minimum wage law, and any other method conducive to increasing the earning power of all people.

Improve the situation, with positive action, existing among the agricultural worker.

Attempt to solve our problems, social, economic, and many others which space does not permit to list.

ALBERT FUENTES, Jr.,
Executive Secretary,
Political Association of Spanish-speaking Organizations.

Join PASO.—"PASO needs your help. Join now. The State dues are only $1 per year plus your local county dues. For further information, write or call one of the following: Albert A. Pena, Jr., Bexar County Courthouse, San Antonio, Tex.; Albert Fuentes, Jr., 430 International Building, San Antonio, Tex.

[From Zavala County Sentinel, Crystal City, Tex., Feb. 22, 1963]

LIONS CLUB TO ORGANIZE SCOUT TROOP

The Crystal City Lions Club is planning to organize a Boy Scout troop for Anglo-American boys between the ages of 11 and 18. Boys in this age group who are interested in scouting are invited to meet at the old Troop 96 Boy Scout Hut on East Maverick Street, at 7:30 p.m., Tuesday, February 26.

Fathers of the boys are also invited to attend the organizational meeting.

Ed Ball, district scout representative, will be on hand with interesting films as well as full information on all phases of scouting.

SCOUTING—FOR ANGLO BOYS ONLY

"On my honor, I will do my best, to do my duty, to God and to my country * * *"

* * * * * * *

"A Scout is trustworthy, loyal, helpful, friendly, courteous, kind, obedient, cheerful, thrify, brave, clean, and reverent."

DISCRIMINATION 1963

Who is responsible: The Lions Club, the Boys Scouts of America, or the people of Crystal City?

[From San Antonio Light, Apr. 30, 1963]

OFFICIALS BACK RANGER IN ROW AT CRYSTAL CITY

Gov. John Connally and Texas Department of Public Safety Director Homer Garrison, Tuesday gave Texas Ranger Capt. Alfred Y. Allee a vote of confidence in his dispute with Crystal City Maj. Juan Cornejo.

Cornejo, leader of an all-Latin American political ticket swept into office April 2 in Crystal City, said Allee assaulted him Monday in the city hall of Crystal City after accusing Cornejo of making false statements about him to newspaper reporters.

CORNEJO IN HOUSTON

Cornejo was in Houston Tuesday to confer with Houston Attorney Chris Dixie about possible action in Federal court.

He also wired the charge to President Kennedy, U.S. Senator Ralph Yarborough, and Attorney General Waggoner Carr, and asked Connally to investigate possible civil rights violations in Crystal City.

In replying to Cornejo's telegram, Connally gave the veteran ranger of 33 years a vote of confidence by saying: "The Texas Rangers were sent to Crystal City for the sole purpose of maintaining law and order and to prevent violence. Apparently their efforts have been successful to date and they will remain as long as the situation warrants."

Colonel Garrison said: "I am sure nobody has been mistreated. I have complete confidence in Captain Allee." Asked about Cornejo's allegations, Colonel Garrison said, "I know of his allegations. I am in close touch with the situation at all times."

UNION AGENT'S CLAIM

Cornejo, 32, business agent for the Teamsters Union in Crystal City, said Allee assaulted him in the city hall of Crystal City Monday morning.

Cornejo was signing checks, he said, when Allee came in and asked to speak to him in the city manager's office. They went in the manager's office, Cornejo said, and Allee accused Cornejo of making false statements about him to newspaper reporters.

Meanwhile, State Representative John Alaniz of San Antonio asked Governor Connally to investigate possible civil rights violations in Crystal City.

The all-Latin slate won office with help from the Teamsters Union and political organizers from PASO.

Then Allee pushed him and banged his head against a wall, Cornejo said. "I fear for my life," Cornejo said. He flew Monday afternoon to San Antonio in an airplane chartered by Albert Fuentes, Jr., an executive of the Political Association of Spanish-Speaking Organizations."

"He's a liar," Allee said.

"I merely talked to the man. He was never attacked or abused, and I've got witnesses to that fact. Everything he said is just a bunch of stuff. He's perjuring himself," Allee said.

Jim Dill, the Crystal City manager who recently announced his intention to resign, backed Allee's story. "The captain didn't lay a hand on Cornejo," Dill said.

Cornejo said Allee cursed him. Allee laughed. "You know me. I cuss a little in everyday conversation, and I just a might have said something he didn't like."

Allee said he welcomes any investigation of his activities in Crystal City, and he said Ranger M. W. Williamson has been called in from Gonzales to help him keep order.

CRYSTAL CITY MAYOR SAYS TEXAS RANGER IS HARASSING HIM

Mayor Juan Cornejo has sent telegrams to President Kennedy and Senator Ralph Yarborough protesting Texas Ranger Alfred Allee's "harassing tactics," Albert Fuentes, Jr., executive secretary of the Political Association of Spanish Speaking Organizations, said Monday.

Fuentes said L. R. Downey, PASO director from El Paso, has flown to Washington to follow through these protests, Fuentes said.

Mayor Cornejo stated in his protest that the duty of the Texas Rangers should be to protect the new city council in its functions instead of harassing it, Fuentes said, Cornejo could not be located for personal verification of the protest.

Fuentes said Cornejo told him that Allee "interferes constantly" in city council meetings.

"HE'S A LIAR"

Told by San Antonio News that Cornejo had accused him of harassment, Captain Allee said: "He's a liar."

Advised that Cornejo had accused Allee of taking Cornejo from a meeting and questioning him, Allee said:

"I didn't take him out of a council meeting. It's all unfounded. I sure didn't do it."

He said, however, he had talked with Cornejo last Friday after Homer Bonmet, a Crystal City gas company employee, had gone to a council meeting to get Councilman Manuel Maldonado to attend another meeting. Allee said the second meeting was held but he did not know what was discussed.

He said Cornejo objected to Bonnett about Maldonado being called to the meeting and "it looked like there was going to be trouble."

Allee continued:

"ENFORCE LAW"

"I told Cornejo that I was here to enforce law and order, and 'if you're going to jump on a citizen you're going to start something and that is what we are trying to prevent.'

"As far as I know, there were no ill feelings. I have not harassed him or anyone else."

[From San Antonio Light, May 31, 1963]

MAN WHO ASKED UNION HELP IN VALLEY FIRED

RIO GRANDE CITY.—Margin Sanchez, who asked the Teamsters Union to help unionize Rio Grande Valley farmworkers, has lost his job and farmers have scheduled an emergency meeting Monday to plan ways to prevent such organizing.

Sanchez said he had been fired from his job as agent for the Brown Express Co.

POLITICAL MOVE?

Farmers planned to fight attempts to organize their workers. If that fails, they said they would turn to crops that do not need hand labor.

Former State Representative Arnold Vale, head of the in-power "new party" in Starr County, charged that the attempt to organize the workers was "politically inclined" and it looked like an attempt by the labor union to set up another Crystal City in the valley.

The Teamsters and the Political Association of Spanish-Speaking Organizations, helped elect five Latin Americans into the city council at Crystal City April 2.

Sanchez said he was told by letter that he was fired.

His company told him he was fired "for reasons beyond their control."

Sanchez said his only interest was to help Starr County workers get "an honest day's wage for an honest day's work."

Bob Lilly, president of the Valley Farm Bureau, said several farm organizations will be represented at the meeting in Rio Grande City Monday.

FIGHT UNIONIZATION

They include the Texas Canners & Freezers Association, the Texas Citrus & Vegetable Growers & Shippers Association, the Valley Cotton Ginners Association and the Texas Citrus Mutual.

Lilly said he was sure the farm groups will formulate a plan to fight unionization because "I believe this is one thing you can get the farmers together on."

[From San Antonio Express-News, Apr. 4, 1963]

CRYSTAL'S CHIEF ASKS JOBLESS AID

Leader of Crystal City's victorious Latin American ticket, which swept out incumbents in last Tuesday's election, wants unemployment compensation.

Manuel Maldonado said he will ask for jobless pay because he was fired from his job as assistant manager of a Crystal City store the day after election and because he will draw no pay as a city councilman.

Maldonado reported in San Antonio that he was told he would have to resign because he had campaigned on the store's time, and that when he refused, he was fired.

He said he does not blame the manager, who he believes was forced to the move by customer pressure.

Maldonado was in San Antonio to confer with Albert Fuentes, Jr., executive secretary of the Political Association for Spanish-Speaking Organizations. He was accompanied by three other winners, Juan Cornejo, Mario Hernandez, and Reynaldo Mendoza.

[From San Antonio Express, Apr. 5, 1963]

CRYSTAL CITY WINNER SAYS HE'S BEEN FIRED

The man who led the five-man Latin American ticket which swept into office in Crystal City Tuesday, said in San Antonio Thursday night he was fired from his job the day after the election.

Manuel Maldonado said he has applied for unemployment compensation—noting he will draw no salary in his councilman's spot, which becomes effective April 16.

Maldonado said the manager of the Economart, a hardware and chemical store in Crystal City, told him Wednesday morning he would have to resign his job as assistant manager because he campaigned during his duty hours.

The Citizens Committee for Better Government candidate, in town with three of the other victorious candidates to map strategy for the Saturday school election—in which the committee has two candidates—denied he campaigned during duty hours.

Maldonado said, however, he had no hard feelings toward the manager, contending the manager was "pressured" into firing him by customers.

He said the manager came in at 9 a.m. Wednesday—Maldonado said he opened the store at 8 a.m.—and told him he would have to resign because he had violated the firm's agreement with him that he would not campaign while working. Maldonado said he refused to resign, forcing the manager to fire him.

Maldonado said he hopes the unemployment check from the Texas Employment Commission comes in soon. He said he is married and has five children. He said he knew the council job paid no salary when he ran for the office.

In San Antonio with Maldonado Thursday night to confer with Albert Fuentes, Jr., executive secretary of the State Political Association of Spanish-Speaking Organizations, were Juan Cornejo, Reynaldo Mendoza, and Mario Hernandez.

Fuentes said, ironically, Maldonado, although he led the ticket, campaigned less than the other four candidates.

[From San Antonio Express, Apr. 7, 1963]

POLITICS ON JOB CAUSE OF FIRING, EMPLOYER REPORTS

Manual Maldonado, one of the five winning candidates in last Tuesday's city election at Crystal City, was fired from his job because he "mixed politics" with his duties, his former employer said Friday.

C. O. Segrarek, manager of the Economart in Crystal City, where Maldonado was employed, denied outside pressure forced him to fire the city councilman-elect.

"He was told not to mix politics with his job and he still kept on distributing campaign propaganda during working hours," Segrarek stated. "For that reason and no other we were forced to let him go."

Maldonado said in San Antonio Thursday he was fired after refusing to resign from his position. He added that he placed no blame on Segrarek because the manager was forced to fire him because of pressure from customers.

Maldonado, one of five Latin Americans who successfully ran on the "Better Government" ticket against the present city council, said he will ask for unemployment compensation since he is to receive no pay as a councilman.

He and three other winners, Juan Cornejo, Mario Hernandez, and Reynaldo Mendoza, were in San Antonio to confer with Albert Fuentes, Jr., executive secretary of the Political Association for Spanish Speaking Organization, which backed the ticket.

Meanwhile, J. Myers Cole, special agent in charge of the San Antonio FBI office, confirmed a complaint in connection with the election had been forwarded to Washington. He would make no comment pertaining to the complaint officer other than to verify that the FBI had received a complaint March 28, which was forwarded to the Washington office.

Martin Garcia, a district director of PASO, told newsmen he had asked the FBI office here to check into alleged civil rights violations.

Garcia said the organization backing the five-man ticket had four specific complaints: That windshields bearing campaign stickers of the Latin American ticket were being smashed; that nails and tacks were being placed under their cars; that Latins were being harassed and that the local marshal had ignored their complaints.

Throughout the entire campaign and election, city officials have denied any discrimination charges.

[From Fort Worth Star Telegram]

CONNALLY GETS CRITICISM ON TEXAS RANGER ACTION

(By Peggy Simpson)

AUSTIN, May 1.—Crystal City Latin Americans are "deeply concerned" about Gov. John Connally's support of Texas Ranger Capt. Alfred Allee, one citizen said Tuesday.

Tomas M. Rodriguez told the Governor in a telegram he and a "substantial group of our citizens of Latin extract are greatly surprised and concerned" about Connally's endorsement of Allee's attitude.

Monday Connally said rangers would stay in the southwest Texas city "as long as the situation warrants" and he asked Mayor Juan Cornejo to cooperate with them.

Cornejo complained earlier of harassment by the veteran ranger captain and said in San Antonio Monday he plans to file assault charges against Allee for allegedly banging the mayor's head against an office wall. Allee denied the charges.

Another Latin American citizen, Frank Guajardo, sent a telegram praising the rangers' "vital service to this community in keeping the peace during our recent political crisis. In behalf of all the people of Crystal City we urge you to keep them here in sufficient number as long as you deem necessary. Captain Allee is well aware of this situation and we appreciate everything they have done." Guajardo is president of the Mexican Chamber of Commerce.

Cornejo and State Representative John Alaniz of San Antonio asked the Governor and State attorney general to investigate alleged civil rights violations. "We are in a state of fear and intimidation. We need help," Cornejo said.

Connally replied that "the Texas Rangers were sent to Crystal City for the sole purpose of maintaining law and order and to prevent violence. Apparently their efforts have been successful to date and they will remain as long as the situation warrants.

"Every effort will be made to insure that all are treated fairly and that the elected officials may perform their duties. I urge your cooperation with the rangers and Captain Allee in keeping the peace and they will cooperate with you in every way in the performance of your duties."

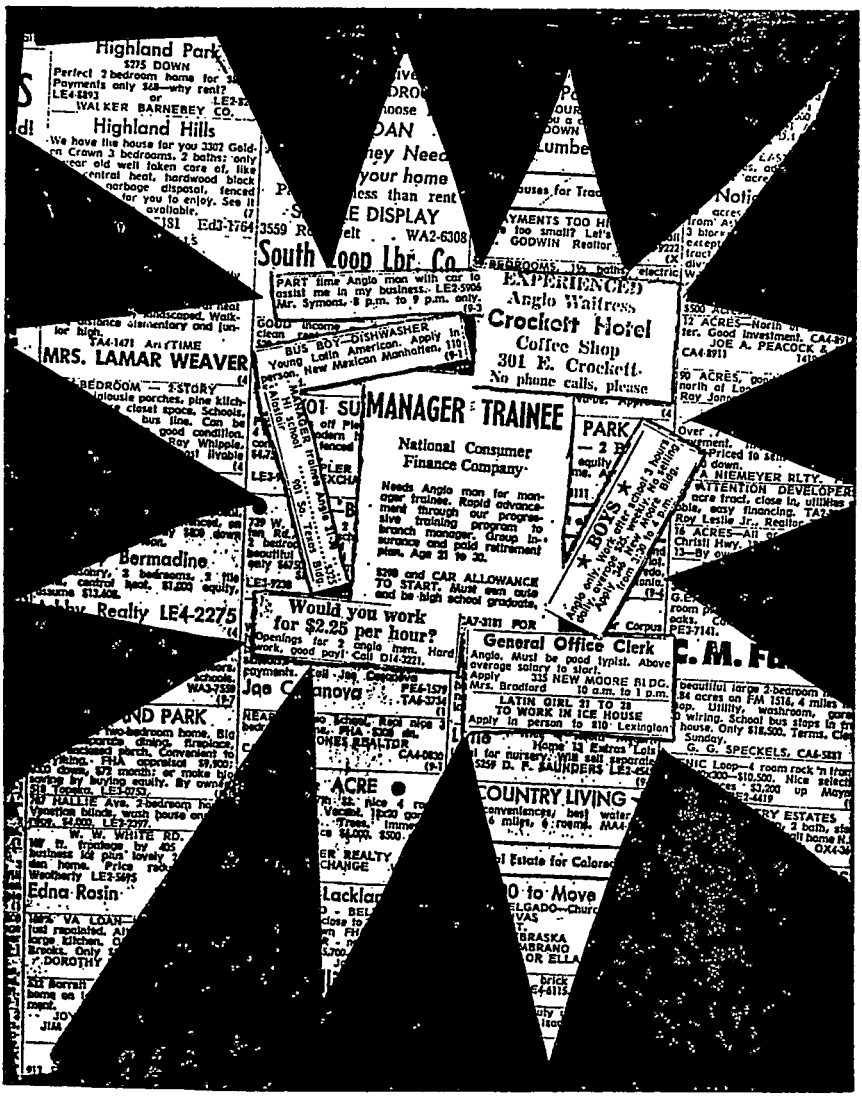
CRYSTAL CITY HAS NEW MANAGER

CRYSTAL CITY, May 1.—George Ozuna, Jr., of San Antonio assumed the duties of city manager Wednesday after the city council accepted the resignation of James Dill in a tense 7-minute session Tuesday night.

About 300 persons gathered outside the city hall prior to the meeting.

Observers said the crowd apparently was drawn to the meeting expecting new developments concerning Mayor Juan Cornejo's charges against Texas Ranger Capt. Alfred Allee.

Allee, whom Cornejo has charged roughed him up, was at the meeting.



STATEMENT BY ALBERT FUENTES, JR., STATE EXECUTIVE SECRETARY, PASO OF TEXAS

(Political Association of Spanish-Speaking Organizations)

During the debates, discussions, publicity, etc. of civil rights and civil rights legislation, it is rather amusing and yet it is also sad that there is so great a lack of understanding of some of the problems in our United States.

Civil rights has been spotlighted as an attempt to bring equal rights and opportunity to Negroes. All one sees in printed reports or on TV is the solution to the Negro problem.

Civil rights may mean the unshackling of the Negro in the South or in those areas where he is discriminated, but, also means affording true freedom to Americans of Mexican descent in Texas and the southwest United States. For here, in these areas, the American of Mexican descent, or Latin American, or

the Spanish-speaking citizen or whatever you would call him, has a problem of discrimination that equals the Negro's problem in the South.

It would be impossible to document all of the gross inequities exercised against the American citizen of Mexican descent merely because he was Latin, in this brief statement. I might say that some progress has been made over the years. But it has been done by giving of blood, and sweat, a chore that should not be necessary when our Constitution guarantees these rights. But these edicts have not been respected and, therefore, necessitated many court battles and demonstrations. We feel proper civil rights legislation could put an end to the personal financial sacrifice the private citizen must go through to insure his right as an American citizen.

I will try, as briefly as possible, to cite some of the problems and desired solutions that we feel will help solve the existing situation in respect to the denial of civil rights to Americans of Mexican descent.

TITLE I—VOTING RIGHTS

In referring to the problems of Americans of Mexican descent, I will restrict myself to Texas, where I am more familiar, but point out that this situation exists in proportion where the Spanish-speaking populations exist in numbers.

The Spanish-speaking population of Texas is one-fifth of the total population of the State, in the southern belt of the State, the Spanish-speaking population will average out at about 70 percent of the population.

However, here the percentages stop and reverse, for there are 254 counties in Texas; each elects a county judge, county clerk, county attorney or district attorney, county treasurer, county school superintendent, tax assessor and collector, a county sheriff a district clerk and district judges. (A judicial district may comprise more than one county.) (How many are Latin Americans?) The last Texas Almanac 1961–62—records as of September 1960—show that there are (with Spanish surnames) only (of 254 counties), three county judges, four county clerks, three county attorneys, two county treasurers, two county school superintendents, five tax assessors and collectors, three county sheriffs, one district attorney, three district clerks, and four district judges, elected in the State of Texas. Each county also supports a county health officer. There are only two county health officers in the State of Texas with Spanish surnames. This in view of the fact that Latin Americans are a vast majority of the population in over 2 counties, and that the Negro-Latin population is predominant in some 50 or 60 other counties, and this does not include east Texas, where Negroes alone comprise the majority in some counties. Incidentally, there are no elected Negro officials.

So it is obvious that the elected officials do not reflect the makeup of the population of Texas. This lack of representation further reflects itself in the appointive political positions.

Again the 1961–62 Almanac of Texas shows that of approximately 247 boards and commissions in Texas, the Latin American has representation on 5 boards; of 1,180 appointees to these boards there were only — with Spanish surnames or approximately one-half of 1 percent of the appointees were Latin. Gentlemen, all things being equal, this could not have happened. I'd like at this point, to clarify what I mean by majority population, so we may better understand the inequity. Here are only a few examples:

Duval County, approximately 90 percent of the population is Latin.
Starr County, approximately 90 percent of the population is Latin.
Webb County, approximately 90 percent of the population is Latin.
Zavala County, approximately 85 percent of the population is Latin.
Zapata County, approximately 85 percent of the population is Latin.
Cameron County, approximately 70 percent of the population is Latin.
Jim Hogg County, approximately 70 percent of the population is Latin.
Willacy County, approximately 70 percent of the population is Latin.
Brooks County, approximately 70 percent of the population is Latin.
Val Verde County, approximately 70 percent of the population is Latin.
Maverick County, approximately 70 percent of the population is Latin, etc.,

and counties like Guadalupe County—35 percent Latin and 30 percent Negro population or Fort Bend and Wharton Counties with each about 30 percent Latin and 25 percent Negro.

No, gentlemen, and I am sure you will agree, the political chart on representation does not reflect the government by and for the people. It reflects that something is not right.

Of course, the economic barrier to voting is one cause (the poll tax, costs $1.75 per person to vote), and this year Texas will have a special election on November 9, the issue being to retain or abolish the poll tax as a prerequisite to voting. The only catch is you have to have a poll tax, to vote against the poll tax, and you can't get one now for any money, since the poll tax paying period ended January 31 1963.

An interesting thing happened in Texas this year, while the mass demonstrations in the South by Negroes revolting against the shackles of discrimination when denial of voting rights were going on, another type of revolution was going on in south Texas. A revolution by ballots rather than bullets.

A combined effort of PASO and organized labor (the Teamsters Union) poll tax buying campaigns were held in Crystal City, Zavala County, Tex., and over threats of violence and economic reprisals the Latin Americans became the voting majority for the first time (they overcame by sacrifice the obstacles of qualifying to vote). Then they united and elected for the first time a truly representative city council. A small pamphlet is attached to this statement which may better explain in more detail the problems encountered in the Latin American's attempt to be a first-class citizen.

But having won the election did not end but began more problems. Attached you will also find some news articles that reflect these problems. The mayor was harassed and denied the right to exercise his office by the Texas rangers, particularly one, Capt. Alfred Allee, in charge of the rangers in Crystal City. The director of public safety (Allee's boss) refused to act, (maybe the fact that he was Tom Allee's cousin had an effect on his decision to condemn Captain Allee's action), the Governor refused to act (Governor Conally of Texas), by the way, says he doesn't favor civil rights legislation and says he is proud of the way Texas has progressed without it. Well, gentlemen, Governor Connally may be proud of the way things progressed in Crystal City but we are not, nor do I think, as Americans you will be when you see the attached exhibits of how Mayor Cornejo, a duly elected city official, has had to file a personal financial sacrifice civil suit against Captain Allee of the rangers because Governor Connally or the U.S. Attorney General has not acted, and because of the lack of civil rights legislation in this field, or the fact that one of the councilmen has been fired because he dared desire to voice his opinion on his political and economic betterment, or the case of Margil Sanchez, of Rio Grande City, who has lost his job because he dared desire to live like a first-class American citizen and educate himself as to the laws of equality. None of the other cases too numerous to mention have gone to court because they cannot afford the prohibited cost and then only to have the Attorney General file the answers in opposition. (This is where *Cornejo* case is now in court with the answers filed by the State's attorney general in defense of Allee.) Governor John Connally may be proud of the way Texas has progressed but we are not and we join other Americans in asking for a strong bill on voting rights for our citizens.

TITLE II. INJUNCTIVE RELIEF AGAINST DISCRIMINATION IN PUBLIC ACCOMMODATIONS

This particular subject is easy for one like me, for I still remember when I was about 5 years old I'd go to town to a movie (a Mexican movie) and I went to a cafe for a glass of water; they told me I'd have to drink it outside; I asked for a hamburger and they said that there was a window outside that I had to order there and take it with me. "Mexicans aren't allowed in here," they said.

Around 1938 or so, Judge Allred made the historic decision that I guess you could almost compare to civil rights legislation of the times, he handed down the decision that "Mexicans" were white. This I'm still not sure inured to our benefit it may have hurt. In either case the powers that be had their job cut out for them. Not to comply but to find ways to avoid compliance, for throughout south Texas, the most common sign on places of public accommodation were "Whites only—No Mexicans Allowed." It didn't take long, though for the Anglo to learn how to circumvent Judge Allred's ruling. Soon the "White Only" was removed and the signs just read "No Mexicans." I guess World War II was mostly responsible for ending a lot of the discrimination, the boys became pretty rough on places that denied service, especially in south Texas, this later spread north, and also the many court cases fought by Albert Pena, Gus Garcia, Carlos Cadena and others on school segregation that progressed the isolating of discrimination in public places.

However, discrimination still exists in public accommodations in Texas against Latin Americans. Agreed, few and far between, but there is no such thing as an apple being a little rotten, it is or it isn't. It's like cancer, you cannot say that because it is a small infection on the small toe of the foot and far removed from the heart, that it is minor, if it is not stopped, quickly, it will soon kill the body. As late as 1960 or 1961 a city councilman and his wife were refused service "because they were Mexicans." Now Congressman Henry Gonzalez in 1955, then mayor pro tem of San Antonio, Tex., was refused admittance to a privately owned public park in New Braunfels, Tex. In 1960 PASO protested the denial of "Mexicans" (Americans of Mexican descent) use of the city swimming pool in Kenedy, Karnes County, Tex. (the population is 58 percent Latin). The city council rather than integrate Latin Americans to swimming pools, closed the pool and private businessmen built a private pool, closed to Latin Americans today. This was also true at Crystal City.

In Kingsville, Tex., Kleberg County, the only country club refused admittance to Latin Americans because the bylaws of the club were for white only; they filed suit in a local court but the decision interpreted the bylaws as meaning "White Caucasian only" and after all a Latin is not "White Caucasian." Ridiculous, it may be, but to a Latin it is a serious denial of what we call American democracy and certainly puts Latins in the position of asking, "What is first-class citizenship?"

In San Antonio, in 1953 or 1954, their councilman, Henry B. Gonzalez, forced an issue on the city council, forbidding segregation in public pools. It was for Negroes to swim, because Latins already could, but was unseen in the headlines was the fact that a pool is in Alamo Heights (a suburb) Latins were not permitted, but not that Negroes were allowed so were Latins.

I also recall the 1957 session of the State legislature, when some terrible race bills were introduced in the State senate, designed to circumvent the school integration of Negroes, then State Senator Henry B. Gonzales fought them bitterly. Gonzales tells of a conversation between himself and the then Gov. Price Daniel. Henry said the Governor approached him and said, "Henry, I don't see why you want to fight these bills, they apply to Negroes only; it won't affect your people." And Henry said, "Well, Governor, why don't you put 'Negroes only' in the bill, because the way it's written it doesn't restrict its effect, so far as I'm concerned, its Negroes in east Texas and Mexicans in south Texas.

Yes, gentlemen, I think that title II is vital for all Americans because to a dedicated American who has shed blood for the United States of America on foreign soil defending 100-percent citizenship and 100-percent freedom, 90 percent is not good enough.

TITLE III. DESEGREGATION OF PUBLIC EDUCATION

Here again, gentlemen, the problem is close to home. For with all the bitter court fights that LULAC (League of United Latin-American Citizens) has fought since the early thirties and the American GI forum since World War II, segregation in schools still exists in Texas. True it is not as pronounced as in the case of Negroes, but it does exist, under the guise of language barriers, etc., whole classrooms of Latins are segregated. As late as 1962, protests have been filed and will continue to be filed every time this condition is ferreted out. Lack of knowledge as to recourse by the average citizen has delayed bringing about more suits, also, lack of finances to do so has detracted. But with this type of legislation being proposed, it could speed up equal educational opportunities for Latin Americans.

We must recognize, that the only reason other inequities have existed among Latin Americans in Texas is the lack of education as to recourse (provided you can afford the recourse) and education is to be the answer, so certainly, here, no measure can be too drastic to insure equal opportunity for education. This is the core of future opportunity for equality.

TITLE IV. ESTABLISHMENT OF COMMUNITY RELATIONS SERVICE AND TITLE V. COMMISSION ON CIVIL RIGHTS

These two titles without question are vital to a workable civil rights program. Experience shows as some of the previous statements show, that laws without proper methods of insuring their compliance with proper recourse, not at the expense of the individual but at the properly channeled obligation of his government to assure every citizen that his voice will be heard if he is wronged.

TITLE VI. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

This area certainly needs to be strengthened and enforced, for I think that it will suffice to say that Federal funds are tax funds, tax funds are peoples money, and certainly my money should be withheld from any federally assisted project if my money is used to discriminate against me. For as I see all of the Negroes, Latins, Jews, and others discriminated against in public places, employment, education, etc., none of them are excused their taxes, or excused their duty in the armed services to defend their country (nor do I think they would want to be excused). It seems that they are given first-class status in pay or discharging obligations but second-class status in exercising their rights, this can never be reconciled as fair or just.

TITLE VII. COMMISSION ON EQUAL EMPLOYMENT OPPORTUNITY

At this point I would like to remind the commission that, as I prepared this statement, no great research program was executed to come up with some of the statements and figures in this presentation; I have only repeated a few of the activities I have learned from personal experience and contacts during my everyday life.

For I know that if a detailed study were initiated and material already in print, such as books and statements by Dr. Geo. I. Sanchez, of the University of Texas, and others gathered, I would have testimony and facts and witnesses enough for many weeks of review. I merely scratch the surface and hope you will consider it as such.

Equal employment opportunity is probably one of the most vital programs that need to be strengthened and enforced, for it is here that all of the effort of the parent to sacrifice and educate his children so that they may better provide for themselves and their families and certainly to be able to contribute much more to their country is guided.

However this is not the case today.

I would, again, make reference to the remarks that Governor Connally, of Texas, made just a day or two ago and may be making today.

He said he is proud of the progress made so far in civil rights in Texas. I have cited the political appointed situation and the elective official problem, but let us look further; there are no Texas Rangers of Mexican descent, there are no Texas highway patrolmen Latin Americans, there are no Latin Americans in executive or administrative capacities or in State government in Texas without exception of the highway department, insurance commission, game and fish, or any other departments. In 1961 there was not a single State employee of Latin American descent in the State capital, with the exception of some of the personal staff of some elected officials and this was minor.

This also reflects the fact that in San Antonio, the city-owned boards hired no Latins in capacities of executive or administrative quantity and the majority not even in clerical positions.

However, I must say Latins abound in the common labor sections of these functions.

The City Public Service Co. in San Antonio maintains a club room for employees, called the Live-Wire Club, but this is for anglos only, across the maintenance yard is an old building that houses the Latin Club, for Latins only. When confronted, the board said the Latins preferred it that way. Of course it may be difficult to get Latins to say otherwise, after all you have seen what happens to others that want to protest and you must eat. So accept? Yes, prefer? No. No man ever preferred being second class. A man will suffer many indignities when he needs to feed his family but he will never enjoy the freedom of being a man equal among men in a free society as long as race, color, or creed, or national origin relegate him to second class.

Let us look at another county, Kleberg, Kingsville, the county seat, the home of Texas A. & I. College and the great King Ranch. The vast majority of the population of Kleberg bears Spanish surnames, yet, not a single engineer nor administrator, not even a skilled worker has been hired to date by the Celanese Corp. operating in Kleberg County just outside the city limits of Kingsville. Many Spanish surname engineers have applied for positions at Celanese, all graduates of A. & I. colleges or some other State college or university. The only Spanish surname people employed are common laborers. We feel it more than coincidence, not a single Spanish surname Texan is employed by the Humble Oil Co., other than labor in that county. The Kleberg First National Bank

does not have a single cashier, clerk, or administrator with a Spanish surname. Yet, about one-third or approximately 300 of the graduates at Texas A. & I. college are American with Spanish surnames.

The high school in Kingsville does not have a single Spanish surname teacher teaching any academic course.

At this point let me say that Kleberg County is one of the counties that has progressed more than others in Texas.

Back in San Antonio, Tex., no law firm with more than six employees have any Latin American employees. This in view of the fact that about one-third of the lawyers in San Antonio are Latin American—not one single Latin American lawyer is retained by the city of San Antonio or by and board of the city.

There are no Latin Americans employed in an executive or administrative capacity in the river authority water board, public service, transit board, etc.

This just mentions a few instances but is repeated time and again throughout the State, from the capitol, the capitol building on down to private employment. The government may be proud but we are not.

Attached you will see a picture of some ads clipped from the San Antonio papers this year, you can see the discrimination is obvious.

Lately, much has been said about columntary integration, on all levels including jobs. They brag about the fact that 80 percent are willing to integrate employment, etc. When a person of a minority group who knows there is discrimination in hiring goes out and looks for a job, he possibly in such an atmosphere walks out and seeks that job with equal confidence? The voluntary bit only changes the position of the so-called majority group, but it does not change, in one respect, the position of the minority, because they know that discrimination exists somewhere and they are afraid to go in some place because it may be one of the 20 percent that discriminates and from the beginning he is still on the defensive. Yes, the 80 percent employers may have their consciences soothed, and his position may change, but the prospective employee still discriminated even though in a small number of places, he has not had his position changed much.

What good is education? What good is it that I sacrifice and educate my boy? When he graduates he can't find a job to fit his education because he is dark skinned and Mexican?

Frankly, I don't always have the right answer, I merely say, with more of our people educated we will be better armed to insure that someday laws will be passed and enforced that will assure equality of opportunity to exert ourselves in those capacities for which we are qualified regardless of race, color or creed.

This bill, gentlemen, lacks many things, it is not forceful enough, it is not mandatory enough, but as we say, in south Texas when you're sleeping on the floor you can't fall out of bed.

We need some relief.

As citizens of these great United States, sharing the full responsibility of our obligations, this will be but a stepping stone for the furtherance of the needs for complete freedom and opportunity of equality which I know will someday come to all people of America regardless of race, color, or creed.

For the world has become very small, gentlemen, and our position as leaders in the free world will be short lived unless we recognize that we can no longer preach freedom, we must live it. Our neighbors to the south in Mexico and beyond do not agree with go slow and moderation, freedom was supposed to completely exist, not progress slowly to its completion. Our country was supposed to be founded on freedom, not on voluntary experimentation, to see if the Latin American (American citizen) is qualified for the equality the United States preaches is the cornerstone of democracy.

We cannot say we have built a great free nation without a foundation and now we will try to place a cornerstone, freedom for its people on a voluntary basis.

This type legislation is long overdue, go slow, is only for those who would fear the promise of the future for freemen, moderation is for those to whom their own foundation is not based on equality and justice, and these are not true Americans.

In closing may I say again that this bill is not all it should be, but as it is, it is vitally needed to justify the hunger for freedom which burns within the bodies of minorities, and what is the United States of America if it is not the minorities of the world united for freedom regardless of race, color, creed, or national origin.

STATEMENT OF SIDNEY ZAGRI, LEGISLATIVE COUNSEL, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA

Mr. ZAGRI. My name is Sidney Zagri, legislative counsel for the National Brotherhood of Teamsters.

On behalf of the International Brotherhood of Teamsters and its 1,700,000 Teamster members consisting of all races, creeds, and nationalities, General President Hoffa and the general executive board, I welcome this opportunity to discuss with this committee of the Congress H.R. 7152 and H.R. 3139.

We believe that the times call for a civil rights act more in keeping with the needs of the disenfranchised minorities than either the administration or the Republican proposals.

H.R. 7152 proposes very little new and attempts to do very little; and what little it attempts to do is not supported by mandatory powers inherent in the bill. Instead, you are requested to give a number of discretionary powers to an Attorney General deeply involved in the preelection action strategy of his political party. The bill is glaringly lacking in adequate enforcement powers, leaving the Negro to the mercies of the local police and economic intimidation and coercion.

In two titles of the bill the administration is seeking statutory status for that which it already has power to do under Executive order. In fact, an analysis of the administration's faliure to use its executive authority in a massive attack on the problem of discrimination raises the question of buckpassing to the Congress. We shall examine this hesitant, limited, loosely drafted bill in detail. We shall make suggestions for its reconstruction and improvement. Finally, we shall suggest that all civil rights legislation must be backed up by a massive attack upon America's No. 1 problem—unemployment.

The CHAIRMAN. That is certainly a massive attack on this bill.

Mr. ZAGRI. It is so intended.

The CHAIRMAN. And also several Republican bills.

Mr. ZAGRI. I think both are exceedingly weak in their approach. However, there is merit in both bills and I shall allude to it where I think there is merit. We certainly subscribe to the objectives.

The CHAIRMAN. Thank you for the tail to your kite.

Mr. ZAGRI. We hope the kite will fly when it has the proper tail.

Mr. MEADER. Mr. Chairman, I might, since I agree with the chairman's interpretation of this opening blast, wonder if the witness wants to give the Attorney General more power than proposed in either a Republican or Democratic bill.

Mr. ZAGRI. In the course of my discussion I will point out that we want to give it less power than it is proposed. We feel he has too much power already. He has aggregated to himself more power than any Attorney General in history. I think he should use the power he already has and use it wisely before he asks for any new powers.

Here we wish to make three points briefly. They will serve to emphasize to the committee why we had an interest in testifying here today.

(1) There is no discrimination within the Teamsters Union against any member on the grounds of race, religion, or national background.

(2) The Teamsters Union, through its nonpartisan political arm, DRIVE, has assisted its minority group members in securing their political rights.

This is one reason why Mr. Fuentes is here and his experiences which he will allude to.

(3) General President Hoffa has effectively eliminated regional differentials and established a uniform scale, uniform grievance machinery, which has been uniformly applied to all members in every part of the country, whether they be white, Negro, Mexican, or American Indian.

Oftentimes nondiscrimination clauses in collective agreements are mere platitudes often used by large corporations to gain immunity from specific performance of nondiscrimination under Government contract.

Incidentally, this is not my charge. It is the charge of Mr. Hill, labor secretary of the NAACP.

What is really important is the enforcement machinery that gives meaning to these clauses.

Yes, the Teamsters Union has a constitutional provision against discrimination; nondiscrimination clauses in hundreds of contracts; but what is important is the carrying out of this policy in daily practice.

What does the record show?

(1) No segregated locals. We have over 800 locals across the breadth and length of this land and we have not one segregated local.

The last vestige of segregated locals disappeared in March 1962 when the general executive board authorized the director of the Southern Conference of Teamsters to merge separate Negro and white locals, even in some instances where Negroes wanted to keep segregated locals.

(2) Over 200,000 teamster Negro members constituting 20 percent of all Negroes in organized labor, many occupying skilled and semi-skilled jobs, protected under uniform seniority clauses enforced by grievance machinery uniformly applied.

(3) To assure that nondiscrimination clauses in teamster contracts would not be window dressing, General President Hoffa circulated the International Harvesters Agreement with 27 teamster locals, including such southern locals as Teamsters Local Union 327 in Nashville, Tenn., and Teamsters Local Union 968 in Houston, Tex., urging the adoption of such clauses and the establishment of administrative machinery to assure their effectiveness.

I am happy to report here today that on July 22, 1963—just 2 days ago, the Western Conference of Teamsters, an organization of over 400,000 members, convened in their biennial convention in Los Angeles, voted to establish a democratic rights committee and did so establish at a point during the convention for the purpose of enforcing equal job opportunities in all teamster locals in the western conference.

This is consistent with the tradition of other Teamster locals, such as Teamster Local 688 in St. Louis, which established a democratic

rights committee in 1951, which has been functioning ever since to insure intraunion democracy, as well as act as a watchdog in the community in the area of human rights.

(4) Training programs. Recognizing that equality of opportunities often begins with the opportunity to receive training, Teamsters Local 657 in San Antonio, Tex., performed an invaluable service in training Mexican American migrant workers and others for semiskilled and skilled jobs in the jurisdiction of that Teamster local.

Albert Fuentes, who is the State executive secretary of PASO, the political organization of Spanish-speaking peoples in Southwest stated:

> In south Texas the Latin American people have the problems that the Negroes have in the South; we have job discrimination and violation of civil rights due to the fact that we are Latin American and have Latin American surnames. We have found it easy to work with the Teamsters Union because in our part of the State, we find the Teamsters Union to be the only union completely integrated and completely free of any segregation.

(5) The protection of minority members by Teamster contracts.

Teamster contracts stress three important aspects of job equality:

(*a*) The right to get a job on the basis of one's ability without discrimination.

(*b*) The right to fair and equal treatment on the job, and

(*c*) Protection against discharge without just cause.

As a result of Teamsters' nondiscrimination policy, master contracts, and the principal of equal pay for equal work, the Teamsters member in the South, whether he be black, white or Mexican, receives the same pay and has the same opportunity as does the Teamster member doing the same work in the North, East, or West.

For the first time in history, under General President Hoffa's leadership, we have wiped out regional differential, established a national minimum and inserted uniform grievance procedures and machinery in all of our contracts, which provisions are uniformly applied to the entire Teamsters' membership. So that there is no longer one pay in Birmingham and another pay in Detroit, Mich., so it is all the same, the same minimum.

Incidentally, come 1964, the rate nationally for over-the-road drivers will be 3.03 per hour with all fringe benefits. The same seniority clauses, the elimination, wherever it might have existed of separate seniority rosters based upon rates. I don't think it ever existed in the Teamsters Union, but we have made positive that it doesn't exist by making it a positive, affirmative policy of our International.

If there is any discrimination in the Teamsters Union—in an organization of 1,700,000 people, there is bound to be—it is mainly to the hiring practices of the employer, which is no longer a matter over which the union can assume any responsibility under Taft-Hartley. Any legislation imposing responsibility on the union must provide corresponding authority to execute the responsibility.

I would like to discuss the proposed bills title by title.

The CHAIRMAN. I want to say first, I compliment your union on the record of nondiscrimination.

Mr. ZAGRI. We are very proud of it. We feel that we have still a very important job to do, to insure that those policies are carried out in daily practices through our watchdog committees.

We will discuss the last title first, so we are going to discuss first title VII, Commission on Equal Employment Opportunity.

In my opinion, this deals with the most significant problem in the whole area of civil rights.

Economic equality must precede social equality to make it meaningful.

As President Kennedy stated in his June 19 message:

> There is little value in a Negro's being admitted to hotels and restaurants if he has no cash in his pocket and no job.

The other day I asked a cabdriver in Washington if he had a choice as to what he could achieve as a result of the struggle for civil rights, what would he ask for. His answer was very simple—"A better job."

Here in Washington the rights for which people have been marching in Cambridge and Greensboro are already achieved. Here the rights which lead people, even schoolchildren, to face imprisonment have already been won. In Washington, D.C., a Negro can ride anywhere in a bus, receive service at any bar or restaurant, can use any tennis court or golf course, or almost any golf course, can vote in a primary with the same freedom as any white man.

Yet, who would say that there is less unrest, less racial tension, less danger of social eruption in Washington than in the communities of the South? We who live here know better than that.

Job discrimination in private industry in the Washington metropolitan area costs more than $300,000 annually, according to the Director of the U.S. Employment Service for the District.

The board of trustees of the National Urban League urging a crash program to close up the gap between the conditions of the Negro and white citizen warned that—

> The current demonstrations in the South by colored citizens seeking elementary and fundamental rights are mild in comparison with those on the verge of taking flame in the tinderbox of racial unrest in the northern cities.

In the teeming Negro ghettoes of the North, as in Washington, D.C., struggling with the problems of automation, overcrowding, and discrimination are reaching the breaking point. This seething unrest may be portrayed even more dramatically by hard core facts. What does the civil rights gap between the white and Negro population consist of? Incomewise the Negro family earns an average of $3,223 as compared with $5,835 for white, a gap of 45 percent. Since 1952 the gap has increased by 3 percent.

The unemployment rate in 1962 for nonwhite, semiskilled workers was 12 percent as compared to 6.9 percent for white persons. In the 14-to-19-year group, unemployed 12 percent for whites and 24 percent for nonwhites. The disparity between whites and nonwhites among the unemployed is getting greater. The nonwhite unemployment rate was 60 percent higher than for whites in the period 1947–49. It has been consistently twice as high in each of the years 1954–62. This is explainable in part because the majority of nonwhite workers are in the unskilled and service occupations while machines are taking over the work which used to be performed manually.

One of every six Negro dwelling units in the Nation is dilapidated, obsolete, or otherwise substandard as compared to 1 in 32 dwellings for whites.

Incidentally, on that point, I would like to point out that at automation the Negro is hit the hardest because when we have 1,800,000 job displacements a year by automation—and this means permanent displacement—the Negro is hit first. It may be because he is less skilled or it may be because he is a Negro, maybe both. And then he is the last to be rehired, so that the question we are discussing here now is going to become greater.

The problem is going to become greater and there are no immediate solutions.

Mr. ROGERS. Is that one of the reasons why you think that this title that you are discussing first is the most important?

Mr. ZAGRI. I think the problem this title deals with is most important, but I think the manner with which the title deals with the problem is one of the least significant in the bill.

Mr. ROGERS. Actually it is the employment and unemployment of the minority race that is presenting its biggest problem.

Mr. ZAGRI. That is correct.

Mr. ROGERS. And in your opinion you feel that title VII doesn't approach it to the best end that could be obtained?

Mr. ZAGRI. That is correct and I will demonstrate that as we proceed.

These ugly and dangerous figures of growing disparities can be explained due primarily to three factors:

(1) Present shortage of jobs in the economy as a whole for all workers.

(2) Nonwhites are usually less qualified for various kinds of work because of discrimination and denial of equal education opportunities. The unequal educational opportunity is reflected in the higher degree of illiteracy among Negroes. About one-third of 3 million adults who cannot read or write in this country are nonwhite.

(3) The third reason for this great disparity is the harsh, cruel fact of discrimination. The fact that men and women who are well qualified are denied the right to work because of the color of their skin.

The magnitude of this problem is staggering. Its solution may be found primarily in terms of more jobs for all citizens through a total expansion of the economy. However, the disparities, the discrimination, the teeming tensions will not wait for a total solution of these problems.

In the face of all of this the administration is offering title VII which is nothing more than window dressing, in my opinion, nothing more than granting legislative status to the President's Committee on Equal Employment Opportunity.

Negro leadership has justifiably little faith of title VII's producing anything more than superficial and token approach to the problem of jobs.

A detailed record of the performance of the President's Committee on Equal Employment Opportunity will reveal that the Committee has been used primarily as a political instrument to get favorable releases in the press to get Negro votes on the one hand and to callously disregard the needs of 1,700,000 Teamsters and many thousands who may some day work in the Teamsters jurisdiction by rejecting the offer of the Teamsters Union to cooperate with the Committee and to meet with its staff to bring the Teamsters under "plans for progress."

At this time I would like to introduce into the record an exchange of correspondence with President Hoffa and an exchange with the President's Committee of April 10, 1962, to July 3, 1963, in which Teamsters Union offered to support the President's plan for progress and it was refused by the Preisdent's Committee.

The CHAIRMAN. That will be accepted.

(The material referred to follows at the close of Mr. Zagri's presentation.)

Mr. ZAGRI. On April 6, 1962, in an appraisal of the first year of operation of the President's Committee on Equal Employment Opportunity, the NAACP stated through its spokesman, Herbert Hill:

The administration has relied for favorable publicity on a superficial approach called plans for progress. The so-called plans for progress—voluntary agreements entered into by a few large corporations—may yield high returns in press notices but only superficial and token results for Negro workers in new job opportunities. The plans for progress have not produced the large-scale job opportunities for Negro workers in new job opportunities that have been so long denied them. It is our experience that major U.S. Government contractors operating vast multiplant enterprises regard the signing of a—

there is a failure here in the typing—

immunity from real compliance of the antidiscrimination provision—

no—that is correct—

plan for progress as a way of securing immunity from real compliance with the antidiscrimination provision of their Government contract. An analysis of the status of Negro workers in companies that signed the plans for progress fully sustains this view. We believe that the plans for progress approach is simply a euphemism for what in previous administrations was called voluntary compliance.

Mr. Herbert Hill, labor secretary of the NAACP, charged the administration with "managing the employment reports" in his recent testimony before the Advisory Committee of the Civil Rights Commission in Washington, D.C. He stated:

* * * there is more press agentry than progress regarding Negro advancement in Federal agencies. Based upon our experience we are forced to agree with the statement of Mr. Adrian Roberts, vice president of the American Federation of Government Employees in the Washington area, as reported in the March 5, 1963, issue of the Washington Star, who charged that Federal agencies have manipulated statistical data to give a misleading impression that they are doing something about ending discrimination in the hiring and promotion of Negroes. Mr. Roberts, a career official of the U.S. Department of Labor testified before the Subcommittee on Equal Employment of the District of Columbia Advisory Committee to the U.S. Civil Rights Committee and stated that: "Citizens in the District of Columbia area who believe in the fundamental concepts of democracy are impatient with the continuous stream of platitudes in public speeches and agency news releases on the subject of equal employment opportunities.

"They resent the manipulation of statistical data on Negro employment in an effort to show dramatic progress * * *. However, when a true accounting is taken of where we are and where we ought to be, it is clear that there is need for full speed ahead."

What, gentlemen, is there in the record who would have us believe that simply giving this committee legislative status would in any way alter the policies which it presently pursues or would in any way guarantee a more fundamental and more basic approach to the problem through proper enforcement machinery. There is nothing provided for this in the bill.

I have already offered for the record quoted correspondence between President Hoffa and various members of the President's Committee and now I would like to summarize the correspondence because I think it is very revealing.

On April 10, 1962, General President Hoffa wrote Vice President Lyndon Johnson, Chairman of the Committee, pledging support of the International Brotherhood of Teamsters to the work of the Committee. In addition, an early conference with a staff member of the Committee was requested to develop a plan for progress to cover the Teamsters Union.

On April 17, 1962, John G. Feild, Executive Director of the President's Committee replied to Mr. Hoffa's letter and stated that the Committee had the matter under consideration and would be in communication with the Teamsters Union.

Three weeks later, May 11, 1962, another letter was written by James R. Hoffa, this time to Jerry R. Holleman, then Vice Chairman of the President's Committee, once again requesting that an early conference be set up to include the Teamsters Union under the plans for progress.

On June 1, 1962, General President Hoffa wrote a letter to the President in which he enclosed copies of the correspondence between himself, Vice President John, and Mr. Holleman. In this letter, General President Hoffa again requested an early conference with a staff member of the committee to develop a plan for progress to cover the Teamsters Union.

On June 5, 1963, John G. Feild, Executive Director of the President's Committee on Equal Employment Opportunities, wrote to Mr. Hoffa acknowledging his letter of May 11 and again assured him that the Committee would be in touch with our union in the not too far distant future.

On August 6, 1962, John G. Feild, Executive Director of the President's Committee, wrote Mr. Hoffa that the committee was continuing its plan for the development of appropriate adaptation of the plans for progress for trade unions. And he said that as these plans develop, "you may be assured that you will be informed by the committee."

On November 20, 1962, James R. Hoffa wrote Mr. Hobart L. Taylor, Executive Vice Chairman of the President's Committee on Equal Employment Opportunities, in which reference was made to the alleged statement by a newspaper reporter that Mr. Taylor gave as a reason for the International Brotherhood of Teamsters' failure to participate with a hundred national trade unions in signing pledges to eliminate employment discrimination was that our union had not contacted the President's Committee. The purpose of this letter was to secure an affirmation or denial of the truth of the alleged statement to the press.

Regardless of whether the statement attributed to Mr. Taylor was made, it was hoped that our union would be accorded the same opportunity to cooperate with the Committee as was accorded to the AFL–CIO affiliates. Again, it was stated that if such opportunity had been accorded to the Teamsters Union, we would have signed a pledge against discrimination as long ago as April 1962. Again, we requested a conference in which a member of the Presi-

dent's Committee staff would meet for the purpose of executing such a pledge by our union.

On February 11, 1963, another letter was addressed to Mr. Taylor, in which General President Hoffa stated:

> In the name of social justice, fair play and common decency, I request a reply to my letter of November 20, 1962.
>
> Very truly yours,
>
> JAMES R. HOFFA,
> *General President.*

On March 1, 1963, John G. Feild, Executive Director, acknowledged Mr. Hoffa's letter of February 11, 1963, and advised Mr. Hoffa that Mr. Taylor had requested him to inform Mr. Hoffa that the statement attributed to him with respect to the reasons for the Teamsters Union not signing a plan for progress was not accurate.

Finally, on July 3, 1963, the affair was concluded by General President Hoffa in a letter to Vice President Lyndon B. Johnson in which he stated:

> It is by now apparent that the President's Committee on Equal Employment Opportunity has decided that the International Brotherhood of Teamsters does not exist for the purpose of signing a Plan for Progress. A summary reading of the enclosed correspondence makes this conclusion inescapable. In my judgment such conduct constitutes another chapter in the continuing vendetta which the Kennedy administration is carrying out against the Teamsters Union. It is most unfortunate that in this instance such reprisal comes at the expense of a program to promote equal employment opportunity.
>
> Hence in the light of the resistance which this Union has encountered from the President's Committee we have decided that any further efforts would be futile. * * *

Copies of the letter were sent to: The Honorable W. Willard Wirtz, the Honorable Adam Clayton Powell, the Honorable James Roosevelt, Mr. James Farmer, Mr. James Foreman, Mr. Herbert Hill, the Reverend Martin Luther King, Mr. A. Philip Randolph.

This exchange of letters over a period of over 15 months can lead to only one of two conclusions:

(1) The President's Committee was convinced that Teamsters Union's policies in the field of nondiscrimination had reached such a stage of perfection that nothing could be accomplished for 1,700,000 workers and countless thousands who may wish to become members of the Teamsters Union by including the Teamsters Union under the "plans for progress," which had been worked out in conjunction with itself and every other internationl union in the labor movement, or

(2) Robert Kennedy's vendetta with James R. Hoffa of the Teamsters Union overshadowed the needs and the welfare of 1,700,000 teamster members and countless thousands yet not organized.

The administration's rejection of the Teamsters Union's offer to cooperate in the promotion of its "plans for progress" program marks a black page in the history of the Government's efforts in the promotion of race relations in this country.

This incident also places in proper perspective the administration's total approach to the problem of race relations:

(1) That it is politically motivated—one that suits the personal desires, aspirations, and ambitions of the Attorney General.

So much for title VII.

Mr. MEADER. Before you leave title VII, you say it doesn't do anything. What do you think should be contained in it?

Mr. ZAGRI. I think title VII should really be amended by adopting H.R. 405, which is an effective FEPC law with adequate enforcement machinery which would treat employers and unions alike.

Mr. MEADER. You are referring to the bill reported out by the House Education and Labor Committee?

Mr. ZAGRI. Yes.

Mr. FOLEY. That doesn't cover Federal, State, or local employees.

Mr. ZAGRI. I think the FEPC bill should be amended to cover Federal and State. In other words, I think the same powers that are provided, enforcement powers that are in the FEPC bill, should also apply to protect employees of Federal, State, and local governments.

Mr. CHAIRMAN. Isn't the thrust of your charge—isn't the thrust of your charge that because of the labor relations that exist between the administration and the Teamsters Union, you take the position that it is not well to incorporate in the statute that which is the result of the Executive order, that of setting up the FEPC Committee?

Couldn't you separate the one from the other?

Mr. ZAGRI. I certainly can.

The CHAIRMAN. Is there any good in the fair practices committee as now set up by Executive order, aside from the difficulties that you have had with them?

Mr. ZAGRI. My point is—and it is the same point that Herbert Hill makes—that the FEPC or the Committee of Equal Employment Opportunities, as it is called, is actually more interested in press-agentry than it is in results.

The CHAIRMAN. Would you then abolish it?

Mr. ZAGRI. I wouldn't abolish it. I would strengthen it. I would give it some enforcement powers.

The CHAIRMAN. Well, what is the use of giving it enforcement powers if its only purpose is to issue press releases?

Mr. ZAGRI. No. The point is that if it had the status of an independent commission and wasn't under the domination of the White House, it would function effectively as an independent commission should.

Mr. MEADER. May I say, Mr. Zagri, that when representatives of that Equal Opportunity Committee were here, I believe they testified that not once since the Committee was created had they ever canceled a contract. They claimed that they had been able to work out complaints of discrimination without actually canceling the contract.

I also would like to ask your——

The CHAIRMAN. Will you yield?

Mr. MEADER. Yes.

The CHAIRMAN. That was not only the situation with the Committee in the Kennedy administration. It was the same in the Eisenhower administration. No contracts were canceled and they made arrangements which were satisfactory.

Mr. MEADER. I wasn't making the distinction that there was any difference between this administration and the previous one, but I also wanted to point out that if discrimination occurred within a trade

union there was no authority in either the Executive order or, so far as I can see, in title VII of the bill, proceeding directly against the person doing the discrimination.

The discrimination, if it were done by the union, say an electrical union or plumbers union or some other construction trade union, would be beyond the power of the employer to control and yet he would be the one that would be punished by having his contract canceled.

Does that seem right to you?

Mr. ZAGRI. No, I feel that on the other hand the employer is the one who hires and fires, not the union. Under the Taft-Hartley law we can assume no responsibility for the employer's practices.

Mr. MEADER. I understand that, but where you have a trade union, he can only hire a union member. If the union does not admit to its membership, any except white people, then the employer, since he must hire union plumbers and union electricians, has no control over whether he is discriminating. He just has to hire the union members. The penalty, however, proceeds against him by the cancellation of his contract.

Mr. ZAGRI. It is not quite accurate. As you know, the closed shop is illegal. There is no law in the land that requires that a man join a union. There is no law that requires that. All that is required is that he pay union dues after 30 days on the job, and so that we in no way can dictate to the employers whom they may hire and therefore we can assume no responsibility for his hiring practices.

Mr. MEADER. I think the situation in the construction industry is such that contractors have learned that they better hire union men on their job if they want to get their job done.

Mr. ZAGRI. I am talking about the fact, the legal status of the problem. It is as I described it, and so from the standpoint of logic, I can't agree with you that we should assume the responsibility in an area which is peculiarly that of the employer.

Mr. MEADER. In your comment on the proposal of H.R. 3139 to deal with equal employment opportunity, it is a somewhat different approach than that of the administration.

Mr. ZAGRI. I was going to get into that, but I read the record the other day when George Meany was here and the chairman I believe assured him that the Republican members had agreed not to press for their particular position on this.

Mr. COPENHAVER. That is not correct. All the chairman sought to indicate was that Mr. McCulloch agreed that inadvertently H.R. 3139 contained greater burdens upon the unions than management and the statement was that the penalty would be equal across the board and that was the statement that the chairman read.

Mr. ZAGRI. I had it incorrectly. I had the impression they were not going to press for that particular section.

Mr. COPENHAVER. Following through with your analysis, isn't it true that within that H.R. 3139 there is the position that you seem to support?

Mr. ZAGRI. Yes; I think it is a step in the direction that we are talking about, but I think the manner in which your bill is drafted is out of balance today. I mean 3139's provisions with reference to imposing penalties and sanctions on trade unions——

Mr. COPENHAVER. But if you agree that the penalties and sanctions would be equated between management and labor, would you tend to support 3139?

Mr. ZAGRI. If they are equated and if labor under the law has the power to, that is commensurate with its responsibility.

Mr. COPENHAVER. How often would it be?

Mr. ZAGRI. Well, as I pointed out a moment ago, we have no responsibility and cannot assume any for the hiring practices of the employer under the Taft-Hartley bill.

Mr. COPENHAVER. If that be the case, I am quite sure that the Commission's authority, as reviewed by the courts, would be limited in that respect.

Mr. ZAGRI. Under those conditions.

The CHAIRMAN. Proceed, Mr. Zagri.

We have quite an array of witnesses for the rest of the afternoon. If you can possibly epitomize some of this.

Mr. ZAGRI. In certain areas I will and in certain parts of this testimony it will be difficult to, but I will try to.

The CHAIRMAN. If you will.

Mr. ZAGRI. Yes.

Title I which deals with the voting right section of the bill. The two basic requirements of this title do not meet the basic problems of mass disenfranchisement in the South.

(1) The provision relating to a presumption of literacy based upon a sixth grade education marks a distinct step backward by the administration in this issue. This presumption would be rebuttable, permitting clerks to challenge each Negro who seeks to register; each would become an individual court case.

In the 87th Congress, the administration offered a bill creating a conclusive presumption of literacy based upon a sixth grade education. The presumption of literacy should be amended to make a sixth grade education conclusive evidence of the person's literacy. This would eliminate the requirement that a literacy test must be in writing and all the attendant difficulties, such as language barriers in the case of an individual who may not have sufficient command of the English language, such as Puerto Ricans in New York and Mexicans in the Southwest.

(2) When the Attorney General certifies that less than 15 percent of the total number of voting age persons of the same race in a voting area are registered to vote, the district court would be authorized to appoint temporary referees to register qualified applicants in cases brought under the 1960 Civil Rights Act.

This is the administration's proposal to solve the problem of mass disfranchisement. In the first place, there are only 200 counties where the registration of any given race is less than 15 percent of that group. So obviously this provision would in no way help the Negroes in the North.

Secondly, this authority is not necessary under the 1960 Civil Rights Act, since the Attorney General is authorized to bring such suits as long as he believes there is a pattern of discrimination in registration.

The provision establishing the arbitrary figure of 15 percent raises some serious problems:

A. It is an arbitrary figure and may not withstand the constitutionality test.

B. It does not solve the problem, because the white supremists in an area could urge the registration up to 15 percent and forever preclude the Attorney General from bringing class suits in the area. At the present time, there is no maximum figure which would bar the Attorney General from bringing such suits. This, in effect, provides a Federal standard which would tie the Attorney General's hands in pursuing class suits essential in achieving mass registration.

C. Why is this 15-percent figure necessary? Has the Attorney General been confronted with any problems in establishing a pattern of discrimination in the 41 civil rights voting suits brought to date?

This title does not deal realistically with the basic causes of mass disenfranchisement in the South.

It fails to provide criminal sanctions to deal with the problem of police brutality and economic coercion to deprive citizens of their right to vote.

Reports of the U.S. Civil Rights Commission are replete of such interference. The most recent example of this is that of Crystal City, Tex., where the elected officials, all Mexican-American teamster members, were voted in and then physically beaten by a Texas ranger and economically dispossessed by members of the community. Albert Funtes, who is with me today, has a detailed statement on this matter. On April 28, 1963, a telegram was sent to Attorney General Robert Kennedy calling for an investigation of civil rights violations. The tenor and substance of the telegram was as follows:

Texas Rangers Capt. Alfred Allee has been harassing the Crystal City Council by interfering with all council sessions. I have been arrested without a warrant, roughed up, taken into a room without my consent for over 20 minutes. Other councilmen have been subject to the same treatment. We are in a state of fear and intimidation. We need help. It was necessary to come to San Antonio to send this message because we have reason to believe that this message would not be accepted or sent from the telegraph office in Crystal City.

JUAN CORNEJO,
Mayor.
REYNALDO MENDOZA,
Mayor Pro Tem.

Since the Attorney General ignored the wire, a second telegram was sent to Robert Kennedy as follows:

We have not heard of the final disposition of FBI investigation pursuant to civil rights violations and continuous harassment by the Texas Rangers in Crystal City of Mayor Juan Cornejo and his council. The Texas Rangers continue to harass by constantly maintaining a surveillance on the honorable mayor, his council of Moses Falcon, and Natividad Granados, leaders of PASO in Zavala County, Crystal City, Tex. We resent Texas Ranger Capt. A. Y. Allee treating our people as common criminals. Please advise me immediately as to the Department of Justice's plans in protecting the rights of our people in Crystal City.

Since the time of the first telegram, suit has been filed in Federal court seeking injunction against the Texas Ranger who has been accused of the following:

(1) Holding the mayor in a room against his will and harassing him with threats and vile language.

(2) On a subsequent occasion, beating up the mayor, including backing him and knocking his head against the wall six times and threatening to impose greater physical harm if he were to report this type of interference to the press or any other authority.

On July 22, we received a telephonic report from the Civil Rights Division of the Department of Justice by one Maceo Hubbard that the case had been closed since there was no Federal violation involved and the proper remedy was in the State courts.

Report No. 5 of the U.S. Commission on Civil Rights, page 53 states:

> The rights of Federal citizenship protected by section 241 include, among others, the following: * * * the right to inform the United States authorities of the violation of its laws.

The report continues:

> Second, section 241 can also be used as a sanction for unlawful official violence perpetrated at any level of government when that violence is used as a means of depriving the victim of any one of his narrowly defined rights of Fderal citizenship * * *.

I suggest that this committee make a formal request of the Department of Justice to explain on what basis the complaint was dismissed.

Mr. FOLEY. Isn't there a serious constitutional issue with regard to conclusive presumptions also?

Mr. ZAGRI. Well——

Mr. FOLEY. You wouldn't be in court on the question of conclusive presumption.

Mr. ZAGRI. There may be.

Mr. FOLEY. That is all.

Mr. ZAGRI. But there certainly is here and I think it is raised unnecessarily here, because the Attorney General can make a finding of a pattern of discrimination without resorting to a 15-percent test, which is not at all helpful.

Mr. FOLEY. This is a rule, I may say, of evidence, as part of the proof of a pattern which must be established under existing law so that the referee can be appointed by the court. It raises a presumption that there is a pattern, so that a temporary referee may be appointed.

Mr. ZAGRI. Now, does this mean that the Attorney General is precluded from filing a class suit where——

Mr. FOLEY. The Attorney General, Mr. Zagri, cannot file a class suit. He is not a member of a class so, therefore——

Mr. ZAGRI. I understand that. He may be a part of—there is a complaint.

Mr. FOLEY. But if he brings the action in the name of the United States it cannot be a class action. The Supreme Court in the *Raines* case, which sustained the voting case, specifically touched on that point. It is the right of the Attorney General to protect the Federal interest in voting as guaranteed by the 15th amendment. He cannot bring a class action. He is not a member of a class.

Mr. ZAGRI. Of course not.

Mr. FOLEY. So therefore he can't bring a class action, can he?

Mr. ZAGRI. No, but he can file suits under the 1960 act.

Mr. FOLEY. Yes.

Mr. ZAGRI. The purpose is to get mass registration, is it not?

Mr. FOLEY. An identifiable group, yes, but not class action.

Mr. ZAGRI. That is what I am talking about.

The CHAIRMAN. All we do in this new provision is to provide a provision whereby the State registrar who has been discriminating can be displaced by a Federal registrar. That is all we do here and it is

on a temporary basis. The standard is if he finds 15 percent are discriminated against, the Attorney General proceeds. What is wrong with that? I don't understand.

Mr. ZAGRI. In the first place it doesn't really solve the problem because in the areas of white supremacy they could urge employment up to 15 percent and then preclude the Attorney General from taking action in that area. Because the presumption is created that there is no discriminatory pattern once the 15-percent point is raised.

The CHAIRMAN. The presumption is that if there are 15 percent discriminated against, then he can go in.

Mr. ZAGRI. As I understand the title, if less than 15 percent of a group is registered, that creates a presumption of a pattern of discrimination.

Mr. FOLEY. Is not registered?

Mr. ZAGRI. That is what I said. Is not registered, creates a presumptional pattern of discrimination.

Mr. FOLEY. Presumption of a pattern.

Mr. ZAGRI. That is right. My point is if the white supremecists in that county see to it that 15 percent of that group are registered, then the presumption has been rebutted; correct?

The CHAIRMAN. The Attorney General is not going in unless he knows his facts.

Mr. ZAGRI. I understand that. We will assume now that the facts are that if 15 percent are registered, then the presumption of a pattern of discrimination has been rebutted. Is that correct?

Mr. FOLEY. No. Absolutely not.

Mr. ZAGRI. Then what is the purpose then of the 15 percent?

Mr. FOLEY. The purpose of the 15 percent is this: To afford the power of the court based upon the presentation of some evidence; namely 15 percent, to appoint a temporary voting referee then and there. Then go on with the remainder of the proof and establish a pattern of practice by definite proof and then the permanent voting registrar comes in.

Mr. ZAGRI. We are not in disagreement here.

The CHAIRMAN. In reading this bill, you have to correlate this bill with existing law of 1960 act?

Mr. ZAGRI. Of course. That is exactly what I am doing. I am saying that the temporary referee that you are referring to——

Mr. FOLEY. Yes.

Mr. ZAGRI (continuing). Could not be appointed if the 15 percent were registered.

Mr. FOLEY. That is correct.

Mr. ZAGRI. And I say under the present law, the 1960 law, a temporary referee could be appointed if you have 15 percent or more, as long as you establish a pattern of discrimination.

Mr. FOLEY. That is correct.

Mr. ZAGRI. So I say this is a retreat from the 1960 law because it establishes an arbitrary low figure of——

The CHAIRMAN. This a a matter of evidence. That is all that is. In other words, the ultimate objective is to show discrimination in the voting. This is a method by which you can approach this more easily and get the appointment of temporary referee. Meanwhile, Negroes can vote. That is the important thing.

Mr. ZAGRI. In only 200 counties.

The CHAIRMAN. Well, whatever it is.

Mr. ZAGRI. 200 counties, that is all there is.

Mr. FOLEY. And how many Negroes are not registered in 200 counties?

Mr. ZAGRI. I don't know.

Mr. FOLEY. Do you know?

Mr. ZAGRI. No.

Mr. FOLEY. Then let's not minimize it.

Mr. ZAGRI. But I am saying that you can still get your temporary referees under the present bill.

Mr. FOLEY. No, you cannot.

The CHAIRMAN. Don't minimize the 200 counties. That is a large number of counties and the bulk of the Negro population are in those counties. Don't fail to realize that. The whole thing is that while this proceeding has been going on, the appointment of temporary referees, Negroes can vote under the 1960 act that was absent and the 15 percent is an easy approach to this. It is a matter of evidence, not final. I don't get the gist of your argument.

Mr. ZAGRI. The gist of my argument was that temporary referees could be appointed even in 1960.

Mr. FOLEY. Point out the section that authorizes it.

Mr. ZAGRI. I will have to brief it.

Mr. FOLEY. You will have to have a judgment of the court that a pattern or practice exists before a referee can be appointed under the 1960 act?

Mr. ZAGRI. That is correct.

The CHAIRMAN. Do you know what that means? After the pattern is found there is an appeal to the U.S. court of appeals. There are all sorts of dilatory tactics and before the issue is determined, the election is over. This way the Negro can vote immediately.

Mr. FOLEY. As a matter of fact, Mr. Zagri, there has not been a single voting referee appointed under the 1960 act. In the one instance where you have obvious discrimination, the court acted to order the registration. He didn't appoint the voting referee but you must have a final judgment of the court before the voting referee can be appointed under the 1960 act. The election can go by and you have registered nobody but here they can be registered by a temporary referee under a showing of less than 15 percent and then they can vote in the meantime, until the final judgment is entered by the court.

Mr. ZAGRI. If you examine the 200 counties that were reported in the July 5 issue of the Congressional Quarterly, you will find that they exist in the, in those sections of the Deep South where police brutality and economic coercion is such as to have prevented in many cases even 2 or 3 percent of the Negroes in that area to register.

What makes you think that absent criminal sanctions of the law, that temporary referee would accomplish this mass of registration? Wouldn't that same Negro——

Mr. FOLEY. Why would he?

Mr. ZAGRI. He would still be subject to the same coercion, economic reprisals, brutality and the general tactics to keep him in his place, whether you have a temporary referee or not. I say that the act does not realistically deal with the problem because it doesn't provide for

criminal sanctions where you have interference with basic constitutional rights.

Mr. FOLEY. Mr. Zagri, you know as well as I do that this approach from the civil standpoint and from the criminal standpoint is predicated on past experience. That even if you go into court and you press for criminal conviction, under the existing laws which are very adequate, you cannot get conviction by a jury. That is the whole purpose behind the 1957, the 1960 act. The civil approach is better.

Mr. ZAGRI. Well I—the U.S. Civil Rights Commission Report No. 5 doesn't entirely agree with what you said. I can get you the exact quote and I probably have it somewhere in this statement, that the reason for failure to get convictions is primarily due to the wording of section 241——

Mr. FOLEY. The *Screws* case.

Mr. ZAGRI. It is a very serious problem.

Mr. FOLEY. But even if you coulld change that, you are not sure that you are going to get convictions. It is a two-sided sword.

Mr. ZAGRI. I understand that but all I am saying to you is that you are not really facing the problem realistically in the Deep South and also in Texas, wherein the case, for example, in Crystal City, the voters and officials immediately were visited upon with economic reprisal, loss of jobs, reduction of salaries. Another of the school contracts was not renewed, and so forth, and these individuals are not going to register just because there is a temporary referee appointed.

Mr. FOLEY. We will have to wait and see.

Mr. ZAGRI. Well, look at the experience. This is the experience. This, I say, is another weakness of title I. It doesn't provide adequate criminal sanctions.

Mr. KASTENMEIER. I would like to say that I agree with you, at least in part on the 15-percent figure. I think that may be unnecessarily low establishing. I think some higher figure could have been used. It may be that the temporary basis will be the sole effective basis for proceeding in terms of growing rights in the future. Certainly under the 1960 laws, the existing machinery has not been effective and perhaps 15 percent, to the extent that this does become significant, is unnecessarily low and there will be some counties not fall into this group that should under any other test, because the percentage is low. I would hope that it does stand, whatever the figure may be percentagewise, the constitutionality test. I don't necessarily agree with you on that but I think that raising the point of 15 percent is a very good point. I am glad you raised the point.

Mr. DONOHUE. By that, do you mean that the 15 percent is low or high? Should that be reduced to, say, 5 percent?

Mr. ZAGRI. It should be raised, so that we can cover more counties, if there is any value to the thing at all.

Mr. DONOHUE. If the 15 percent were in one county.

Mr. FOLEY. No, it would be elective with the district, be it a ward, a county, or a parish.

Mr. ZAGRI. Right.

The CHAIRMAN. Let me show you how many Negroes are involved. I just did a spot check here. Take the State of Alabama. In one county they have 7,909 nonwhite population and only 125 registered. Another county, 12,850 nonwhite population, 400 registered; in another

county, 32,715 population, only 130 registered. In one county 11,054, 166 registered. In another county 13,811, only 150 registered. In another county 12,439 population and not a single colored man is registered.

That is the pattern that runs through all of these Southeastern States, particularly Alabama, Mississippi, and Louisiana, so that when you speak of 200 counties, it may not sound too large, but when you figure the great Negro population in those counties, then it certainly is large.

Mr. ZAGRI. Of course, I am not trying to minimize the number of people that could be affected. My point is that they will not be affected because of the conditions under which they live in these areas. It would take a man of exceedingly great courage and foolhardiness to run the risk involved, even though you have a temporary referee appointed. Especially when you get into a situation as we have already seen that there are many southern counties where you have white registration of 120 percent, white voting of 120 percent or 132 percent and so on, so that the Negroes voting would be in many instances because we have inaccurate vote fraud laws or investigatory powers granted by the Congress.

The CHAIRMAN. I notice that you, for example, are a firm believer in equal rights and your union is a firm believer in equal rights but I think you have used a blunderbuss here. You have simply tried to demolish the whole bill here. I thumbed the pages of your statement while you were testifying. You don't seem to give us any credit here for an attempt to bring about an amelioration of this issue. Remember, also, there is no perfect approach. You just can't get perfection here.

Mr. ZAGRI. No one is expecting perfection.

The CHAIRMAN. You have to consider the practicalities also.

Mr. ZAGRI. But I don't think we should kid the Negro people of America that they are going to get relief in the area of voting rights by this 15-percent insertion, which is the principal remedy proposed in this bill.

The CHAIRMAN. I will say this: I have listened to any number of television programs in civil rights in which Negro leaders participated. I hear no objection to this provision, the provision on voting rights, except on the case of the 6-year presumption. In other words, 6-year grade school is a presumption. That is the only criticism that I hear from the Negro leaders.

Mr. ZAGRI. Let me read to you then the statement by the Negro leaders which they have prepared, signed by James Farmer, Martin Luther King, John Lewis, Roy Wilkins, and Whitney Young, which is the group on the march to Washington, August 28, 1963.

They say what are the demands of the march.

1. The civil rights demands include and one of the things they request is an end to police brutality directed against citizens using their constitutional rights of peaceful demonstration.

I also read a memorandum by Mr. Paul House who is counsel for the NAACP, in which he states that this section is weak and unrealistic because it doesn't provide criminal sanctions and I don't anticipate his testimony before this committee but I am sure when he appears he will agree with what I have said.

The CHAIRMAN. We are going to hear Mr. Roy Wilkins this week.

Mr. ZAGRI. Why don't you ask him that question?

The CHAIRMAN. And Mr. Farmer on Friday.

Mr. FOLEY. There is nothing in that statement which deals with the 15 percent?

Mr. ZAGRI. I didn't say that. I am talking about police brutality and you are not going to assign the question of police brutality by appointing temporary referees.

The CHAIRMAN. That is another matter.

Mr. ZAGRI. But it is a very important part of the picture and let's not kid people that they are getting something when they are not.

The CHAIRMAN. OK. Again I am going to ask you to try to be brief and epitomize this.

Mr. ZAGRI. All right.

Now, I will skip over the exchange of telegrams here between Mr. Fuentes and Mayor of Cornego who was beat up by a Texas Ranger after he assumed office and then after Mr. Cornejo sent the telegram to Washington, to the Attorney General asking him to investigate his violation of civil rights under 241 and 242, then the Texas Ranger visited the mayor, closeted him in a room and beat him up again and threatened him with greater bodily harm if he were to ever communicate such information to the Attorney General or to the press.

Then a second telegram was sent, requesting the Attorney General's report on this about 3 months later. Finally we received a telephonic communication from Mr. Hubbard of the Civil Rights Division of the Department of Justice telling us the case was closed because there was no Federal question involved and the remedy was through the State courts and yet it seems to me that the analysis of the U.S. Civil Rights Commission's report would certainly indicate there is a Federal question because when a man's right to communication with a Federal official is interfered with, that this would be interference of a Federal right and at least should have some type of consideration and report.

This is the kind of thing that goes on today, for which we don't seem to have adequate remedies. Either section 241 is inadequate and should be amended or this may be another example of where inadequate enforcement job is being done within the framework of the present statutes.

The CHAIRMAN. I don't want to hold any brief for anybody on negligence and enforcement of existing statutes. That is deplorable. But I do know this of my own knowledge, that in the first place, the Department of Justice is not a police department. They just cannot cover the whole country and get after all of this police brutality and all of this excess authority that is used by State troopers, and so forth.

I have in mind, for example, one notable case which came to my attention, where from very responsible sources I received information to the effect that they had discovered a man who actually saw the shooting of this man Evers and he was asked to bring him up here.

I took that man down to the Department of Justice. He seems to have a plausible story. The FBI interrogated him, and gave him a lie detector test. They came up with the answer that the man was ut-

terly irresponsible and was not telling the truth. That his whole story was a fabrication, yet I was deceived. Finally, he, after considerable questioning, the man who was brought up here at great expense admitted he was wrong.

You have many of those cases I am told by the Department of Justice. Many of those cases. It is very difficult to separate the wheat from the chaff.

Mr. ZAGRI. All I am saying is that the Federal Civil Rights——

The CHAIRMAN. I hold no brief for anybody on that score, but it is a very difficult problem.

Mr. ZAGRI. If they don't have enough personnel they should ask for a budget to cover whatever the needs are that are indicated. We do it in every other area. Why don't we provide for an adequate law enforcement of the civil rights area? They have 21 members on their staff to cover this vast problem across the Nation.

The CHAIRMAN. Do you think it would take efforts from Congress to set up a huge police state? We can't do it.

Mr. ZAGRI. It is not a question of a police state. If you are going to have laws on the books——

The CHAIRMAN. I mean set up a huge Federal police department. We can't get that through Congress. It is impractical.

Mr. ZAGRI. What solution is there to the question of physical coercion of voters' rights if we don't have a law enforcement agency responsible to get that job done. What is the solution?

The CHAIRMAN. I would like to get as many as possible personnel in the department to take care of all of these situations, but you try to get something like that through Congress and you see the difficulties encountered.

Mr. ZAGRI. Until we face up to that very difficult problem, we aren't going to make much progress in those pockets in the South where the individual fears for his life if he exercises his constitutional right. I think we just have to face up to it. I would suggest that this committee make a formal request to the Department of Justice and explain on what basis the complaint was dismissed.

It is quite clear that the ranger threatened Mayor Cornejo with physical violence and, in fact, committed physical violence on his person because the complainant had communicated a previous assault to the Attorney General of the State of Texas and the Attorney General of the United States. Either 241 is inadequately drawn and is in need of amendment or the Attorney General is not interested in exercising his power to protect the civil rights of Mayor Cornejo—a member of the Teamsters Union.

Isn't this possibly another example of the Attorney General permitting political considerations and his personal vendetta with Mr. Hoffa to interfere with proper law enforcement?

(2) It fails to provide for sanctions in the case of vote frauds. There are a number of districts in the south where 138 percent of the white population is registered with less than 4 percent of the Negro population registered.

Albert Fuentes will testify to the fact that in Crystal City, Tex., as in all Texas communities outside of the large cities, elections are conducted in the open and without the protection of the secret ballot. He cites the case of the Baron of Duval—who is the political boss of

Duval County, Tex., who intimidated voters by threatening to cut off their pensions, unless they voted according to his instructions without the protection of the secret ballot.

So, Mr. Chairman, I think it would be enlightening in the face of problems we are discussing here to write to the Department of Justice—I was making the request that the committee write a letter to the Department of Justice on which basis the complaint made by Mayor Cornejo of Crystal City, Tex., was dismissed. Because we feel that this would throw light on the whole question.

The CHAIRMAN. You go ahead and make the request.

Mr. ZAGRI. Thank you.

Senator Ralph Yarborough speaking before a Law Day luncheon of the bar association on May 1, 1963 in San Antonio, Tex., commented on the deprivation of basic constitutional rights in Crystal City in the following statement:

> Let us advance liberty under the law. Let there be full voter participation in elections and full governmental participation by duly elected officials after they are elected. Let Law Day be Liberty Day. A lawyer with law books is the only guardian that elected officials require. Pistoleers breathing down the necks of duly elected city commissioners as they exercise the functions of their offices are a relic of a primitive age in Texas which should have passed away with the frontier. Law Day should be Law Day, and mean something, something more than mere lip service.

And yet the Attorney General closed this case and passed the buck to the State courts.

Mr. FOLEY. Let's not come to that conclusion until we have the reason. Maybe he didn't have the evidence. Let's find that out, shall we?

Mr. ZAGRI. At least he referred it to the State courts. I stand corrected.

Mr. FOLEY. Thank you.

Mr. ZAGRI. In connection with fraud cases, I favorably commend—if I synopsize, I am still on title I. It means I have covered two titles.

Title II which deals with the question of public accommodations, we have a lengthy discussion of the 14th amendment and the commerce clause. Incidentally we favor the objectives of title II with some modifications which we think you will be inclined to agree and you will see as we progress that there are many things in the bill that we favor and that we have a constructive approach to this problem, but I don't want to rush through this thing. It is now 12:30. Would it be possible for me to come back after lunch?

The CHAIRMAN. Yes. I think it would be a good point to take a recess and come back at a quarter after two.

Mr. ZAGRI. Thank you.

(Whereupon, at 12:30 p.m., the committee was adjourned, to reconvene at 2:15 p.m., the same day.)

AFTERNOON SESSION

The CHAIRMAN. The meeting will come to order.

I will ask you, Mr. Zagri, to make a very quick presentation. Someone once said it was a short speech, but I believe you can give us an epitomized version of your very long statement.

Will you wait a few minutes? We have a distinguished colleague from New Jersey, Representative Gallagher, here. We will be glad to hear you, Mr. Gallagher. We don't want to keep you waiting.

STATEMENT OF HON. CORNELIUS E. GALLAGHER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. GALLAGHER. Thank you very much, Mr. Chairman.

I am appearing here today in support of the legislation of the President's program. I feel never before has the Government of the United States, through the initiative of the executive branch, so firmly committed itself to the cause of human rights.

Never before have the Negro people had such valid cause to look hopefully to Congress for the fulfillment of their demands. The sense of hopefulness in the Negro population, added to the growing agreement in the white community that civil rights is everybody's business, combine, my opinion, to perform an irresistible mandate for congressional action. Yet there is a further consideration that such mandate be discussed.

The nature of the crisis calls to every citizen to make an emotional commitment; and this committee, as a legislative organization, must acknowledge this sentiment to a reasonable extent. This is not true, I feel, with most legislation where complete objectivity is required for proper perception of the issues.

Mr. Chairman, I have a statement here but in the interest of time I would like to request permission to insert my statement at this point and just say that I am in full accord with the program and would like to lend my support to it.

The CHAIRMAN. You have that privilege. We are very grateful for it.

Mr. GALLAGHER. I thank you very much for allowing me to interrupt your witness at this point and I thank the witness.

(The complete prepared statement of Mr. Gallagher follows:)

STATEMENT BY HON. CORNELIUS E. GALLAGHER

I deeply appreciate the opportunity to come before this committee and express my views on the crucial issue of civil rights legislation. As you know, I am firmly committed to the entire Presidential package. In the short time allowed me today, however, I would like to concentrate initially on several points related to the field of public opinion, in the hope that this might help to put the forthcoming legislation in its proper perspective.

Throughout the Nation in recent weeks, the consensus of public opinion polls has shown increasing support for President Kennedy's program. Mr. Lou Harris in the Washington Post of July 15 is one example of this kind of information.

Looking to the Negro community, the reaction to the proposed legislation has been, of course, an optimistic one. The key factor in much of the current civil rights movements, I feel, as opposed to those movements of several decades ago, has been a growing pride in the Negro community and an acceptance of an activist role in achieving rightful goals.

We might well contrast the failure of some past movements with the spirit of optimism today. W. E. B. DuBois immediately comes to mind as a prominent Negro leader of the past, who throughout his career became progressively disillusioned with the American way of life. By the end of his career he had become an embittered Marxist and correspondingly his influence with his own people dwindled to insignificance. The civil rights movement passed this man by. And it also passed by those, on the other hand, who willingly subjected themselves to an inequitable social system, without an attempt at legal protest. But today's Negro leaders almost without exception look hopefully to the democratic process for results; and rightfully so. Some say the legislation does not go far enough. Others say even if it passes it will not be fully enforced. But the large, overwhelming majority of prominent Negro citizens is pleased with the President's proposals. And I will contend that this is really the first time that Negro leaders can look realistically to the existing legislative machin-

ery to achieve their goals of equal opportunity. Never before has the Government of the United States, through the initiative of the executive branch, so firmly committed itself to the cause of human rights. Never before have the Negro people had such valid cause to look hopefully to Congress for fulfillment of their demands. The sense of immediacy and hopefulness in the Negro population, added to the growing agreement in the white community that civil rights is everybody's business, combine in my opinion to form an irresistible mandate for congressional action.

And yet there is a further consideration when such a mandate is discussed. The nature of the crisis calls to every citizen to make an emotional commitment, and this committee as a legislative organization must acknowledge this sentiment to a reasonable extent. This is not true, I feel, with most legislation, where complete objectivity is required for proper perception of the issues. But there are many different "rights" being discussed in this case, and the issues are rarely clear cut. How are the important distinctions to be made? To use an example, the Attorney General testified that in two Southern tourist guidebooks only one establishment is listed in Montgomery, Ala., where a Negro can find overnight lodging, while none are listed in Danville, Va. But a dog, provided he is traveling with a white man, is welcome to spend the night in at least five establishments in Montgomery and in four in Danville.

There is something basically wrong with a situation that condones such discrimination, and it is our commitment which enables us to choose that set of rights which is most important. I am talking specifically now of public accommodations. It is only just that a Negro citizen should be able to travel from place to place with the same comfort as a person of Caucasian extraction. If he cannot do this, then a legal statement is needed to assure him this right.

Fortunately, there is a long tradition of legislation on the State and municipal levels to give support to title II, influenced primarily by the wording of the 14th amendment. Beginning as early as 1867, 32 States now have public accommodations laws, including my own State of New Jersey, many of them more stringent than the Executive proposal.

Beyond the State level, it is traditional in interstate affairs to interpret the commerce clause broadly, so that public accommodations legislation would fall clearly within the limits ascribed to the Federal Government by the Constitution. Prof. M. D. Howe of Harvard Law School is only one of many constitutional scholars who insist that Congress must exercise "its own unquestioned power over any commercial conduct—public or private—which affects the economic and moral health of the Nation."

Furthermore, it has been the established legislative trend since the 1890's that the Federal Government has become more and more willing to assert its responsibility in the public sphere. No one would dispute the Government's right and obligation to curtail a monopoly, privately owned, and controlled, which was setting prices artificially high or selling identical products at different prices. People would be getting hurt unfairly, and the fact of private ownership is not particularly relevant. In reality, a business enterprise is in the public sphere and must comply with public law. In a like manner, a restaurant with discriminatory policies must be treated in the same fashion as a monopoly with discriminatory prices. People are being hurt unfairly in both cases; and the size differential is not so important as the fact that both enterprises are in the public sphere, and must be viewed as such.

Opponents of title II accuse the Government of trying to usurp private property rights, but I have a difficult time understanding exactly what they mean. First of all, ever since the earliest Greek thinkers, Western political thought has recognized the interconnecting responsibility of every individual in society. In this respect, then, "no man is an island, entire of itself"; if he were, he would be a hermit, subject to no law and responsible to no other man. But in today's society a situation like this cannot exist, and in respect to property law, there are a myriad restrictions on absolute property rights. If you trip and fall on a slippery stairway, you can sue the owner. If your property is completely surrounded by another man's, he must provide access to it. In many places you cannot build above a certain height or have a certain kind of roof. If the county wants to build a highway, and it goes through your property, your property will be used. If a policeman has a warrant he may enter and search your house against your will. If a stream runs through your property, you cannot impede its course. All these so-called infringements on private property rights are essential regulations which conscientious citizens willingly accept,

in order that diverse groups of individuals may better live in social harmony. And there are times, now for example, when these regulations must be amended to allow society to continue functioning harmoniously.

To conclude, I would like to say a few words about New Jersey's progress in civil rights, primarily to emphasize the fact that several million people can exist quite happily and with little if any infringement on individual liberties, under legislation much stricter than the bill presently before you. You might also keep in mind that right across the river in Delaware, nearly half the biracial school districts are segregated, while across the bay from Cape May, N.J., segregated beaches stretch southward to Florida.

The principal trouble spots in New Jersey have been job opportunity and de facto school segregation. Governor Hughes has pushed relentlessly in these areas. With the cooperation of the AFL–CIO and other civic-minded labor organizations, apprentice programs in trade unions have opened their doors to Negro applicants, and much progress has been made in desegregating local construction units. Similar progress has been made on the management side as well.

In education, Governor Hughes' commissioner of education, Frederick Raubinger, has done much to solve what inequities exist in New Jersey's biracial school districts, with a minimum of incident. The recent Englewood and Orange decisions speak for themselves.

As far as public accommodations are concerned, New Jersey has had far-reaching legislation since 1884. Since that time, when a law was passed entitling all persons "to equal enjoyment of inns, public conveyances, theaters, and other places of public amusement," 25 statutes have enlarged the coverage of all facilities to include restaurants, hotels. hospitals, schools, colleges, State and Federal construction projects, and all real estate sales or rentals public and private. With laws such as these on the books for several generations, the psychological result has been widespread acceptance of Negroes in public facilities and a general feeling of respectability among the Negroes themselves. All of these aforementioned programs combine to form one of the most energetic civil rights drives in the country, and resentment is at a minimum due to the long history in New Jersey of constructive civil rights legislation. This has provided the necessary background for meaningful action.

I am not looking at this situation through rose-colored glasses. I realize that we have an immense job still ahead of us. I realize that there is tension throughout the country, in the North as well as in the South, in New Jersey as well as in Mississippi. But I emphasize that meaningful legislation is the necessary first step toward eventual equality of opportunity. This comprehensive guarantee before you will act as a pledge of good faith to the Negro people and to the rest of the world. A dynamic executive can only go so far, and then it is up to you and me to follow through wholeheartedly. I sincerely hope that we can.

Thank you very much.

Mr. ZAGRI. We saw a ticker tape over the wire which came across this noon. Dr. Martin Luther King just this noon called for a civil rights police force in New York. We must have had clairvoyance of functioning at the same time.

Mr. FOLEY. He didn't call for a Federal police force in New York. He was in New York at the time and called for a policeman.

Mr. Zagri. I said he made the statement in New York and this is where he made the suggestion.

The CHAIRMAN. I would like to ask you, how would we go about it to set up a Federal police force?

Mr. ZAGRI. Actually you have one today in the FBI.

The CHAIRMAN. That is not a police force. That is an investigative force.

Mr. ZAGRI. Actually that is all I think that is implied in this particular suggestion. I don't think it goes beyond that.

The CHAIRMAN. Do you suggest that we expand the FBI?

Mr. ZAGRI. No, I think that most organizations who have had experience in this field, including the U.S. Civil Rights Commission, feel

that the FBI, because of its close relationship to local and State police, find it difficult to actually enforce Federal law in relation to or against local and State police and for that reason the suggestion has been made that a separate division be set up, separate and apart from the FBI.

Mr. FOLEY. The only problem there, Mr. Zagri, is this: The Federal Government has no police power as such. Any law enforcement power that the Federal Government has must grow from one of the delegated powers given to the Federal Government in the Constitution.

Mr. ZAGRI. No one is suggesting that the Federal Government take on the power of the local police. I would be the first to oppose this because I think this would be a basic invasion of our Federal system. What I am suggesting here is that there be an expansion of an investigative force and this function would normally be performed by the FBI, but the FBI in this situation finds somewhat of a conflict of interest because of their close relationship with the local police and coordination of law enforcement repsonsibility.

The CHAIRMAN. It is so easy to say a Federal police force, but those who advocate a Federal police force do not see this matter through to the end. As counsel has stated, the only way that we could have any kind of personnel in that direction would be to enforce the Federal laws and, as such, we have no police powers.

The only thing the Federal Government can do is to endeavor to enforce the Federal statute. Now, as involved here, a Federal police force, all manner and kinds of conglomerations, difficulties, and intricacies, and what-have-you——

Mr. ZAGRI. I don't even like the term "Federal police force." I think the proper term would be a civil rights investigative unit.

Mr. FOLEY. This is then only for civil rights violations?

Mr. ZAGRI. It would have to be for this purpose, yes.

The CHAIRMAN. All right. Go ahead.

Mr. ZAGRI. In this conversation, we also discussed the possibility, as a further suggestion to this problem, having an amendment ,to the terms of "civil injunctive relief in this area."

The CHAIRMAN. Would that be your part III?

Mr. ZAGRI. Yes.

The CHAIRMAN. All right. We passed part III once and it was rejected by the Senate.

Mr. ZAGRI. I would urge that you try to get it through again as a part of this bill.

The CHAIRMAN. The Judiciary Committee might propose that the House dispose of it.

Mr. ZAGRI. Very true.

The CHAIRMAN. Even so, the Senate disposes.

Mr. ZAGRI. Maybe the temper of the times may temper the views of even the Senate in this respect.

Since 1957—and I again, as the chairman requested, am attempting to epitomize.

In connection with fraud cases, I favorably commend section 102 of H.R. 3039; also section 103 which would direct the Bureau of Census to conduct a nationwide compilation of registration and voting statistics of every State by race, color, and national origin. This information would be most helpful in establishing patterns of discrimination as well as fraudulent registration and voting.

There is nothing in the proposed bill which makes mandatory the filing of class suits by the Attorney General wherever a pattern of discrimination may exist.

Since 1957, a total of 41 suits have been instituted by the Attorney General. In other words, 159 counties where the registration is under 15 percent were completely ignored by the Attorney General—instigated suits, the States involved: Mississippi, Alabama, Louisiana, Georgia, and Tennessee.

The following analysis indicates that a selective filing of suits carefully avoiding congressional districts where the incumbent was considered friendly to the administration and in some instances, filing several suits in the districts where the Congressman voted against the administration consistently. By State, the number of suits filed were as follows:

	Number	Number of suits filed	Year filed
Alabama	7	1	1958
Georgia	4	3	1959
Louisiana	11	4	1960
Mississippi	15	16	1961
Tennessee	4	9	1962

NOTE.—9 have been filed to date in 1963.

The Congressional Quarterly of July 5, 1963, disclosed that less than 15 percent of potential Negro voters were actually registered in 261 counties in 60 congressional districts in 11 States. It is reasonable to assume that in each of these counties various discriminatory devices have been used to keep Negro voter registration to a minimum. Yet, although 261 coutnies and 11 States are clearly involved, over a 5½-year period the Attorney General has seen fit to file suits in only 33 counties in 17 congressional districts in 5 States. In addition, two statewide suits were filed against State voter registration procedures, one in Mississippi and one in Louisiana.

If we examine the congressional representation in the 33 counties where, over the past 5½ years, suits have been filed by the Attorney General, we find a general pattern of representation. The incumbent Congressman is, in most cases, a man who consistently supports conservative causes and has given minimal support to the programs of the President in 1961 and 1962.

An analysis of the voting record of the 17 Congressmen involved is shown below:

Name of Congressman	Number of suits filed in his district	Conservative coalition—anti-Kennedy record [1]	Name of Congressman	Number of suits filed in his district	Conservative coalition—anti-Kennedy record [1]
Alabama:			Louisiana—Con.		
Andrews	2	77	Hébert	1	44
Grant	1	77	Morrison	1	49
Boykin	1	49	Mississippi:		
Selden	1	82	Whitten	6	87
Georgia:			Colmer	4	85
Forrester	2	95	Williams	2	74
Vinson	2	23	Winstead	2	85
Louisiana:			Tennessee:		
Passman	5	69	Everett	2	44
Waggonner	3	(2)	Murray	2	79

[1] Percentage of 39 conservative coalition rollcalls on which the Congressman voted in agreement with the conservative coalition.

[2] Not available.

A glance at this table indicates that Congressmen who have been embarrassed by more than two suits in their district are both opponents of the Kennedy program and, also, archconservatives.

We have made an analysis which I will not read because it is in the record and we find of these 41 suits that they were filed in two types of congressional districts and I call your attention to the table of the Congressmen on page 21.

Mr. FOLEY. Our copies are not numbered by pages.

Mr. ZAGRI. It states "Conservative Coalition—Anti-Kennedy Record." Do you notice that?

Mr. FOLEY. Yes.

Mr. ZAGRI. An analysis of this was made to indicate that in almost all instances where the suits were filed the Congressmen had a voting record of voting with the conservative coalition, anti-Kennedy, anywhere from 49 percent to as high as 85 percent of the time.

Mr. CORMAN. Will the gentleman yield for a question at that point?

Mr. ZAGRI. Yes.

Mr. CORMAN. Could we find that the people who get elected to office, who fail to support and where people are denied the right to vote?

Mr. ZAGRI. I think this is true, but I also would like to point out, on the other hand, that there were a number of areas where there was a high incidence of voter denial where no suits were filed.

For example, South Carolina is a very good example of this. Why were no suits filed in three of the Southern States with the worst record of refusing registration to Negro voters?

Of course, the answer to this, or at least one possible answer to this is that in those States, the filing of voting suits would prove to be an embarrassment to friendly Congressmen and Senators and some of these gentlemen are friends of mine. I am not here to make any case against them.

However, I think that this is something that should be noted because we found, for example, in Alabama the four Congressmen—and there are some very bad situations of voter denial in those districts, Rains, Fifth District; Jones, Eighth District; the Ninth District, they supported the Kennedy administration a pretty high percentage of the time, 46, 84, 81, and 66, but no suits were filed in those districts.

No suits were filed in South Carolina where they had one of the worst districts. Why? Because of Olin Johnston.

The CHAIRMAN. I think you have the same names here that you have registered on one of these pages that would be against——

Mr. ZAGRI. That is very true, but the point I am making is that an impartial administration of this very great power would call for a more objective approach to the problem.

If we are going to go into these matters district by district, we would have the suits filed in South Carolina as well as in Mississippi.

The CHAIRMAN. There are some names on this list that have not been antagonistic to the administration. I don't want to enter into the political arena with you. There are a number of names on here in whose districts——

Mr. ZAGRI. Of course, I only solicited this on the basis of the quarterly record of the percentage of those that were of the anti-Kennedy coalition.

On that basis I thought there was a line of consistency.

Mr. MEADER. Take Judge Vinson, who had a very good record. He was only 23 percent antiadministration.

Mr. ZAGRI. There is a special explanation there. Nothing that the administration could do could ever hurt Judge Vinson. He will be reelected even after he dies.

Mr. MEADER. I think this is a very interesting bit of research that you have conducted here. I don't know whether the Republican National Committee financed it or not, but in any event I find it very interesting.

What prompted you to go into this particular line of research?

Mr. ZAGRI. Well, one of the reasons that we went into this was because I thought that if we are going to grant the Attorney General additional powers, it would be interesting to find out how this vast discretionary power is presently being used.

I didn't know what we would come up with, but I was quite impressed with a certain pattern of consistency here, where the power was used in two areas, one where—Judge Vinson's case, where whatever the administration did, it could make no difference because of his very solid position in his district or where there had been a consistent pattern of hostility.

Mr. MEADER. Are you suggesting there is a pattern or practice on the part of the Attorney General to use this power for political purposes?

Mr. ZAGRI. I am suggesting it, yes.

Mr. FOLEY. Do you have any evidence other than circumstantial evidence?

Mr. ZAGRI. I say we have a pattern here. I say this list establishes a pattern of prosecution in areas where there is a record of antiadministration activity or where it would make no difference, as in the case of Vinson, because of his impregnable position.

The CHAIRMAN. Let's take those States. You speak of Mississippi—I mean Alabama. There is certainly proadministration. Maybe not on civil rights. In Georgia you have Russell and Talmadge. They are interested in civil rights. Gore and Kefauver are certainly proadministration. Ellender voted for the administration.

Mr. ZAGRI. That may be true on the House side, but these names, I think, also establish a pattern. It is interesting to notice how in each one of these States they have bypassed the friendly Congress and only brought the suits where the Congressmen weren't friendly.

Mr. FOLEY. Did you take this back beyond the present administration, to the 1957 act?

Mr. ZAGRI. Yes, we did. This goes back to 1957, but very few suits were filed prior to 1960.

Mr. FOLEY. Filed from 1957 to 1960. You differentiate between them when we had a different Attorney General.

Mr. ZAGRI. Actually we only got totals. I didn't do this research myself. However, I do know that of the 41, less than 13 suits were filed prior to 1960, so this reflects that the vast majority of these cases came up under the present administration.

Mr. CORMAN. It would be fair to conclude from that that this administration has been a little more vigorous than the last one to reserve people's rights.

Mr. ZAGRI. It is true. I think the record is that there have been many more cases filed. However, in terms of the number of cases

where there is a pattern of discrimination or if you want to establish a pattern of discrimination, the present administration has been extremely conservative and selective in their choice.

My only point is that in their selectivity they have been influenced by political discrimination.

Mr. CORMAN. This is discrimination of the second power. Discrimination where we are going to attack discrimination?

Mr. ZAGRI. It is discrimination in terms of "who is your political friend and who is your political enemy?"

Mr. FOLEY. Your research didn't go into perhaps the fact that in the other counties or the other areas where suits were not filed, there might not have been a cause of action. Did you take every single district in the South and analyze it?

Mr. ZAGRI. Yes. As a matter of fact, in my statement you will find that we cite the record, the percentage of registration.

Mr. FOLEY. County by county?

Mr. ZAGRI. District by district. We have that and it is part of the record here.

The CHAIRMAN. Go ahead, Mr. Zagri.

Mr. ZAGRI. And, of course, because of the lack of figures that are in terms of reliability—because we actually do not have today a record that we should have in terms of registration and voting statistics and I wish to commend the Republican bill, H.R. 3139, for their work in this area and I think the Kastenmeier bill also would include this and I see the makings of a coalition committee of the subcommittee to get this bill to the committee and I would so urge. Then I think the kind of question you ask could be more realistically answered.

Now we get to title III. In terms of other conditions, we recommend that the bill provide for, to include the State as well as Federal elections. I think this is in the Kastenmeier bill.

Mr. FOLEY. State as well as Federal?

Mr. ZAGRI. Yes.

Mr. FOLEY. You don't anticipate any problem?

Mr. ZAGRI. A problem in what respect?

Mr. FOLEY. Legal problems as to State elections.

Mr. ZAGRI. I think your reapportionment of the cases would back you up on that.

Mr. FOLEY. Which reapportionment case?

Mr. ZAGRI. Supreme Court——

Mr. FOLEY. The *Carr* case. That doesn't have anything to do with voting.

Mr. ZAGRI. They could get into reapportionment.

Mr. FOLEY. That is true.

The CHAIRMAN. How could we ascertain the election of a State senator or a councilman of a borough?

Mr. ZAGRI. You are legislating in the area of voting rights, too, aren't you? Whether this is a Federal or State election, this is basically right.

The CHAIRMAN. How could you control the State of Washington?

Mr. ZAGRI. I think I could pass legislation that would protect the individual's voting rights.

Mr. FOLEY. We cannot go into the qualifications.

Mr. ZAGRI. We are not talking about that. We are talking about protecting his rights to register and to vote.

The CHAIRMAN. To register?

Mr. ZAGRI. For example, an interference of his vote, vote frauds.

The CHAIRMAN. You cannot do it as to State officials. This bill we have before us is Federal legislation.

Mr. ZAGRI. I understand that, but I was under the impression that we had some legal precedent which would permit Congress to extend its power to the State area.

The CHAIRMAN. The Constitution provides the times, place, and so forth, and manner of election and Members of the House.

How could we control that situation?

Mr. ZAGRI. I am not suggesting that we get into the question of qualifications. I am talking about registration.

Mr. FOLEY. You have to qualify to register and the qualifications are set out as States rights under the Constitution.

When it comes to a State or local election, how can the Federal Government, without a constitutional amendment, reach that?

Mr. ZAGRI. That is what I am talking about. That is what we are referring to. We are dealing with the question of discrimination.

Mr. FOLEY. That is right, by State or local officials.

Mr. ZAGRI. That is right.

Mr. FOLEY. Then you have it covered under existing law.

Mr. ZAGRI. I am talking about the various recommendations that are brought forth here in terms of registrars and so forth.

Mr. FOLEY. But you need color law and if you have that under title 42 today, the civil rights section, you have law.

Mr. ZAGRI. You are suggesting it is not necessary?

Mr. FOLEY. No, because the individual has his rights in the Federal statutes today. The thing that you want is to bring the Federal Government into the picture to apply the same power which we now have in the 1957 and 1960 acts.

Mr. ZAGRI. Where discrimination is involved.

Mr. FOLEY. And in the State laws.

Mr. ZAGRI. That is exactly what I am saying.

Mr. FOLEY. I think you have a serious constitutional question involved. That was one of the big problems on the poll tax. Should we take the statutory route or——

Mr. ZAGRI (reading):

> The right of citizens to vote shall not be abridged by the United States or any State on account of race, color or previous condition of servitude.

That is all I say. I am saying that Congress would have power to pass laws to protect the individual's rights under the 15th amendment.

Mr. FOLEY. And there is a statute on the books where an individual can come into the Federal courts, not the State courts, and sue.

Mr. ZAGRI. I am suggesting we go one step further.

Mr. FOLEY. And have the Federal Government, too?

Mr. ZAGRI. Well, to protect the individual——

Mr. FOLEY. In a State election?

Mr. ZAGRI. Certainly. To protect his rights under the 15th amendment.

Mr. FOLEY. As the State elections?

Mr. ZAGRI. That is right.

Mr. FOLEY. They are already protected as to Federal elections as to the 1957 and 1960 acts.

Mr. ZAGRI. I understand that. I am suggesting we go one step further and protect him under State elections to protect his rights under the 15th amendment.

Mr. FOLEY. Then we have, for instance, over in a county in Virginia, a county referendum. It has nothing to do with the Federal Government whatsoever. It is limited to one single county in Virginia. Do you want the Federal Government to be able to go over there and interfere in that election?

Mr. ZAGRI. If an individual's rights as a citizen have been abridged, then I say we shall.

The CHAIRMAN. All right.

Mr. MEADER. Mr. Chairman, I am interested in that paragraph on—I don't have a page number here, but you are talking about reapportionment of Congress based on the number of people voting, instead of the number registered as possible under section 2 of the 14th amendment.

Mr. ZAGRI. This is the Stratton bill, as I understand it, where the representation would be based on votes rather than population.

Mr. MEADER. I don't know that counsel is referring to this, but there isn't any doubt in your mind that under section 2 of the 14th amendment, Congress, in setting up the number of districts to which each State would be entitled, would have authority to implement section 2 of the amendment.

Mr. ZAGRI. Certainly.

Mr. FOLEY. Not setting up districts.

Mr. MEADER. No; but we can determine. We don't have to have the Bureau of Census do it. We can determine, ourselves, on the basis of statistics collected by the Bureau of Census under section 103 of the McCulloch bill or otherwise, when the right to vote at any election for the choice of the President and the Vice President, representatives in Congress, the executive and judicial offices of the State or a member of the legislature, therefore is denied to any of the male inhaibtants, being 21 years of age and a citizen of the United States, is in any way abridged.

We certainly, in Congress, have the power to reduce the number of representatives to which one of these States is entitled on the basis that they deny the right to vote.

Mr. FOLEY. Or abridge it.

Mr. MEADER. Or abridge it.

Mr. FOLEY. What do we mean by "abridge"? I don't question Congress power in section 2. How do we exercise that power? What does "abridge" mean? It has no relation to previous conditions of servitude, race, or color. What does it mean?

Mr. MEADER (reading):

> Except for participation in rebellion or other times, the basis of representation therein shall be reduced in the proportion in which the number of such male citizens shall bear to the number of male citizens of 21 years of age in that State.

Mr. FOLEY. I don't deny the power of Congress to reduce representation, but I do question what we would use as the measure or standard of "abridgment." I am not talking of denial.

Mr. MEADER. Section 5 says, "Congress shall have the power to enforce by the provisions of this article" and I think it defines an "abridgment."

Mr. FOLEY. If we reduce Mississippi by four or Alabama by three, what do we do with that four and three figure? Do we give it to some of the States or just reduce the membership in toto by four and three?

Mr. MEADER. If you are asking me—and I didn't intend to become a witness here.

Mr. FOLEY. I was looking at you but I was addressing my question to him, sir.

Mr. MEADER. I would be glad to have Mr. Zagri answer the question.

Mr. ZAGRI. Go ahead. I yield.

Mr. MEADER. Obviously what you would do, it seems to me, would be to apportion the States or the seats of the House of Representatives thus reduced because of section 2 of article 14 among the other States, in the order in which they would be entitled to them on the count of population. I think we have the power under this section to do it by statute.

Mr. FOLEY. I think that is absolutely correct.

Mr. MEADER. I don't know why nobody has ever done it. This section 2 of article 14 has never been implemented by the Congress, apparently, and I don't know why.

The CHAIRMAN. Let's put it this way, Mr. Meader: It was a very difficult provision to implement by appropriate legislation, that section, but I will say this: If by chance we get a strong civil rights bill through and after a fairly decent period of time some of these States are made intransient and deliberately denied the right to vote, I don't see that we have any other method to insure equality but to invoke that provision. I think we have to do it.

I don't say this by way of a warning, but I would not be loathe to have a bill introduced and have a provision of that sort in a bill of that sort, because I wouldn't know, after we had exhausted all of our ingenuity, in order to secure equality and we still don't secure it, we have to enter that door. I don't see how we would have any other choice, after a reasonable period of time. That is my view of it.

Mr. MEADER. I must say that it seems to me—and I haven't read this memorandum that counsel just gave me prepared by the Legislative Reference Service—but it strikes me that it would probably be a little stronger sanction to be employed against discrimination in voting in certain sections of the country, to implement the terms of section 2, article 14.

The CHAIRMAN. You know where there is restrictive legislation, you have to ease into it gradually. If we would present this by appropriate legislation, I don't think we can go to Congress with a bill that embraces it, not yet. I think after we pass legislation of the type that is now before us, and a reasonable time elapses, I don't know what choice we would have but to do something along those lines.

Mr. ZAGRI. Also I would suggest that the Attorney General be empowered to act independently of a complainant. The complainant does not necessarily have to show that he does not have the means, because in many areas there are many individuals who would fear reprisal and, therefore, would not want to become a complainant but the problem would still be there.

It seems to me that the Attorney General should have this right if he is convinced there is probable cause.

I am again referring to those areas where there is deep-seated hostility.

The CHAIRMAN. Proceed to your next title.

Mr. ZAGRI. Title IV we can dispose of very quickly. We are for it. We feel that it would serve a valuable purpose and it would be particularly valuable in terms of conciliation and the most important service, particularly in a community where there is a need for a transition from segregated society. We have had particular experience in this. For example, a city like St. Louis, we introduced an eight-stage plan of transition via the board of education. The board of education in St. Louis adopted this transitional step in which they involved community groups and as a result the city of St. Louis was among the first to be—the schools to be completely desegregated shortly after the Supreme Court decision in 1954.

Mr. MEADER. Mr. Chairman and Mr. Zagri, I have asked other witnesses questions about title IV, not for the words that are included in section IV but the ones that are omitted. First of all, this Community Relations Service is not created within the confines of any department or even within the Executive Office of the President. It is an independent agency out here all by itself.

Secondly, the Director who gets $20,000 a year is appointed by the President but there is no word there that limits his term.

In the third place, there is no requirement that an official of this importance, this salary, should be confirmed by the Senate. The last section in 401 says, "The Director is authorized to appoint such additional officers and employees as he deems necessary to carry out the purposes of this title." No reference is made to the classification under civil service laws. I wonder if you have any comment on the omissions in that bill?

Mr. ZAGRI. Yes. I believe that the Director—I have this in my prepared statement—of the Community Relations Service should be approved by the Senate. This would give the agency more independent status.

Mr. MEADER. You think he should have a limited term?

Mr. ZAGRI. Yes.

Mr. MEADER. And he should be required to comply with the classifications of civil service?

Mr. ZAGRI. Right. I think that that would establish this in line with other independent agencies.

Mr. MEADER. And you think that this position should be created in the Executive Office of the President or should it be out here somewhere by itself?

Mr. ZAGRI. I think it should be an independent agency. I think in this area the higher degree of independence, the more effective a job that can be done. I think it should be divorced from politics completely so far as is possible and I think that if you have an independent agency you can achieve this objective more likely than not.

Mr. MEADER. Did you ever think of the possibility of making this a function under the Civil Rights Commission?

Mr. ZAGRI. Yes. This could be possible, because I think that there is——

Mr. MEADER. I am speaking now from the point of view of Government organization and as a Member of the House Government Opera-

tions Committee. I think Congress has been reluctant to create new offices that are not tied into existing departments of the Government. It is a bad situation if we get too many of them floating around without any controls or supervision. I believe that where it is possible to create a new function within an existing department of Government or some agency of Government rather than proliferating independent agencies, it is desirable from the standpoint of general Government housekeeping to do so.

Mr. ZAGRI. I think that this would be particularly helpful if the recommendation of the H.R. 3139, Civil Rights Commission, became a permanent agency which would be adopted rather than for a limited term.

Mr. COPENHAVER. Mr. Zagri, I also point out that whereas in title II the Attorney General can be required to refer the case to the Service, in title IV the way the language spells it out the Service is not required to take the case. On line 23, page 26, it says "the Service may offer its services in case of such disputes, disagreements, or difficulties whenever in its judgment peaceful relations among the citizens of the community are involved or threatened thereby and may offer its services either upon its own motion or upon request of an appropriate local official or other interested person."

There is no requirement that they must consider referral from the Attorney General.

Mr. ZAGRI. Is it your thought that all matters should be referred by the Attorney General?

Mr. COPENHAVER. I think that he should be required to handle a matter referred under title II.

Mr. MEADER. That seems to be a loophole or gap, where one title makes it mandatory that the Attorney General refer cases to the Community Relations Service and wait 30 days before taking any action, himself, and yet in the title creating the Community Relations Service, there is no requirement that the Community Relations Service accept such a referral and take action with respect to it.

Mr. ZAGRI. Certainly there should be such a requirement, otherwise you might be performing an act of utility.

On the question of definition, if I may, I would like to refer back to our discussion of title III on only one point and that was the act—the title fails to define the term "racial imbalance."

Acting Chairman CONOHUE. What page are you reading from?

Mr. ZAGRI. Page 24.

Acting Chairman DONOHUE. Are you going back?

Mr. ZAGRI. Just because I think it is important.

Acting Chairman DONOHUE. What page? Is that after title V?

Mr. ZAGRI. No, I am back on title III for a moment. The chairman asked me to proceed and I neglected to discuss the question of a definition of "racial imbalance" under title III.

Acting Chairman DONOHUE. Proceed.

Mr. ZAGRI. This defect is particularly noticeable since the title defines "commissioner," "desegregation," and "public schools" in terms that are commonly used and known, however, the term "racial imbalance" is not a word of art nor is it a term that has a generally accepted meaning. It is therefore suggested that the term be defined wherever it appears in the bill.

If racial imbalance refers to an imbalance created by segregated neighborhoods, then I suggest that the way to proceed with that problem is to provide for legislation to desegregate housing.

However, I would say either eliminate the term "racial imbalance" or have it defined, because otherwise we have a term without a specific meaning and I think this would create a great deal of confusion.

Acting Chairman DONOHUE. Do you have any suggestions as to a substitute phrase?

Mr. ZAGRI. It seems to me that desegregation really covers it. I don't know what else we are going to accomplish by the term "racial imbalance" unless we are talking about the question of desegregating the question of transporting children, let's say, from one area to another. If that is what is intended here, it should be defined. I really don't know what the authors of the bill had in mind here when they used the term "racial imbalance."

Mr. MEADER. When Secretary Celebrezze was here—I believe I raised this point this morning briefly—we discussed racial imbalance and I don't believe we were able to get a definition of racial imbalance from the Secretary. I am not sure that any other witnesses who appeared on behalf of the bill have attempted to define racial imbalance, but it would seem to me that where it is applied to racial imbalance in schools it must necessarily mean that the proportion of Negro to white pupils should be the same as the proportion of Negro to white residents in a given area. If, for instance, the imbalance in schools is discrimination under title VI, it gives the Secretary of Public Education and Welfare the authority to decide on his own what should be the proper boundaries of the school district or city and in case he finds they are improper to withhold funds within his jurisdiction to that particular area, because of racial imbalance in the school system.

Does that sound logical to you?

Mr. ZAGRI. That sounds logical, but I still think you should have a definition.

Mr. CRAMER. Can you suggest that definition of racial imbalance? What do you think it means?

Mr. ZAGRI. I am inclined to agree with Congressman Meader, that where you have a disproportion of whites or Negroes to white students in the school, in disproportion to the Negroes in the neighborhood that this would be evidence of racial imbalance.

Mr. CRAMER. Then comes the question of who decides what the neighorhood will be that comes into play. In other words, the local school board draws a neighborhood district line for schools. The line may not be in keeping with what the Secretary thinks the line ought to be. I think it is clearly indicated in the legislation that the Secretary of Welfare could withhold funds because he was dissatisfied with the neighborhood area established by the local school board and thus force it to redraw the neighborhood lines. Is that your understanding and interpretation of it?

Mr. ZAGRI. I would think that there could be a finding by the Commission of Education even that there was discrimination, if the lines were, say, drawn in such a manner or gerrymandered in such a manner as to exclude Negroes from that particular school and so that he would then—could withhold funds even without the words "racial imbal-

ance." He doesn't need that term, it seems to me, to accomplish the objective, as you refer to it.

Mr. CRAMER. Of course, you always get into the question of degree. If, in fact, the local school board drew a line a block from where the Secretary thought it ought to be drawn, should it be forced into drawing it otherwise just because the majority of those people, say, in that one given block are Negro?

Mr. ZAGRI. I would think that if you had a pattern here of integration in a school district and someone decided that they were going to gerrymander it, this would become pretty apparent.

Now, I agree with you that——

Mr. CRAMER. That is where the problem of definition comes in.

Mr. ZAGRI. That is right.

Mr. CRAMER. How Congress could possibly define it in any way would be to prescribe what the duties of the Secretary should be.

Mr. ZAGRI. I think that there probably should be some definition of the term and, also, if possible, some standards. I agree with you that it is a very difficult problem to work out.

Acting Chairman DONOHUE. Who in your opinion would set up the boundaries?

Mr. ZAGRI. The boundaries in a local school district?

Acting Chairman DONOHUE. Yes.

Mr. ZAGRI. I think originally it should be set up by the local board of education, but I think if it becomes necessary under title VI for the Commissioner of Education to decide whether or not this is a discriminatory or nondiscriminatory boundary line for that particular school district.

Acting Chairman DONOHUE. You may proceed.

Mr. ZAGRI. Title V—at this time I will simply say that the Civil Rights Commission has performed an excellent job and that if it had permanent status, it could plan, it could engage in long-range planning and programing and undoubtedly would be in a better position to secure funds to support the program. I am in favor of establishing the Civil Rights Commission on a permanent basis.

Mr. CRAMER. May I ask a question on that title, Mr. Chairman?

Acting Chairman DONOHUE. Yes.

Mr. CRAMER. The bill introduced by a number of other members including Mr. McCulloch, H.R. 3139, and a separate bill introduced by myself could provide not only for power of the Civil Rights Commission to investigate denial of rights to vote on the part of the minority, but, also, could include a protection of everybody's right to vote and have that vote counted. It is stated in the following terms: "To investigate allegations in writing or under oath that certain citizens of the United States are being unlawfully accorded or denied the right to vote or to have that vote counted."

Don't you agree that in the Civil Rights Commission's objective, to protect civil rights, there is no more important civil right than the right to vote and that right belongs to everybody and that the Civil Rights Commission should properly have the authority to investigate instances where votes are unlawfully counted or the right to vote unlawfully permitted?

Mr. ZAGRI. Yes; I touched upon that in my discussion under title I when we discussed the vote frauds and I commended the section in H.R. 3139 that would establish this investigative power.

Mr. CRAMER. Thank you, sir.

Mr. ZAGRI. I think the Kastenmeier bill also includes that recommendation.

With reference to title II, there are four questions to be resolved in the discussion of title II.

(1) Is legislation needed?

(2) Does legislation in this field constitute undue invasion of property rights?

(3) Does Congress have power to legislate in the area of public accommodation, and what is the extent and scope of such power?

(4) Is the proposed remedy adequate?

(1) With reference to the need of legislation in this field, the Teamsters Union is in a position to make reference to the experience of many of our members.

According to Vice President Murray W. Miller, director of the Southern Conference of Teamsters, the Negro is excluded from over-the-road operations where overnight trips are involved because of the difficulty of finding public accommodations.

It is pointed out that the employers' failure to hire Negroes for over-the-road jobs is not due to prejudice since over 50 percent of the 9,000 city drivers in New Orleans, La., Atlanta, Ga., and Houston, Tex., are Negroes; and a fairly large number of checkers on the docks—who are "straw bosses" are also Negroes.

He further points out that the city driver is more important to the employer-customer relations than the over-the-road driver. Where Negroes have been hired to fill over-the-road driving positions, as is the case in Memphis, Tenn., no night trips are involved. This is a clear example where the absence of public accommodations does not permit the Negro equal opportunity to compete with white drivers for the same jobs.

So here is a good example of where the title II really is closer related to the objective than title VII.

If we have a public accommodations, equal public accommodations for the driver, we can also promote equal employment opportunities for him.

Incidentally, I think that this power is vested today, to a large extent, in the ICC. The ICC has already promulgated regulations, as far as bus terminals are concerned. It seems to me that they could promulgate regulations as far as motels and eating places along interstate highways where interstate carriers and where interstate drivers, such as truck drivers, and others, would find the Negro accommodations.

I think if you can establish that the absence of such equality of accommodations causes a burden, certainly this would fall within the area of the ICC today.

Another suggestion, when funds are allocated by the Federal Government in terms of public roads, they could establish conditions on this allocation of funds requiring equality of public accommodation along these highways, so that there are a number of areas that the

Executive in the Government could deal with today, even without legislation. This is no argument against legislation, however. I am pointing out that the Executive arm has great power in terms of all, of many of these titles, to accomplish a great deal of the reform that is needed.

Now, during the month of August, motorcades of Teamster wives will be coming to Washington, D.C., to visit their Congressmen from Georgia, Florida, Louisiana, Alabama, and Texas.

Those busloads of women will be representative of both races. This presents the problem of finding public accommodations in the South where both races could be served.

In order to avoid humiliation and embarrassment for our Negro members' wives, it will become necessary for the buses to drive all the way through and to pack box lunches in order to make this trip possible.

Last year we had the experience of an integrated group of wives visiting the Congressmen from the Carolinas. They suffered such embarrassment because of restaurants' refusal to serve both groups we resolved that we would never inflict this experience on our membership again.

Recently our Southern Conference of Teamsters had a convention in Dallas, Tex. They attempted to make reservations for the delegates and their wives to attend a showing of Cleopatra. Since the theater would not permit the Negro delegates to sit with the white delegates in the orchestra, but insisted upon segregating them into the balcony, we finally called off the theater party. I could multiply instances such as this in many cities throughout the country where our members and their wives participate in bowling team competition and cannot find integrated bowling alleys. Rather than have "Jim Crow" bowling teams, we have been forced to give up this type of activity which we found so helpful in building harmony and good relations among our members in our local unions.

(2) It has been charged that this section of the bill would extend the power of the Federal Government to every restaurant, store, barber shop in America. And it is alleged that this would destroy the right of freedom of association and would deny the merchant the right to decide with whom he will do business.

I do not have to burden this committee with a recitation of the regulations passed by State and local authorities which impose limitations upon the use of property in the interest of promoting public health and safety.

I don't have to burden the committee with examples of Government grants in the form of permits, franchises, licenses, certificates of convenience or necessity which are granted by the appropriate regulating agency governing interstate commerce.

So while there may be some interference with absolute property rights or rights of privacy, it would certainly not be unreasonable interference. The law would simply provide that a public business must in fact be open to the public—all the public. Surely, this is no more of an intrusion on the rights of a merchant than many other regulatory matters that I have referred to.

Of course, the question of the right of privacy arises in the case of "Mrs. Murphy," the roominghouse or boardinghouse keeper who

lives in her home and rents out two or three rooms to boarders or to transients.

I have no serious objection to protecting "Mrs. Murphy's privacy by imposing an exemption on boardinghouses and roominghouses with five or less roomers; but, in principle, I can see no significant distinction in that situation and the average motel which is often run by a husband and wife who also live on the premises but would be required to comply with the law. I grant that the degree of privacy in one case may be greater than in another, and if this distinction needs to be preserved, I have no objection to such an amendment.

The administration bill seeks to solve the problems of "Mrs. Murphy" by incorporating the words "substantial" or "substantial degree" in section 202(a) (3) because the word "substantial" is an ambiguous term and subject to a variety of constructions. It has been suggested by some members of this committee that a dollar volume limitation, such as $500,000 or $150,000 be written into the bills.

First, it should be noted that the word "substantial" or "substantially" is not used with reference to hotels, motels, or other places of business furnishing lodging but only applies to certain types of retail establishments. This difference of substantiality in one instance and not in the other would create confusion in the minds of both the traveler and the merchant. But more important than that, it would be a humiliating experience for a traveler to be turned down by an establishment that is just under the dollar-volume line and thus exempt because it was not "substantial." In order to avoid this experience, the traveler would have to carry an encyclopedia and roadmap which would register the places that were available to him. Frankly, this is not the kind of experience which we would like to subject our members to or for that matter any human being.

It should be further noted that a dollar-volume limitation such as the $150,000 limitation would exempt from the bill approximately 80 to 85 percent of all restaurants, motels, and hotels. This is according to the figures of the National Restaurant Association who estimate that of the 375,000 restaurants in the country, only 25,000 averaged more than $100,000 annually. Similar figures pertain to hotels and motels. A dollar-volume limitation, such as has been suggested, would afford equal public accommodations to the wealthy Negro or other minority member, but would deprive the vast majority no protection whatsoever. A more realistic resolution of the problem of "Mrs. Murphy's" right to privacy and the needs of millions of American citizens who are members of minority groups, is to impose a limitation on the size of the establishment in terms of the rooms rented, rather than some arbitrary limitation, such as the volume of business.

Mr. MEADER. The "substantial" didn't relate to motels and hotels. It relates only to restaurants?

Mr. ZAGRI. That is right, that is correct.

Mr. MEADER. And stores?

Mr. ZAGRI. That is correct.

Mr. MEADER. I think one draft of a bill came up here and limited the application of the bill to restaurants which had more than 20 seats. I don't think the $150,000 limitation related to restaurants but to retail stores. I thought the motels would be exempt if they had five or fewer rooms. Restaurants would be exempt if they had 20 or fewer

seats, and retail establishments if they had $150,000 or less annual volume.

Mr. ZAGRI. This would eliminate most of the truck stops, for example, because most truck stops would have probably less than 20 seats.

Mr. CRAMER. Then you would include under 202(a)(1) any boardinghouse or hotel, motel, or public place engaged in furnishing lodging with an excess of five rooms rented; is that right?

Mr. ZAGRI. Yes. I will agree that this is an arbitrary figure.

Mr. CRAMER. Except those fewer than five?

Mr. ZAGRI. That is right.

Mr. CRAMER. Without any relationship as to whether those that have an excess of five or that have less than five would serve interstate commerce or not; is that right? You are taking the interstate commerce test in the present bill completely out of it; is that right?

Mr. ZAGRI. No, no. I don't think it is necessary for us to do that. I think we can rely on both powers here, the 14th amendment and the interstate commerce power, and I think that it is clear now that anything that affects commerce would come within the scope and extent of the commerce power. I think that the best example that I know on that is the extent and scope of the Landrum-Griffin law, where the Congress exercised power and apparently the courts have held that it may extend its power to regulate the internal affairs of a local union in Podunk, dealing with the question of procedure, parliamentary law, and all the factors that regulate the internal affairs of the first six titles of Landrum-Griffin. If Congress has power to go that far, it certainly seems to me that it would have the power to extend its scope to any manner that affects commerce in the case of the motel or the restaurant that you mention.

It has been established, also, by the Supreme Court—I think in 1944 in the *Polish Alliance* case, that it is purely interstate and as long as it affects interstate, it would come within the scope of the commerce clause.

I am not going into that point because of the limitation of time, but I hope the members will read it.

Mr. CRAMER. It is in the wording of 202(a)(1) which talks of including guests traveling or in interstate commerce.

Mr. ZAGRI. I don't think it has to be limited to that. Again, I think that the draftsmanship problem here is one that could be worked out.

There is nothing in the nature of things—I mean the scope of the power of Congress under the commerce clause that requires the word "transient" or the word "travelers."

Mr. CRAMER. Then is it your position that any establishment in excess of five rooms should be included, whether they serve interstate commerce guests or not?

Mr. ZAGRI. That is correct.

Acting Chairman DONOHUE. You may proceed.

Mr. ZAGRI. Title VI, "Nondiscrimination in Federally Assisted Programs."

Title VI would authorize the withholding of Federal funds from any program or activity that receives Federal assistance, directly or indirectly, by way of grant, contract, loan, insurance, guarantee, or otherwise, when discrimination is found in such a program or activity.

This title simply sanctions by legislation that which already exists in terms of Executive power.

The President's failure to withhold funds in a case of federally subsidized discrimination in public schools in impacted areas has caused the Subcommittee on Education and Labor to report out favorably the Gill bill, H.R. 6938. The Gill bill would make mandatory the withholding of funds under the impacted areas bill, Vocational Education Act, the National Defense Education Act, and the Library Services Act, where the federally subsidized project was engaged in discrimination.

The Gill bill would eliminate the discretionary power presently vested in the President of the United States and would require the withholding of funds to the tune of $1,116,800,000 in Federal grants in aid to 11 States which are presently benefiting from federally supported programs of racial discrimination. What assurance do we have that the President of the United States would exercise his discretionary power derived from legislative enactment any differently than that which is presently exercised under his power as Chief Executive.

Let us look at the record and see what is happening today under Executive authority.

Even in the case of the Defense Department where there is an official program of nondiscrimination, the Southern Regional Council reports, January 1961, that usually reliable sources have reported that gentlemen's agreements existed where military Negro personnel are housed or transferred when their children reached school age. The Southern Regional Council also reported that—

> Federal property has been deeded or leased to school boards for use as school sites with the result that the facilities then become off base or segregated.

Most of the southern off base schools are segregated. Elementary, secondary, and vocational education grants under the impacted areas program where the matter is left to the discretion of the administrator, almost 100 percent segregated programs follow. For example, regulations issued by the Office of Education state that educational opportunities must be available without discrimination because of race, creed, or color. However, there is no administrative program of enforcement of this regulation. The result is that grants in fiscal 1960 for vocational education in which no vocational schools have been desegregated include: Alabama, $1,063,459; Arkansas, $780,559; Florida, $641,558; Georgia, $1,094,212; Louisiana, $871,379; Mississippi, $961,493; South Carolina, $732,732.

Here we have figures where we have grants under the vocational schools bill in 1960 to Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, and South Carolina where the entire program is 100 percent segregated.

Grants in the form of scholarships, fellowships, and research and endowments to hospitals, universities, institutions, have amounted to $2,889,100,000 in 1959 (Tax Foundation: Facts and Figures on Government Finance, 1960–61, p. 91).

With a few exceptions, there is no formal policy or machinery to assure that these funds paid for by all taxpayers, will be used in a nondiscriminatory manner.

Under the impacted program, the following 11 Southern States received over $63 million for their school systems in 1 year by the

Federal Government and operating in an almost completely segregated program:

State:	Percent of desegregation
Texas	1.21
Alabama	0
Georgia	0
Mississippi	0
South Carolina	0
Arkansas	.107
Florida	0.013
Louisiana	.0004
North Carolina	.026
Tennessee	.247
Virginia	.099

Here we have desegregation. It seems Texas was the highest with 1.21 percent, or in most cases it was a fraction of one-tenth of 1 percent, yet they have benefited to the tune of $62 million in Federal funds which you and I and all taxpayers from all parts of America contribute.

With regard to the guidance training program which is conducted for the purpose of training high school teachers and administrators who identify and guide the talent of the Nation's youth, Federal funds in 1960 were not available to Negro teachers in four and possibly six of the seven Southern States studied.

The Civil Rights Commission report observed:

> It is difficult to conclude that there is no talent of use to the Nation to be identified and developed among a group constituting 31 percent of the people of Alabama, 19 percent of the people of Florida, 29 percent of the people of Georgia, 42 percent of the people of Mississippi, and 36 percent of the people of South Carolina.

National Science Foundation: In 1960 almost $4 million in Federal funds were spent in seven Southern States for higher educational institutes. All but 31.8 percent of them subsidized segregation.

It is clear from the foregoing that the President has done little or nothing in the use of his vast discretionary power to date in the withholding of funds for the purpose of desegregation of the schools in the South.

The next question is, If the President is to make use of this power under the proposed title, would funds be withheld solely for the purpose of effectuating policies of the act or would possible abuses set in, and funds withheld are granted for the purpose of gaining political support on administration programs?

It seems to me when an administration has $7 billion to withhold, and they can decide, based entirely on their own personal judgment, that it would be within the interest of the country to withhold it in one area but to overlook discrimination in another area, this can become a tremendous political bargaining weapon to achieve unity and solidarity of the votes on any issue that the administration wanted to influence Congress.

Mr. MEADER. You are talking about Congress?

Mr. ZAGRI. That is right.

Mr. CELLER. You mean that Congress has done this for a political purpose?

Mr. ZAGRI. I didn't say that. As a matter of fact, the President said in his press conference that—this was at the time that the U.S. Civil Rights Commission requested that he cut off the funds in Mississippi and the President said in the September 24 issue of the Congressional Quarterly, or, rather, April 24, press conference, he clearly said that he didn't think that this power should be given to the Presi-

dent. He didn't think the President should have the power because of the dangers implicit in this tremendous power. I think I have the quote here in my testimony.

Yes, here it is. The question was:

Mr. President, will you attempt to cut off Federal aid to the State of Mississippi as proposed by your Civil Rights Commission?

The PRESIDENT. I don't have the power to cut off the aid in a general way as was proposed by the Civil Rights Commission, and I would think it would probably be unwise to give the President of the United States that kind of power because it could start in one State and for one reason or another it might be moved to another State which was not measuring up as the President would like to see it measure up in one way or another.

Mr. CELLER. That is why in the bill before us we provide that the President shall have discretionary power, whether or not to exercise that power in the event of discrimination.

There are situations where, for example, if you cut off funds from a college, that practices discrimination, in the middle of the term that college may have colored as well as white students. Are you going to penalize the innocent as well as the guilty? In other words, the students are innocent. There may be colored students there. Are you going to cut off funds under the Hill-Burton Act, for example, in a hospital that may be practicing somewhat, in some degree, discrimination? Are you going to penalize the sick, wounded, and feeble by cutting off funds summarily?

Those are very difficult questions. It is very difficult to exercise authority of that gigantic nature, and it certainly cannot be done arbitrarily, and it won't be done arbitrarily.

Mr. ZAGRI. The President didn't want this power, according to the answer. He said "I don't have the power to cut off the aid in a general way as was proposed by the Civil Rights Commission."

Mr. CELLER. That was probably true at that time, and he probably doesn't have it now unless we give it to him.

Mr. ZAGRI. Although according to certain decisions in the Government's brief in *Restricted Covenants* case, it is argued that the President did have that power. As a matter of fact, today we have five different departments of the Government that have resolutions which impose this very condition on loans and grants.

Let me list them to you.

1. The Department of the Interior recently made Federal land more available for parks by reducing the sale price of land in the national forest reserve. As a condition of purchase, State and local governments will be required to agree to maintain such land open to public recreation without discrimination. Failure to do so will cause the land to revert to the Federal Government.

This is mandatory. They don't have discretion.

Mr. CELLER. Have you examined those cases to see if there would be more inequity if that power were exercised?

Mr. ZAGRI. That power is now being exercised; this is a power that presently exists.

2. The Federal Home Loan Bank Board by a resolution adopted on June 1, 1961 (Res. 14656) made it a policy that member banks not discriminate in the making of loans.

3. The Rural Electrification Administration has made it a condition of its loan contracts that the borrower agree to pursue a nondiscriminatory employment policy.

Mr. CELLER. Do you agree with those resolutions?

Mr. ZAGRI. I do.

Mr. CELLER. What is your criticism of the resolutions?

Mr. ZAGRI. Oh, no, I say these resolutions show that the President has the power today, and it also indicates that it is practical to have mandatory limitations in the administration of the Federal funds.

Mr. CELLER. Your argument is that the President has the power, and he hasn't exercised it?

Mr. ZAGRI. That is my argument—it is not my argument. This happens to be the thesis of some very eminent lawyers in this country who have served as advisers to the U.S. Civil Rights Commission, and also to a special group—I have forgotten the group. I think Mr. Aaronson is executive director of this group.

Mr. CELLER. You state at the bottom of that page, you speak of the resolutions that you just mentioned. You give a good answer.

"In terms of imposing hardships on innocent people through the withholding of funds, I might simply say that it is always a question of comparative hardships." That is the answer, isn't it?

Mr. ZAGRI. That is right, that is the answer to the question. It is exactly the answer.

Mr. CELLER. The President probably figured it might do more harm than good in some of these instances.

Mr. ZAGRI. Then I continue to say "If you withhold the funds principally white students will suffer. If you don't withhold the funds principally Negro students will suffer." I think that the temper of the times calls for a reversal in emphasis.

Mr. MEADER. You are saying that you believe that if we pass legislation to withhold funds where discrimination is practiced, that it shall be mandatory upon the Administrator rather than discretionary with him?

Mr. ZAGRI. That is the position of the Gill bill, and I am recommending that the Gill bill, which has now been reported out of the committee, the Subcommittee on House and Labor.

Acting Chairman DONOHUE. But not by the actual committee.

Mr. ZAGRI. But it will. The chairman tells me it is coming up on the calendar on Wednesday.

(Discussion off the record.)

Mr. CORMAN. It will be the first time that we have passed on, if we do.

Mr. ZAGRI. However, I think this happens to be a good bill.

Mr. CORMAN. I wanted to ask you, are you suggesting that we ought to remove this discretion only in the area of aid to education or in all Federal programs?

Mr. ZAGRI. Well, I would like to, as the chairman so eloquently stated earlier, we have to, like trying to get into a tight shoe, ease our way into it. In order to ease into it gradually, I would like to start out with the Gill bill and limit it to impacted areas, libraries, and so forth.

The CHAIRMAN. Mr. Zagri, we have three more witnesses. If you keep us working, we will have to make application to the Teamsters Union as members.

Mr. ZAGRI. You are an honorary member right now. I am really not prolonging this, Mr. Chairman. We have so many good questions.

Mr. CRAMER. Are you urging the mandatory cutoff of Federal funds for scholarships and research by universities on the basis of discrimination? I have some difficulty in determining what it means.

A university pursuant to court order or otherwise, may have integrated by accepting Negro students. Does that school, because it doesn't have a large number of Negro students as you have suggested in your percentages, continue, in your opinion, to discriminate, and therefore even though they have done what the court has ordered them to do they would not be entitled to the funds?

Mr. ZAGRI. I would think they are not discriminating as long as they leave their doors open to students of all races.

Mr. CRAMER. Your thesis, deciding the percentages, is that apparently on the basis of percentages, alone, you feel that discrimination or desegregation is continuing, even though those institutions have been integrated?

Mr. ZAGRI. Of course here we are talking about secondary schools. When you look at these records of zero, zero, zero, one-tenth of 1 percent, two-tenths of 1 percent, nine-hundredths of 1 percent, it seems to me that that type of evidence in the elementary and secondary school level after 10 years of a Supreme Court decision is not reflective of all speed, nor does it indicate to me that there is a nonsegregation policy.

Mr. CRAMER. Yes, you are substituting, then, your judgment, and that of the administrator or the President in this instance as to whether, in fact, discrimination continues although the issue had already been determined in the school district or college by the courts.

Mr. ZAGRI. I say as long as the doors are open, that will be sufficient. Whenever a university would bar a student from entering, that would be discrimination.

Mr. CRAMER. When Mr. Meany was here he answered affirmatively as to whether a State agency administering State employment should cut off employment compensation funds to that State simply because the State agency practiced discrimination. Do you agree that that should be done? Mr. Meany said it should.

Mr. ZAGRI. Well, of course, they may wake up some day and throw the rascals out, and the one way to do it is to have the shoe pinch.

Mr. CRAMER. In Florida you had to wait 4 years before you could change it. The 4 years of pinching could hurt pretty bad, couldn't it?

Mr. ZAGRI. Yes, I think it creates a real difficult problem.

Mr. CRAMER. Yes, and under this bill, title VI, that discretion is with the President, and he could do so, and Mr. Meany says he should do so.

Mr ZAGRI. Well, I am going just one step—as I indicated earlier, I would like to start out with the Gill bill, which would treat in the areas of our schools.

Now, in principle, I think, logically, I would have to answer in the affirmative your question as well, but from the standpoint of easing into the problem, I would like to take this one step at a time.

Mr. CRAMER. You would like to ease into it, and maybe the President would not want to ease into it, and we are giving him authority to use across the board mandatory powers if he wants to.

Mr. ZAGRI. He has the power now, but he hasn't been using it.

Mr. CRAMER. There is some debate about that, how far his powers might go in cutting off Federal funds.

That is all.

The CHAIRMAN. How many more pages do you have?

Mr. ZAGRI. We are getting near the end here. As a matter of fact, I would like to conclude by thanking the committee for its indulgence, and this opportunity to exchange ideas.

The CHAIRMAN. We wish to assure you we are very happy to have you here and get the benefit of your views. Thank you.

Does that conclude your statement?

Mr. ZAGRI. Yes.

By the way, Mr. Fuentes is here if you have any question with relation to voter discrimination or any other civil rights violations based upon his written statement from the State of Texas.

Mr. Fuentes, as you know, is the executive secretary of PASO, which is the Spanish-speaking Americans in Texas, over a million, I understand, over the age of 21 with Spanish surnames.

The CHAIRMAN. Does he have those cases documented?

Mr. FUENTES. Yes, sir; the statement includes some problems, not all of them. As the statement points out, it is a very, just a scratch on the surface of the problem.

The CHAIRMAN. I was wondering, sir, would you mind submitting them and we would have them and have it incorporated into the record.

Mr. FUENTES. Each of the committee has a copy of it. I don't want to infringe. I merely want to say that I prefer the permission to insert this statement in the record.

Mr. ZAGRI. That has already been granted. I want to acknowledge appreciation of it, because the Latin American people in the United States have very seldom been afforded the opportunity, either through their own fault or other issues, not presented their views before any groups that would listen to their problems. As a matter of fact, it was in 1960 that the first time in the history of the United States that the problem of the Latin American was brought up before the platforms committee of any party in this country. I don't know how exact I am, but with the exception of possibly Henry Gonzales appearing before any other committee, Congressman Gonzales, I don't know that any Latin American has ever presented the problems of civil rights problems before any committee, so certainly I do thank you very, very much for accepting this statement, and hope you will read it, and maybe we can get something with it.

The CHAIRMAN. Thank you very much.

Mr. CRAMER. May I ask Mr. Zagri a question?

I notice in your conclusions, which you didn't read—I assume you are making that a part of the record—that you suggest in No. 1, that:

1. The temper of the times calls for statesmanship rather than partisanship in the handling of this, the most serious problem of the present day. Disturbing indeed is a record of partisanship and press agentry with this civil rights issue that has been so characteristic of this administration's approach to this problem. The most recent evidence of the Attorney General's using the civil rights issue as a political football should be found on page 1 of the July 19 issue of the Wall Street Journal in their Washington wire column:

Bother Robert pushes President Kennedy to make an early civil rights speech in the Deep South. The Attorney General argues a Presidential appeal on the spot would help mobilize moderate opinion in Dixie. Anyway, he reasoned, it would be good politics in the North.

Then you say:

With all due respect to the Attorney General's position and his interest in the civil rights issue, may I humbly suggest that the greatest service he could perform in promoting a truly bipartisan policy in this Congress on the issue of civil rights is public announcement that he will resign as Attorney General to assume the duties for which he seems to be so ideally suited.

Previously you said:

The Attorney General has been thought of as the politician of the administration, and it has been rumored he will resign after the first of the year to assume his responsibilities in directing his brother's campaign.

Mr. ZAGRI. It has been suggested, or it has been thoroughly reliably reported, that he intended to do this the first of the year, anyway, so I just thought it might be helpful in terms of a bipartisan approach to the problem if he would do it now.

Mr. CORMAN. Are there any other reasons in addition to his activities in civil rights that would lead you to give him that advice?

Mr. ZAGRI. Yes, but this is not the forum for me to discuss that.

Mr. CRAMER. I would like to say that that is a rather fascinating and interesting suggestion. If the rumor is correct that he is going to resign next year, anyway, to handle the President's campaign—and I obviously have no way of knowing—I think certainly that aspect of it should be considered then by the Congress and your statement certainly points that out.

I agree with your statement concerning Congressman Lindsay's remarks that the Attorney General had not even bothered to read the proposals made by the Republicans on civil rights as presented to this committee.

The CHAIRMAN. There were 170 bills filed by both Republicans and Democrats. The gentlemen haven't read all of those bills. The gentleman from Florida hasn't read all those bills, certainly. It would be a staggering thing for anyone to read those bills. I think when a witness is asked, Did you read a particular bill, and he says, "No, I haven't read it," what is wrong with this? Just because it happens to be a Republican that offers the bill, that there are political overtones?

I don't see that. I couldn't read all the bills before me. It is impossible. There are Democratic bills that I haven't read, and there are Democratic bills that the Attorney General hasn't read. You can't read all of those bills. I don't think there is any studied purpose to put the stigma on a Republican who has not read the bill.

As far as I am concerned, I am ready to take anything that is good in any of these bills, whether they are Republican or Democratic, and instill them all and get a good bill. I am sure that that is what we all try to do.

I think it is a little unfair to charge the Attorney General with something sinister politically because he hasn't read a particular bill.

I don't agree with our good friend, Congressman Lindsay, with whom I agree most of the time, and I don't agree with others on this political situation.

Mr. MEADER. Since I asked the Attorney General that question, I think perhaps I ought to say something here. The original so-called Republican bill, of which there were not just 1, but 11. H.R. 3139 was introduced January 1, 1963, and there were some 40—I mean I think there were 11 members of the Judiciary Committee, 10 members that introduced the identical bills.

Then on June 3, the so-called Lindsay bill, in which he was joined by Representatives MacGregor, Mathias, and Cahill of this committee, which was discussed under unusual circumstances on the floor of the House.

When the administration sent up a public accommodations bill, it seemed to me very strange that the Department of Justice didn't take the trouble when they were drafting a bill, to study any of the bills that already had been introduced, unless they were drafting a bill for partisan appeal on civil rights legislation.

I understood that there had been discussions between House Republicans not only with the White House, but with the Attorney General. I was not involved in those. I was astonished when the Attorney General in open hearings testified that this particular bill, H.R. 3139, and its companion bills, and also the public accommodations bills offered by four members of this committee, had not even been studied or read by him. They weren't such long bills that would take him a lot of time. He didn't have to read 170 bills. All he had to do was to read two.

The CHAIRMAN. If my memory serves me correctly, he was asked about H.R. 6720, not the other one.

Mr. MEADER. That is correct. I believe the question related to the Lindsay public accommodation bill.

The CHAIRMAN. I think the Lindsay bill just confined itself to that.

Mr. MEADER. That is right; title II.

Mr. CRAMER. In view of the fact that the House spent one evening, some 3½ or 4 hours, discussing publicly the approach by Mr. Lindsay on the 14th amendment, and it had very substantial public notice, and a number of members introduced it, it just seemed to me that when the Attorney General was testifying on that point, that I just couldn't imagine that he had not read and considered this approach. He included, to some extent, a 14th amendment section in title II of his bill, and, to me, it is inconceivable that a matter of this great national importance was not considered by the Attorney General prior to the time that he came before the committee.

It just occurred to me that I couldn't imagine he hadn't considered it or read it, but that he preferred to kick it under the rug and not admit that there was a Republican proposal of any consequence. That is the only way that I could interpret it.

Mr. ZAGRI. May I make one request, and I am through?

The CHAIRMAN. Thank you very much.

Mr. MEADER. I would just like to note that we ended Mr. Zagri's testimony on a note of harmony.

The CHAIRMAN. Thank you very much, sir.

(The balance of Mr. Zagri's statement is as follows:)

In connection with fraud cases, I favorably commend section 102 of H.R. 3039; also section 103 which would direct the Bureau of Census to conduct a nationwide compilation of registration and voting statistics of every State by race, color, and national origin. This information would be most helpful in

establishing patterns of discrimination as well as fraudulent registration and voting.

There is nothing in the proposed bill which makes mandatory the filing of class suits by the Attorney General wherever a pattern of discrimination may exist.

Since 1957, a total of 41 suits have been instituted by the Attorney General. In other words, 159 counties where the registration is under 15 percent were completely ignored by the Attorney General. Only 5 of the 50 States in the locale of these Attorney General-instigated suits, the States involved: Mississippi, Alabama, Louisiana, Georgia, and Tennessee. The following analysis indicates that a selective filing of suits carefully avoiding congressional districts where the incumbent was considered friendly to the administration and in some instances, filing several suits in the districts where the Congressman voted against the administration consistently. By State, the number of suits filed were as follows:

		Number of suits filed	Year filed
Alabama	7	1	1958
Georgia	4	3	1959
Louisiana	11	4	1960
Mississippi	15	16	1961
Tennessee	4	9	1962

NOTE.—9 have been filed to date in 1963.

The Congressional Quarterly of July 5, 1963, disclosed that less than 15 percent of potential Negro voters were actually registered in 261 counties in 60 congressional districts in 11 States. It is reasonable to assume that in each of these counties, various discriminatory devices have been used to keep Negro voter registration to a minimum. Yet, although 261 counties and 11 States are clearly involved, over a 5½-year period the Attorney General has seen fit to file suits in only 33 counties in 17 congressional districts in 5 States. In addition, two statewide suits were filed against State voter registration procedures, one in Mississippi and one in Louisiana.

If we examine the congressional representation in the 33 counties where, over the past 5½ years, suits have been filed by the Attorney General, we find a general pattern of representation. The incumbent Congressman is, in most cases, a man who consistently supports conservative causes and has given minimal support to the programs of the President in 1961 and 1962.

An analysis of the voting record of the 17 Congressmen involved is shown below:

Name of Congressman	Number of suits filed in his district	Conservative coalition—anti-Kennedy record [1]
Alabama:		
Andrews	2	77
Grant	1	77
Boykin	1	49
Selden	1	82
Georgia:		
Forrester	2	95
Vinson	2	23
Louisiana:		
Passman	5	69
Waggonner	3	(2)
Hébert	1	44
Morrison	1	49
Mississippi:		
Whitten	6	87
Colmer	4	85
Williams	2	74
Winstead	2	85
Tennessee:		
Everett	2	44
Murray	2	79

[1] Percentage of 39 Conservative-coalition rollcalls on which the Congressman voted in agreement with the Conservative coalition.

[2] Not available.

A glance at this table indicates that Congressmen who have been embarrassed by more than two suits in their districts are both opponents of the Kennedy program and, also, arch conservatives. The voting record of Mr. Waggonner is not available, but his stand on most matters is very close to that of Mr. Passman, his Louisiana colleague in the House.

IMPACT OF THE BOBBIE KENNEDY SUITS

Suits were filed in 33 counties in 17 congressional districts in 5 States, with 2 suits at large in 2 of these same 5 States.

The Kennedy policing of voter intimidation and denial, over a 5½-year period represents action in 12.6 percent of the counties, and in 28.3 percent of the congressional districts involved.

In commenting on the areas of high incidence of voter denial, Congressional Quarterly had this to say: "* * * the States with the highest percentage of counties with less than 15 percent of the voting age Negroes registered were Mississippi, 76 of 82; South Carolina, 26 of 46; Alabama, 33 of 67; Louisiana, 23 of 64; Georgia, 36 of 159; Virginia, 13 of 97; and Texas, 22 of 254. Scattered counties with less than 15 percent Negro registration were located in Arkansas, Florida, Tennessee, and North Carolina.

Why were no suits filed in three of the seven States with the worst record for refusing registration to Negro voter registration—down to less than 15 percent? Attorney General Kennedy has filed no suits in South Carolina; neither has he filed suits in Texas, which is also among the seven States which—most recognizably—have a pattern of voter discrimination.

Attorney General Kennedy filed four suits in Tennessee. According to Congressional Quarterly, there are only two counties in Tennessee where a pattern of discrimination, as defined in the administration current civil rights bill, exists. One of these is Haywood County, where the enthusiastic and democratically minded white folk have a 118.2-percent voter registration and the Negroes 4.8 percent; the other is Morgan County. Two suits were filed in Haywood County and none in Morgan County. However, two suits were filed in Fayette County, which is not listed by Congressional Quarterly as being a major offender.

Why is there such a discrepancy between the actions of the Attorney General in regard to Texas and South Carolina, on the one hand, and his actions in regard to Tennessee on the other? Again, if we look into the details of voter denial in, say, Alabama, it is surprising to find that no suits were filed in the Fifth, Seventh, Eighth, and Ninth Districts. The incumbent Congressmen in these four districts exhibit the following voting records:

Rains, Fifth District, supported 46 percent of Kennedy bills; opposed only 5 percent. Supported 21 percent of conservative measures; opposed 28 percent.

Elliott, Seventh District, supported 84 percent of Kennedy bills; opposed 8 percent. Supported 26 percent of conservative measures; opposed 67 percent.

Jones, Eighth District, supported 81 percent of Kennedy bills; opposed 19 percent.

Huddleston, Ninth District, supported 66 percent of Kennedy bills; opposed 19 percent. Supported 56 percent of conservative measures; opposed 28 percent.

On the average these four Congressmen, who were not embarrassed by civil rights suits in their districts despite the prevailing patterns of voter discrimination there, voted for 69.2 percent of the Kennedy measures in 1961 and 1962 and opposed only 9.5 percent.

On 249 Senate rollcalls, Olin Johnston, of South Carolina, voted with the Kennedy supporters on 56 percent of the votes and against on 29 percent. No civil rights suits were filed in South Carolina.

The explanation for the absence of Federal suits in Texas, where Mexican-Americans and Indians, as well as Negroes, are openly discriminated against, may lie in the peculiar situation of Vice President Lyndon Johnson. Lyndon Johnson is living his political life backwards, proceeding from a rigidly conservative youth to a liberal middle age while prudently keeping a foot in both camps. It would be distressing for Johnson's newly discovered role of moral leader in the field of civil rights—if he were to be embarrassed on his homeground by civil rights suits filed from Washington.

It should be noted that no Federal referee has been appointed in any one of the 41 suits.

We recommend that the bill provide for Federal registrars as a more effective method of protecting the rights of the applicant seeking registration. Reapportionment of Congressmen based upon the number of people voting instead of

the number registered is possible under section 2 of the 14th amendment. In this connection, section 103 of H.R. 3039 calls for a compilation of registration voting statistics by the Bureau of Census, which would be most helpful.

It should also be noted that the bill is limited to Federal elections and under recent Supreme Court decisions in the reapportionment cases, it is clear that Congress can legislate to protect voting rights in State as well as Federal elections.

TITLE III

The key provision of this title authorizes the Attorney General to institute civil actions for school desegregation upon receipt of a complaint and a determination by him that the complainants are unable to institute legal proceedings.

This provision is defective in several respects:

(1) Fails to impose a time limit on local school boards in which they must file a plan for desegregation with the section of health, education, and welfare. I commend to the committee favorably H.R. 1766 which would impose a 180-day period in which the school board must file such a plan.

(2) The Attorney General does not have power to act independently of a complainant. This power is essential particularly in certain communities where the individual complainant would fear reprisal and, therefore, would not file a suit.

(3) The bill has no standards with reference to the period in which desegregation must take place but leaves it to the experts on the local school board. Can you imagine how much desegregation would take place under this program in Prince Edward County?

(4) It fails to define racial imbalance which is used throughout the title in addition to the term "segregation." This defect is particularly noticeable since the title defines "Commissioner" "desegregation" and "public schools" in terms that are commonly used and known. However, the term "racial imbalance" is not a word of art nor is it a term that has a generally accepted meaning. It is therefore suggested that the term be defined wherever it appears in the bill.

If racial imbalance refers to an imbalance created by segregated neighborhoods than I suggest that the way to proceed with that problem is to provide for legislation to desegregate housing.

The Executive order of President Kennedy applies to only about 25 percent of all Federal funds in the field of housing. Because the Executive order does not apply to FHA and other loan committments previously made, it does not help a Negro who is in the market for a house that is already built. The act is notably weak insofar as it does not even touch on this fundamental problem.

(5) If the Attorney General is authorized to institute a suit but is not required to under the language of the bill, section 307(a) too should be amended on line 14 as follows: the words "and directed" should be inserted after the word "authorize."

TITLE IV

The Community Relations Service, a new agency, would provide a conciliation service which would in no way be a substitute for law enforcement but would compliment enforcement. It would perform the important function of seeking compliance for voluntary action.

Such a function could be effectively performed if it were backed up with enforcement machinery.

This agency could perform a very valuable function in assisting a community in making a transition from segregated to nonsegregated facilities.

The Director of Community Relations Service is not subject to approval of the Senate under H.R. 7152. It should have the same status as the Director of the Civil Rights Commission who is subject to Senate confirmation. Such a provision will add to independent status of the Commission and free it from White House domination.

TITLE V

Civil Rights Commission.

The Civil Rights Commission has performed an excellent educative function.

Title V, the Civil Rights Commission would extend the life of the Commission on Civil Rights for 4 years and authorize it to serve as a national clearinghouse for civil rights information and to provide advice and technical assistance to governmental and private persons and organizations. The Civil Rights Commission should be made permanent. This would give it stability which it needs to conduct a continuing operation.

TITLE II

There are four questions to be resolved in the discussion of title II.

(1) Is legislation needed?

(2) Does legislation in this field constitute undue invasion of property rights?

(3) Does Congress have power to legislate in the area of public accommodation, and what is the extent and scope of such power?

(4) Is the proposed remedy adequate?

(1) With reference to the need of legislation in this field, the Teamsters Union is in a position to make reference to the experience of many of our members.

According to Vice President Murray W. Miller, director of the Southern Conference of Teamsters, the Negro is excluded from over-the-road operations where overnight trips are involved because of the difficulty of finding public accommodations.

It is pointed out that the employers' failure to hire Negroes for over-the-road jobs is not due to prejudice since over 50 percent of the 9,000 city drivers in New Orleans, La., Atlanta, Ga., and Houston, Tex., are Negroes; and a fairly large number of checkers on the docks—who are strawbosses are also Negroes.

He further points out that the city driver is more important to the employer-customer relations than the over-the-road driver. Where Negroes have been hired to fill over-the-road driving positions, as is the case in Memphis, Tenn., no night trips are involved. This is a clear example where the absence of public accommodations does not permit the Negro equal opportunity to compete with white drivers for the same jobs.

During the month of August, motorcades of Teamster' wives will be coming to Washington, D.C., to visit their Congressmen from Georgia, Florida, Louisiana, Alabama, and Texas.

Those busloads of women will be representative of both races. This presents the problem of finding public accommodations in the South where both races can be served.

In order to avoid humiliation and embarrassment for our Negro members' wives, it will become necessary for the buses to drive all the way through and to pack box lunches in order to make this trip possible.

Last year we had the experience of an integrated group of wives visiting the Congressmen from the Carolinas. They suffered such embarrassment because of restaurant's refusal to serve both groups, we resolved that we would never inflict this experience on our membership again.

Recently, our Southern Conference of Teamsters had a convention in Dallas, Tex. They attempted to make reservations for the delegates and their wives to attend a showing of Cleopatra. Since the theater would not permit the Negro delegates to sit with the white delegates in the orchestra, but insisted upon segregating them into the balcony, we finally called off the theater party. I could multiply instances such as this in many cities throughout the country where our members and their wives participate in bowling team competition and cannot find integrated bowling alleys. Rather than have "Jim Crow" bowling teams, we have been forced to give up this type of activity which we found so helpful in building harmony and good relations among our members in our local unions.

(2) It has been charged that this section of the bill would extend the power of the Federal Government to every restaurant, store, barbershop in America. And it is alleged that this would destroy the right of freedom of association and would deny the merchant the right to decide with whom he will do business.

I do not have to burden this committee with a recitation of the regulations passed by State and local authorities which impose limitations upon the use of property in the interest of promoting public health and safety.

I don't have to burden the committee with examples of Government grants in the form of permits, franchises, licenses, certificates of convenience or necessity which are granted by the appropriate regulating agency governing interstate commerce.

So while there may be some interference with absolute property rights or rights of privacy, it would certainly not be unreasonable interference. The law would simply provide that a public business must in fact be open to the public—all the public. Surely, this is no more of an intrusion on the rights of a merchant than many other regulatory matters that I have referred to.

Of course, the question of the right of privacy arises in the case of "Mrs. Murphy," the roominghouse or boardinghouse keeper who lives in her home and rents out two or three rooms to boarders or to transients.

I have no serious objection to protecting "Mrs. Murphy's" privacy by imposing an exemption on boardinghouses and roominghouses with five or less roomers; but in principle, I can see no significant distinction in that situation and the average motel which is often run by a husband and wife who also live on the premises but would be required to comply with the law. I grant that the degree of privacy in one case may be greater than in another, and if this distinction needs to be preserved, I have no objection to such an amendment.

The administration bill seeks to solve the problem of "Mrs. Murphy" by incorporating the words "substantial" or "substantial degree" in section 202(a) (3) because the word "substantial" is an ambiguous term and subject to a variety of constructions. It has been suggested by some members of this committee that a dollar volume limitation, such as $500,000 or $150,000 be written into the bills.

First, it should be noted that the word "substantial" or "substantially" is not used with reference to hotels, motels, or other places of business furnishing lodging but only applies to certain types of retail establishments. This difference of substantiality in one instance and not in the other would create confusion in the minds of both the traveler and the merchant. But more important than that, it would be a humiliating experience for a traveler to be turned down by an establishment that is just under the dollar volume line and thus exempt because it was not "substantial." In order to avoid this experience, the traveler would have to carry an encyclopedia and roadmap which would register the places that were available to him. Frankly, this is not the kind of experience which we would like to subject our members to or for that matter any human being.

It should be further noted that a dollar volume limitation such as the $150,000 limitation would exempt from the bill approximately 80 to 85 percent of all restaurants, motels, and hotels. This is according to the figures of the National Restaurant Association who estimate that of the 375,000 restaurants in the country, only 25,000 averaged more than $100,000 annually. Similar figures pertain to hotels and motels. A dollar volume limitation, such as has been suggested, would afford equal public accommodations to the wealthy Negro or other minority member, but would give the vast majority no protection whatsoever. A more realistic resolution of the problem of "Mrs. Murphy's" right to privacy and the needs of millions of American citizens who are members of minority groups is to impose a limitation on the size of the establishment in terms of the rooms rented, rather than some arbitrary limitation, such as the volume of business.

I prefer this solution of establishing this limitation on the size of the establishment in terms of the rooms rented, rather than some arbitrary limitation, such as the volume of business done. According to the National Restaurant Association—of 375,000 restaurants in the country, 25,000 average more than $100,000 annually; 300,000 had a gross less than $50,000; and 25,000 grossed less than $100,000. On the criteria of suggesting the $100,000 cutoff, over 80 percent of all restaurants would be excluded from the coverage of the act. Similar percentages pertain to hotels and motels.

SCOPE AND EXTENT OF CONGRESS' POWER TO LEGISLATE IN THE AREA OF PUBLIC ACCOMMODATIONS

In the course of discussion over the pending equal accommodations bill, the question has arisen as to whether the 14th amendment or the Commerce clause, or both, should serve as the constitutional basis upon which the Congress should enact legislation outlawing racial discrimination in places of public accommodation. Such question has raised the issue of Congress' power to legislate in the area of public accommodations as well as the scope and extent of such power.

Since the Supreme Court has held that Congress may rely upon more than one power to justify this legislative power to act, I find no need to make a choice between the commerce clause and the 14th amendment as a basis for congressional power in the area of public accommodations. In fact, I would prefer to have two strings to my bow. With this in mind, we have prepared the following legal analysis of Congress' power to act under both the commerce clause and the 14th amendment.

With respect to the congressional exercise of the commerce power, arising under article I, section 8 of the Constitution, as well as the authority "[t]o make all laws which shall be necessary and proper for carrying into execution the foregoing powers," the experience of labor unions under Federal enactments regulating the conduct of labor-management relations as well as the internal affairs of union offers perhaps the best example of how extensively Congress has been willing and able to legislate under its commerce power.

The year 1935 was very much like 1963 in terms of its prevalent labor-management unrest and strife, which, although distinct from the racial unrest which has arisen in the course of the Negroes' recently reinvigorated struggle for equality, stemmed also from a feeling of inequality, albeit the inequality in bargaining power which existed between employer and worker. Having possessed the wisdom to recognize the deleterious effect upon commerce and national life which resulted from "[t]he denial of employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining,"[1] Congress in that year enacted the Wagner Act.[2] Moreover, Congress considered the need for legislation granting employees "the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection,"[3] to be so pervasive that it chose to grant such rights in the broadest manner possible under the Commerce clause.[4] Hence, in sections 2(6) and 2(7) of the act, Congress defined the terms "commerce" and "affecting commerce" as follows:

"(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any territory of the United States and any State or other territory, or between any foreign country and any State, territory, or the District of Columbia, or within the District of Columbia or any territory, or between points in the same State but through any other State or any territory or the District of Columbia or any foreign country.

"(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

And in section 10(a) of the act, Congress declared that the National Labor Relations Board was empowered "to prevent any person from engaging in any unfair labor practice affecting commerce."

The full breadth and scope of the National Labor Relations Act was made clear by the Supreme Court in 1944 in *Polish National Alliance* v. *NLRB*, 332 U.S. 643, in an opinion written by perhaps the greatest judicial defender of our Federal system of government, Mr. Justice Felix Frankfurter. In *Polish National Alliance*, Justice Frankfurter speaking for the Court declared:

"Congress has explicitly regulated not merely transactions or goods in interstate commerce but activities which in isolation might be deemed to be merely local but in the interlacings of business across the State lines adversely affect such commerce * * *.

" * * * Whether or not practices may be deemed by Congress to affect interstate commerce is not to be determined by confining judgment to the effect of the activities immediately before the National Labor Relations Board. Appropriate for judgment is the fact that the immediate situation is representative of many others throughout the country, the total incidence of which if left unchecked may well become far reaching in its harm."[5]

In a concurring opinion in the same case, Mr. Justice Black declared:

"The doctrine that Congress may provide for regulation of activities not themselves interstate commerce, but merely 'affecting' such commerce, rests on the premise that in certain fact situations the Federal Government may find that regulation of purely local and intrastate commerce is necessary and proper to prevent injury to interstate commerce."[6]

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[1] 49 Stat. 449.
[2] 49 Stat. 449, et seq.
[3] 49 Stat. 456.
[4] The limits of the National Labor Relations Act are coextensive with those of the commerce clause. *NLRB* v. *Fainblatt*, 306 U.S. 601; *Santa Cruz Fruit Packing Co.* v. *NLRB*, 303 U.S. 453; *Consolidated Edison Co.* v. *NLRB*, 305 U.S. 197.
[5] 322 U.S. 648.
[6] 322 U.S. 652.

The Supreme Court has since shown no tendency to narrow its pervasive concept of the range of businesses in which a labor dispute would be regarded as "affecting commerce." [7]

More recently Congress again chose to act under its commerce power to remedy what it believed to be serious abuses in the labor-management area. While unions disputed and still dispute the actual need for such legislation and while Secretary of Labor W. Willard Wirtz has since declared with respect to the Landrum-Griffin Act that "If you were to ask how many violations of the act have been found, I suppose the answer might well be: Not enough to justify the enactment by the administration of that legislation," the fact remains that Congress saw the enactment of the Labor-Management Reporting and Disclosure Act of 1959 [8] as being within its commerce power.

And despite the high-sounding language of the "declaration of findings, purposes, and policy" contained in that act it is obvious that Congress, by enacting Landrum-Griffin, was legislating in the area of the internal affairs of organizations which in contemplation of law are private voluntary associations. Hence, for example, the act guarantees certain rights to union members, directs the manner in which union elections must be conducted, establishes standards of internal behavior for union officers, requires detailed reporting of internal union financial affairs, disqualifies certain individuals from holding union office notwithstanding the desires of union members, and makes criminal certain internal union practices.

Such regulation of noncommercial, not-for-profit, private voluntary associations, as are labor unions, is on its face certainly remote from "Commerce * * * among the several States * * *." Yet, Congress found that the enactment of Landrum-Griffin was necessary "to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants * * * which * * * have the tendency or necessary effect of burdening or obstructing commerce by (1) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (2) occurring in the current of commerce; (3) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods into or from the channels of commerce, or the prices of such materials or goods in commerce; or (4) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing into or from the channels of commerce."

On the basis of these and other findings, Congress did not hesitate to regulate under Landrum-Griffin matters of internal union concern which in and of themselves seem tenuously related to interstate commerce. Moreover, to the extent that it has been argued that a public accommodations law would interfere with rights of property it should be noted that the Landrum-Griffin Act clearly constitutes a compromise with the first amendment right to freedom of association.[9] Yet Congress was more than willing to balance what it found to be the public interest in the regulation of internal union affairs against the principle of free association. And, it is well settled that such legislative findings, made after investigation, are binding on the courts.[10]

In addition, it is apparent that in neither the Labor-Management Relations Act nor in the Labor-Management Reporting and Disclosure Act did Congress deem it necessary or advisable to limit these enactments to matters having a substantial effect or impact upon commerce. On this basis the pending administration bill is subject to considerable criticism in that it seeks to withhold the full power of Congress over commerce by the use of the term "substantial." It cannot be argued that the scope of the need for equal accommodations legislation is any less than that which has produced the existing legislation in the labor-management area. Hence, it is imperative that the term "substantial" be deleted from the pending legislation and that its scope be made coextensive with the full reach of the commerce power.

It would appear from this analysis of congressional action in the labor-management sphere that both Congress and the courts concur in the view expressed by Mr. Justice Rutledge that "We do not yet know how to define commerce with broadly inclusive words or precision. We only know how to chip out the defini-

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[7] See *NLRB* v. *Denver Building and Construction Trades Council*, 341 U.S. 675 (1951); *Howell Chevrolet Co.* v. *NLRB*, 346 U.S. 482 (1953); *Amalgamated Meat Cutters* v. *Fairlawn Meat, Inc.*, 359 U.S. 20 (1957); *Reliance Fuel Oil* v. *NLRB*, 371 U.S. 224 (1963).

[8] 73 Stat. 519 et seq.

[9] Cf. *Bates* v. *City of Little Rock*, 355 U.S. 313 (1957); *NAACP* v. *Alabama*, 357 U.S. 449 (1958).

[10] *Communist Party* v. *Subversive Activities Control Board*, 367 U.S. 1, 93–95.

tion bit by bit," [11] and that "A democratic nation must have a government endowed with powers sufficient to meet its external and internal needs. These today necessarily must be large." [12]

Congress surely recognizes the internal need for Federal legislation providing for equal public accommodations. And that it possesses the power to enact an extensive and far-reaching measure in this area is obvious from the above analysis of its legislation in the labor-management area.

That the denial of equal accommodations in restaurants, theaters, hotels, motels, amusement parks, and other places of public accommodation impedes, disrupts, inhibits, and interferes with the free flow of commerce is self-evident.

First, such denial impedes and adversely affects the interstate travel of citizens whether for business or pleasure. That such travel by persons is commerce within the meaning of the commerce clause is settled beyond question.[13]

Second, such denial affects and impedes the distribution and sale of goods and commodities in commerce in that certain persons are interfered with in their ability to buy and sell such commodities by reason of racial barriers.

In summary then, it is abundantly clear that the commerce clause and the necessary and proper clause offer a solid foundation upon which equal accommodation legislation may be enacted by the Congress.

A second but no less worthy basis upon which an equal accommodation law should be enacted is pursuant to the congressional power authorized in section 5 of the 14th amendment.

It has been argued that in light of the civil rights cases of 1883 [14] which held the Civil Rights Act of 1875 [15] to be unconstitutional, Congress is without authority to enact an equal accommodations law based upon its 14th amendment powers.

Such a view however ignores 80 years of constitutional development in which many outmoded constitutional doctrines have been discarded by the Supreme Court on the basis of changed economic and social circumstances. And just as a unanimous 1954 Supreme Court overruled the infamous separate but equal doctrine [16] of *Plessy* v. *Ferguson*,[17] so might a 1963 Court decide that the 1883 decision is of no further vitality as a precedent and thereby revive the far-sighted dissent of Mr. Justice Harlan in the civil rights cases. It should be recalled that the memory of Mr. Justice Harlan was similarly honored in 1954 when his dissent in *Plessy* was fully vindicated in the school desegregation cases.

Moreover, it is only by the exercise of an assumed power that Congress may ever determine whether such power actually exists. And particularly where congressional authority is clear under the commerce clause, for Congress to add the 14th amendment as a second string to its legislative bow hardly constitutes legislative irresponsibility. And that Congress may enact a measure on the authority of more than one constitutional power is well settled.

Further, to rely upon the power of the 14th amendment would be giving deserved recognition to a grant of authority designed to protect Negroes from State action which deprives them of equal protection and due process of law. To the argument that State action is absent in the denial of equal accommodations in private facilities open to the public, it need only be said that in an age of mounting governmental regulation over the commercial sphere of life, the States have obviously become involved in the operation of public accommodations licensed, regulated, and supported by their agencies. The private property concepts which were the basis for the Supreme Court refusal in 1883 to give necessary scope to the 14th amendment's guarantees, canot today remain dispositive of the question. No reason appears why our presently constituted Supreme Court would decline to give controlling significance in equal protection cases to the public interest considerations it finds dispositive in economic due-process cases. It should also be noted that Mr. Justice Douglas has already expressed the view in a concurring opinion [18] that, "* * * there is hardly any private enterprise that does not feel the pinch of some public regulation—from price control, to health and fire inspection, to zoning, to safety measures, to

[11] Rutledge, "A Declaration of Legal Faith 36" 1947).
[12] Id. at 76.
[13] See *Edwards* v. *California*, 314 U.S. 160 (1941).
[14] 109 U.S. 3.
[15] 18 Stat. 335–336.
[16] *Brown* v. *Board of Educ.*, 347 U.S. 483.
[17] 163 U.S. 537.
[18] *Lombard* v. *Louisiana*, 31 L.W. 4476, 4480 (1963).

minimum wages and working conditions, to unemployment insurance. When the doors of a business are open to the public, they must be open to all regardless of race if apartheid is not to become engrained in our public places. * * *"

Finally, to argue that the spectre of a near-discredited 1883 decision, which may very well fall of its weight in the October 1963 Supreme Court term,[19] should inhibit the Congress in its exercise of power under the 14th amendment, is to ignore the teachings of recent congressional history. One need only turn again to Congress' exercise of authority in the labor-management field, to prove that Congress usually has not been reticent in the implementation of its power.

In 1933 Congress enacted the National Industrial Recovery Act [20] aimed in part at promoting collective bargaining, the workers' right to self-organization, and industrial peace. Yet when a Supreme Court majority, more imbued with "the social statics of Mr. Herbert Spencer" than with an understanding of the complexities of modern industrial life, held the National Industrial Recovery Act unconstitutional,[21] Congress did not feel itself constrained to defeat the Wagner Act. In fact, in little more than 2 months following the demise of the National Industrial Recovery Act, the National Labor Relations Act was enacted on July 5, 1935, containing policies and procedures which were even stronger than those which had been contained in the National Industrial Recovery Act. And in 1935, notwithstanding the National Industrial Recovery Act decision, the constitutionality of the Wagner Act was upheld by a somewhat newly composed Supreme Court.[22]

Certainly if the 1935 Congress was prepared to do battle with outmoded constitutional doctrines within 2 months of their announcement, this Congress should be prepared to do no less with an antiquated holding which dates back to the late 19th century.

TITLE VI, NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Title VI would authorize the withholding of Federal funds from any program or activity that receives Federal assistance, directly or indirectly, by way of grant, contract, loan, insurance, guarantee, or otherwise, when discrimination is found in such a program or activity.

This title simply sanctions by legislation that which already exists in terms of executive power.

The President's failure to withhold funds in a case of federally subsidized discrimination in public schools in impacted areas has caused the Subcommittee of Education and Labor to report out favorably the Gill bill, H.R. 6938. The Gill bill would make mandatory the withholding of funds under the impacted areas bill, Vocational Education Act, the National Defense Education Act, and the Library Services Act.

The Gill bill would eliminate the discretionary power presently vested in the President of the United States and would require the withholding of funds to the tune of $1,116,800,000 in Federal grants in aid to 11 States which are presently benefiting from federally supported programs of racial discrimination. What assurance do we have that the President of the United States would exercise his discretionary power derived from legislative enactment any differently than that which is presently exercised under his power as Chief Executive.

Let us look at the record and see what is happening today under Executive authority.

Even in the case of the Defense Department where there is an official program of nondiscrimination, the Southern Regional Council reports January 1961 that usually reliable sources have reported that "gentlemen's agreements" existed where military Negro personnel are housed or transferred when their children reached school age. The Southern Regional Council also reported that "Federal property has been deeded or leased to school boards for use as school sites with the result that the facilities then become off-base or segregated. Most of the southern off-base schools are segregated. Elementary, secondary, and vocational education grants under the impacted areas program where the matter is left to the discretion of the Administrator, almost 100 percent segregated program follows. For example, regulations issued by the Office of Education state that educational opportunities must be available without discrimination because of

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[19] See *Griffin* v. *Maryland*, No. 6, in the Supreme Court of the United States, October term, 1963.
[20] 48 Stat. 198.
[21] *Schechter Poultry Corporation* v. *United States*, 295 U.S. 495 (1935).
[22] *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1.

race, creed, or color. However, there is no administrative program of enforcement of this regulation. The result is that grants in fiscal 1960 for vocational education in which no vocational schools have been desegregated include:

Alabama	$1,063,459
Arkansas	780,559
Florida	641,558
Georgia	1,094,212
Louisiana	871,379
Mississippi	961,493
South Carolina	732,732

Grants in the form of scholarships, fellowships, and research and endowments to hospitals, universities, institutions have amounted to $2,889,100,000 in 1959 (Tax Foundation, Facts and Figures on Government Finance, 1960–61, p. 91).

With a few exceptions, there is no formal policy or machinery to assure that these funds paid for by all taxpayers, will be used in a nondiscriminatory manner.

Under the impacted program, the following 11 Southern States received over $63 million for their school systems in 1 year by the Federal Government and operating in an almost completely segregated program.

State:	*Percent of desegregation*
Texas	1.21
Alabama	0
Georgia	0
Mississippi	0
South Carolina	0
Arkansas	.107

State—Continued	*Percent of desegregation*
Florida	0.013
Louisiana	.0004
North Carolina	.026
Tennessee	.247
Virginia	.099

With regard to the guidance training program which is conducted for the purpose of training high school teachers and administrators who identify and guide the talent of the Nation's youth, Federal funds in 1960 were not available to Negro teachers in four and possibly six of the seven Southern States studied. The Civil Rights Commission report observed:

"It is difficult to conclude that there is no talent of use to the Nation to be identified and developed among a group constituting 31 percent of the people of Alabama, 19 percent of the people of Florida, 29 percent of the people of Georgia. 42 percent of the people of Mississippi, and 36 percent of the people of South Carolina."

National Science Foundation: In 1960 almost $4 million in Federal funds were spent in seven Southern States for higher educational institutes. All but 31.8 percent of the subsidized segregation.

Research grants and contracts: The U.S. Office of Education reported that $750 million was spent in 1960 by the Federal Government in research projects in universities and research centers. This represents more than 70 percent of all funds spent for research and 86 percent of all such research in the physical sciences. In the seven States studied by the Civil Rights Commission, it was found that 43 percent of all National Institutes of Health grants and 41 percent of all grants by the Atomic Energy Commission went to public institutions which refused admission to colored students.

The Civil Rights Commission observed that all other programs of higher education "the failure of the Federal Government to give any consideration to the presence or absence of discriminatory practices by federally supported institutions has the effect of supporting racial segregation and continuing the education and deprivation of those excluded from such institutions."

It is clear from the foregoing that the President has done little or nothing in the use of his vast discretionary power to date in the withholding of funds for the purpose of desegregation of the schools in the South.

The next question is if the President is to make use of this power under the proposed title, would funds be withheld solely for the purpose of effectuating policies of the act or would possible abuses set in, and funds withheld are granted for the purpose of gaining political support on administration programs?

The discretionary power is so vast and so great that even the President of the United States questioned whether it should be used in the case of Mississippi when the U.S. Civil Rights Commission suggested that it cut off all funds from the State of Mississippi until it ceases subverting the Constitution. At a press conference on April 24, the President stated, and I quote the following colloquy:

Question. "Mr. President, will you attempt to cut off Federal aid to the State of Mississippi as proposed by your Civil Rights Commission?"

The President: "I don't have the power to cut off the aid in a general way as was proposed by the Civil Rights Commission, and I would think it would probably be unwise to give the President of the United States that kind of power because it could start in one State and for one reason or another it might be moved to another State which was not measuring up as the President would like to see it measure up in one way or another."

I recommend to the committee the adoption of the mandatory features of the Gill bill. It is quite clear that its mandatory aspects of the program does not create unreasonable inflexibility as mandatory requirements presently exist in five different Federal agencies' resolutions.

1. The Department of Interior recently made Federal land more available for parks by reducing the sale price of land in the national forest reserve. As a condition of purchase, State and local governments will be required to agree to maintain such land open to public recreation without discrimination. Failure to do so will cause the land to revert to the Federal Government.

2. The Federal Home Loan Bank Board by a resolution adopted on June 1, 1961 (Resolution No. 14656) made it a policy that member banks not discriminate in the making of loans.

3. The Rural Electrification Administration has made it a condition of its loan contracts that the borrower agree to pursue a nondiscriminatory employment policy. (REA loan contract form "L.C.," revised September 30, 1953.)

4. The Departments of Interior and Agriculture and the Army Corps of Engineers have made it a requirement that anyone using land under their jurisdiction, under a lease, license, permit, etc., must agree that such land will be used without discrimination.

5. The Office of Vocational Rehabilitation and the Office of Education have by regulation prohibited discrimination in vocational programs assisted with Federal funds (45 CFR 10218 and 401.14 (2)).

In terms of imposing hardships on innocent people through the withholding of funds, I might simply say that it is always a question of comparative hardships. If you withhold the funds principally white students will suffer. If you don't withhold the funds principally Negro students will suffer. I think that the temper of the times calls for a reversal in emphasis.

In conclusion, I would like to make a few general observations.

1. The temper of the times calls for statesmanship rather than partisanship in the handling of this, the most serious problem of the present day. Disturbing indeed is a record of partisanship and press agentry with this civil rights issue that has been so characteristic of this administration's approach to this problem. The most recent evidence of the Attorney General's using the civil rights issue as a political football should be found on page 1 of the July 19 issue of the Wall Street Journal in their Washington Wire column:

"Brother Robert pushes President Kennedy to make an early civil rights speech in the Deep South. The Attorney General argues a Presidential appeal on the spot would help mobilize moderate opinion in Dixie. Anyway, he reasoned, it would be good politics in the North."

2. It is true that the administration is pleading for a bipartisan approach, yet can it really expect bipartisanship in the face of such ruthless partisanship as has been evidenced by the Attorney General?

Even the Attorney General's appearance before this committee led Congressman John Lindsay, of New York, to say:

"I am quite deeply disturbed, Mr. Attorney General, that you have never bothered to read this very important legislation that was carefully drafted and introduced by four of us on the minority side long before the administration saw fit to take any position on this subject at all."

3. The vast powers that are being requested by the administration give serious rise to whether or not such broad discretion should be granted by the Congress to a politically motivated administration.

The Attorney General has been thought of as the politician of the administration and it has been rumored he will resign after the first of the year to assume his responsibilities in directing his brother's campaign.

With all due respect to the Attorney General's position and his interest in the civil rights issue, may I humbly suggest that the greatest service he could perform in promoting a truly bipartisan policy in this Congress on the issue of civil rights is public announcement that he will resign as Attorney General to assume the duties for which he seems to be so ideally suited.

I trust whether the Attorney General heeds this gratuitous suggestion or not, the merits of the pending legislation be considered separate and apart from the personalities involved.

NONDISCRIMINATION CLAUSES CONTAINED IN TEAMSTER CONTRACTS

1. Local 210 and Air Conditioning, Inc., agreement, 21st day of October 1960, article VIII, page 3 of agreement:

"The employer agrees not to discriminate against any employee because of union activity or because of the lack thereof; or because of race, color, or creed."

2. Franklin Baker Division, General Foods Corp., Local 560, March 24, 1960, section XVI, discriimnation and intimidation, page 14:

"The company and its representatives shall not discriminate against any employee on account of union affiliation, or on account of any legitimate union activity. The union, its officers, and members shall not intimidate or coerce employees into joining the union or continuing their membership therein.

"It is mutually agreed that neither the company nor the union will discriminate against employees because of race, color, or creed."

3. Toledo dockmen agreement, March 4, 1962, between A. & P. Tea Co. and Local 20, IBT, article VI, section 4, page 6:

"No employee shall be discriminated against because of union activities, race, creed, color, or national origin."

4. Local 239, IBT, and Automotive Parts Distributors Association, Inc., September 29, 1958. See also agreement April 30, 1962. See article XX, page 35:

"Neither the union nor a member employer shall discriminate against any employee because of race, color, creed, religious beliefs, nationality, union activity or the refusal to participate therein, and no favoritism based upon such factors shall motivate any member employer in connection with promotions, upgrading, apprenticeship or job training programs, transfers, shift assignments, layoffs or rehiring."

5. Local 1145, a Union of Honeywell Employees, Minneapolis Honeywell Regulator Co., February 1, 1962, section 4, article III, page 8:

"The company shall not discriminate against any employee on the basis of arbitrary or capricious action or by reason of sex, race, creed, color, national origin, membership in the union, or union activities authorized by the terms of this agreement. The union or its members shall not intimidate or coerce employees into membership in the union. The company or its employees shall not engage in antiunion activities which in themselves create discord or lack of harmony."

6. Minneapolis Automobile Dealers Association and local 974, April 16, 1963, article XII, section 1, page 5: "The provisions of this contract shall be applied to all employees without discrimination on account of sex, race, color, creed, or national origin. No employee shall be in any way discriminated against for giving information or testifying concerning alleged violations of this agreement."

REPORT OF THE DEMOCRATIC RIGHTS COMMITTEE, TEAMSTERS LOCAL UNION 688, ST. LOUIS, MO., FOR THE YEARS 1952, 1954, 1956

The beginning of 1951 was a low water mark for the Democratic Rights of Members Committee—both in membership and activity.

However, during the year the committee was doubled in size as a result of a series of short talks made by our members to various unit stewards meetings and classes. In these talks we explained the purposes and activities of our committee that the Democratic Rights Committee exists to see that every member gets a fair shake on the job, in the union, and in the community.

The activities, as well as the size, of the committee increased greatly. One of the main projects was to assist in every possible way to end the undemocratic practice of segregation in the public schools. We sent telegrams and night letters in support of House bill 135 to members of the State legislature. This bill would, if passed, have ended segregation in the schools.

We also drew up the plan, which all delegates have in their kits, entitled "Preparing for an Integrated Public School System." This plan assumes that segregation will soon end and that we must plan now for an intelligent and orderly change. The plan details the reasons why we think segregation will end and makes eight recommendations for integration.

Also, the committee expressed its concern to Congressman Karsten that the (then) new draft bill did not contain the GI bill of rights for returning servicemen. The Congressman assured us that he would press for the GI bill.

The committee set up a subcommittee to protect those members who are brought before the executive board on charges. Ted Hill and Jim O'Donnell served on this subcommittee. They made sure that those charged knew of what they were charged and the proper procedures and that the executive board did not violate the bylaws.

The year 1951 was one of the best in terms of getting the antidiscrimination clause in our contracts. At the beginning of the year about 5,100 workers were covered by this clause. At the end of the year more than 6,000 were protected. The employees of only 31 companies now under contract with local 688 are not covered by this clause which provides that "the employer shall not discriminate against any employee, or applicant for employment, because of union membership, race, creed, color, or national origin."

The antidiscrimination clauses were better enforced once they were achieved. For example, in one surgical supply house, the contract containing the antibias clause for the first time was signed late in October. Early in December a Negro who had seniority bid on a job as order filler and was upgraded in accordance with the contract.

1954 Report

The Committee on Democratic Rights serves a basic functional purpose within the structure of the local union. It is a watchdog committee in the area of human rights and intraunion democracy. When it was established 4 years ago, as a permanent standing committee of the union the committee issued the following memorandum to all shop stewards:

"The enormous growth in size of this union has made it necessary to create the Democratic Rights Committee so that every member has a court of appeals if his rights are infringed by stewards, officers, staff members, government officials, private citizens or anyone else.

"If any member feels that he is discriminated against within the union or in the shop, he should of course report such discrimination to his steward, and if necessary to his chief steward in the same manner as all other grievances. But he should know that if he does not get satisfaction through the usual channels, he has the right to appeal to the Committee on Democratic Rights. The committee would also welcome reports of discrimination in the community at large, which must be eliminated through political action and the creation of a more democratic climate of opinion."

A major continuing project of the committee is its efforts to have incorporated in all contracts, a fair employment practice clause which seeks to eliminate discriminatory hiring practices in 688 shops. To date approximately 72 percent of the membership is covered by contracts which contain such a provision.

The committee is currently concerned with another area of discrimination, and that is discrimination against women in the establishment of rates of pay and separate seniority rosters.

Within the community, the major continuing project has been in the field of public school education. Two years ago the committee presented to the St. Louis Board of Education a series of proposals on preparing the community for an integrated public school system. The proposals attracted nationwide attention, and have been reprinted in several educational journals. Informal meetings and discussions have been held with representatives of the school board on these proposals and the committee is now planning to bring its original report up to date, based on recent developments.

During the year, the committee had introduced, through State Senator Robert Pentland, a State fair employment practices bill patterned after the New York State measure. The primary purpose of the bill was educational and to draw attention to a difficult and tedious problem. Many church groups and community organizations appeared before the committee in support of the bill. While the bill failed to receive the support of a majority of the Senate committee, a great deal of education was accomplished.

1956 Report

The Committee on Democratic Rights has worked endlessly and faithfully since its creation 6 years ago in local 688. We have some fruitful gains to report in the field of human rights and intraunion democracy, which is the primary function of the committee.

In the year of 1951, the committee made an all-out effort in support of House bill 135 in the State legislature. House bill 135, if passed, would eliminate the undemocratic practice of segregation in the public school system. The Com-

mittee on Democratic Rights of local 688, being very sincere in its function, drew up eight recommendations which were presented to the board of education as proposals of how desegregation would be workable. These recommendations attracted nationwide attention, and they were also reprinted in several educational journals. Several informal meetings were held with representatives of the board of education. After intensive work, the committee is happy to report that St. Louis was one of the first cities to desegregate its public schools with the use of some of the recommendations of local 688 after the U.S. Supreme Court decision was made.

All members who feel they are discriminated against should have their complaint processed as any union shop grievance. The committee on democratic rights also serves as a watchdog committee in the area of antidiscrimination clauses in local 688 contracts. These causes seek to eliminate discriminatory hiring practices and discrimination of rates of pay and separate seniority rosters.

On the city government level, the committee is working on a grievance concerning antidiscrimination in city contracts given out to private industry. Pending in the board of aldermen is a public accommodation bill which was endorsed by the committee and local 688, stewards council, which would make it a misdemeanor for anyone to discriminate against anyone in public places. The committee has worked very hard on this bill. Brother Zagri and members have appeared before the aldermanic committee and other civil groups to further the passage of this bill. It still lies in the legislative committee of the board of aldermen. We hope we will be successful in getting this bill passed.

On the State level, several bills were introduced in the field of democratic rights which we supported. House bill 201, which died in the house committee, dealt with the creation of a human rights commission whose aims were to: (1) Foster mutual understanding and respect among all racial, religious, and ethnic groups in the State; and (2) encourage equality of treatment for, and prevent discrimination against, any racial, religious, and ethnic groups or its members.

House bill 275 which died in the house committee was antidiscrimination in public places which was very similar to the one introduced in the city.

House bill 294 which passed the house and died in the senate committee would make it a misdeameanor to discriminate in State employment.

House bill 491 which was defeated in the house on final passage would have made it unlawful for any employee, employer, or labor organization to discriminate against anyone because of race, creed, color, or national origin. This is the same bill introduced by Senator Pentland in 1953. It was patterned after the New York law.

[Editorial from the St. Louis Post-Dispatch, Jan. 28, 1952]

A UNION PLAN FOR THE SCHOOLS

The AFL, Warehouse & Distribution Workers' Union, Local 688 has presented St. Louis with a program looking to an orderly transition from racial segregation to integration in our public school system—when and if existing legal barriers are torn down.

The union's report is based on the assumption that the days of racial segregation in the public schools here are numbered. It points out that a suit brought against the board of education and appealed to the U.S. Supreme Court conceivably could result in an order ending segregation. This being the case, reason dictates that the city should be prepared for the change, the union feels.

But it also believes careful conditioning is necessary if the change is to be quiet and orderly. To that end, the union has drawn an eight-point program for consideration by the school board, the essence of which is the encouragement of interracial participation in school activities in many areas where it is possible under the law.

These include mixed participation in certain athletic events, the racial integration of teachers in those schools located in interracial neighborhoods, and the establishment of a required high school course in human relations, among other things.

The union admits its plan is not perfect in detail and is soliciting comments and constructive criticisms. It hopes in this way that weaknesses can be brought to light, and that suggestions for improvements might be forthcoming.

This attitude should commend itself to the community generally and to the school board in particular. The program is concrete, but far from flexible. As

such it deserves mature study and consideration in every section of the community, and particularly by the board of eduaction.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, GENERAL EXECUTIVE BOARD, RESOLUTION ON RANDOLPH CENSURE, DECEMBER 6, 1961

The General Executive Board of the International Brotherhood of Teamsters deplores the resolution adopted by the recent meeting of the executive council of the AFL–CIO which censured A. Philip Randolph and charged him with bearing the major responsibility for the gap that has developed between organized labor and the Negro community.

This motion of censure is a gross injustice to a labor leader who has done more than anyone else in the labor movement to maintain its integrity and unity in the fight for the complete integration of Negro and white workers in the house of labor, who has struggled tirelessly, courageously, and consistently for this goal.

This injustice is particularly shocking in view of the fact that no measure of equal force has ever been adopted by the AFL–CIO executive council against any leaders of AFL–CIO affiliates which continue to maintain Jim Crowism in their organizations.

The International Brotherhood of Teamsters recognizes that the American labor movement has made greater advances in organizing and in improving the living standards of Negroes than any other voluntary, public organization or institution in this country.

The International Brotherhood of Teamsters, together with many others who also champion both the labor movement and civil rights, categorically rejects the charges leveled against that distinguished advocate of trade unionism and human brotherhood, A. Philip Randolph.

JAMES R. HOFFA.
JOHN F. ENGLISH.

Exchange of Correspondence Between General President Hoffa and Representatives of the President's Committee on Equal Employment Opportunity From April 10, 1962, to July 3, 1963, in Which the Teamsters Union Offers To Support the President's "Plans for Progress" Program and Is Refused by the President's Committee

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA,
Washington, D.C., April 10, 1962.

Hon. LYNDON B. JOHNSON,
Vice President of the United States of America, Chairman, the President's Committee on Equal Employment Opportunity, Washington, D.C.

DEAR MR. VICE PRESIDENT: It is my understanding that the President's Committee on Equal Employment Opportunity is developing "plans for progress" for labor unions. Inasmuch as the policies and practices of the International Brotherhood of Teamsters with respect to employment opportunities has been and will continue to be in complete conformity with the policies and objectives of the Committee, we will be pleased to support the work of the Committee in every respect. In addition, we respectively request an early conference with a member of your staff to develop a plan for progress to cover our union.

Respectfully yours,

JAMES R. HOFFA, *General President.*

THE PRESIDENT'S COMMITTEE ON EQUAL EMPLOYMENT OPPORTUNITY,
Washington, D.C., April 17, 1962.

MR. JAMES R. HOFFA,
General President, International Brotherhood of Teamsters,
Detroit Mich.

DEAR MR. HOFFA: This will acknowledge receipt of your letter of April 10, 1962, addressed to the Vice President. The Committee has this matter under consideration and will be in communication with you.

Sincerely,

JOHN G. FEILD, *Executive Director.*

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA,
Washington D.C., June 1, 1962.

THE PRESIDENT
The White House,
Washington, D.C.

MR. PRESIDENT: Enclosed are copies of a self-explanatory letter, dated April 10, 1962, addressed to Vice President Johnson, and a letter, dated May 11 1962, to Mr. Holleman, then Vice Chairman of the President's Committee on Equal Employment Opportunity, in which I stated that the policies and practices of the International Brotherhood of Teamsters with respect to employment opportunities have been and will continue to be in complete conformity with the policies and objectives of your Committee and that our union will be pleased to support the work of the Committee in every respect.

We again respectfully request an early conference with a staff member of the Committee to develop a plan for progress to cover our Union.

Respectfully yours,

JAMES R. HOFFA *General President.*

Enclosures.

THE PRESIDENT'S COMMITTEE
ON EQUAL EMPLOYMENT OPPORTUNITY,
Washington, D.C., June 5, 1962.

MR. JAMES R. HOFFA,
General President, International Brotherhood of Teamsters,
Detroit, Mich.

DEAR MR. HOFFA: This will acknowledge receipt of your letter of May 11 addressed to Jerry R. Holleman. As I previously informed you, we expect to be in communication with you on this matter in the not too distant future.

Sincerely yours,

JOHN G. FEILD, *Executive Director.*

THE PRESIDENT'S COMMITTEE
ON EQUAL EMPLOYMENT OPPORTUNITY,
Washington, D.C., August 6, 1962.

MR. JAMES R. HOFFA,
General President, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Washington, D.C.

DEAR MR. HOFFA: Your recent letter to the President has been forwarded to my office for reply.

The Committee is continuing its plan for the development of an appropriate adaptation of the plans for progress program for trade unions. As these plans develop, you may be sure you will be informed by the Committee.

Sincerely,

JOHN G. FEILD, *Executive Director.*

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN & HELPERS OF AMERICA,
Washington, D.C., November 20, 1962.

MR. HOBART L. TAYLOR,
Executive Vice Chairman, the President's Committee on Equal Employment Opportunity, Department of Labor Building, Washington, D.C.

DEAR MR. TAYLOR: It is our understanding that on November 16, 1962, you stated to a newspaper reporter that the reason the International Brotherhood of Teamsters did not participate with 100 national trade unions in signing pledges to eliminate employment discrimination was that our union had not contacted the President's Committee. I would appreciate it very much if you would advise us whether you made such a statement. We cannot believe that you did.

By letter dated April 10, 1962, addressed to Vice President Johnson, I stated that the policies and practices of our union with respect to employment opportunities has been and will continue to be in complete conformity with the policies and objectives of the President's Committee and that we would be pleased to support the Committee in every respect. In addition, I requested an early conference with a staff member to develop a plan for progress to cover our union. Executive Director John G. Field, by letter dated April 17, 1962, advised me that the Committee had the matter under consideration and would be in communica-

tion with me. By letter dated May 11, 1962, to Vice Chairman Holleman, I restated the position of our union with respect to employment opportunities and again requested an early conference to develop a plan for progress to cover our union. By letter dated June 5, 1962, Mr. Field advised me that the Committee expected to be in communication with me in the not too distant future. By a letter dated June 1, 1962, to the President, which was placed in the mail on June 8, 1962, I again stated our position and again requested an early conference. Mr. Field, by letter dated August 6, 1962, advised that the Committee was continuing its plans for the development of an appropriate adaptation of the plans for progress program for trade unions and that as these plans develop, I could be sure that I would be informed by the Committee. This was the last communication I have received from the Committee.

Regardless of whether you have made the statement attributed to you, it is the hope of our union that, inasmuch as you have at long last been successful in persuading AFL–CIO affiliates to accord cooperation to the Committee, the Committee may now be willing to grant equal opportunity to our union to sign a pledge against discrimination which our union would have been willing to sign as long ago as April 1962.

Despite the way in which the Committee has dealt with our union, we will continue to support the work of the Committee in every respect, and we again respectfully request a conference with a member of your staff to arrange for the execution of a pledge by our union.

Respectfully yours,

JAMES R. HOFFA,
General President.

THE PRESIDENT'S COMMITTEE ON EQUAL EMPLOYMENT OPPORTUNITY,
Washington, D.C., March 1, 1963.

Mr. JAMES R. HOFFA,
General President, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Washington, D.C.

DEAR SIR: This is to acknowledge receipt of your letter of February 11, 1963, and earlier communications.

Mr. Taylor has asked me to inform you that the statement attributed to him, with respect to the reasons why your union had not signed a plan for fair practices, was not accurate. He has never stated to a newspaper reporter that the Teamsters Union had not contacted the President's Committee.

Sincerely yours,

JOHN G. FEILD,
Executive Director.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA,
Washington, D.C., July 3, 1963

Hon. LYNDON B. JOHNSON,
Vice President of the United States,
Washington, D.C.

DEAR MR. VICE PRESIDENT: It is by now apparent that the President's Committee on Equal Employment Opportunity has decided that the International Brotherhood of Teamsters does not exist for the purpose of signing a plan for fair practices. A summary reading of the enclosed correspondence makes this conclusion inescapable. In my judgment such conduct constitutes another chapter in the continuing vendetta which the Kennedy administration is carrying out against the Teamsters Union. It is most unfortunate that in this instance such reprisal comes at the expense of a program to promote equal employment opportunity.

Hence, in the light of the resistance which this union has encountered from the President's Committee we have decided that any further efforts would be futile. However, this will advise that the International Brotherhood of Teamsters will continue its policy of nondiscrimination as it has in the past and will continue to exert its best efforts to promote equality of employment opportunity. In this connection I am enclosing a copy of an editorial appearing in the June 1963 issue of the International Teamster which more fully sets forth the position of the Teamsters Union on the question of racial equality.

Very truly yours,

JAMES R. HOFFA,
General President.

Enclosures.

MESSAGE FROM THE PRESIDENT—BUT ONE MORAL CHOICE

It has been a long time since anyone in this country has fought to obtain rights with the same vigor and spirit the American Negro now utilizes in seeking what is rightfully his.

Not since the 1930's when labor battled with company goons on the streets of Detroit for decent wages and dignity on the job has this country witnessed revolution such as the one which is sweeping the South and threatens to erupt in the North.

I can understand why an Attorney General with Bobbie Kennedy's mentality and background would fail to understand the civil rights fight of the Negro, as a leading Negro author has charged. But I can't for a moment comprehend the workingman who has anything but understanding and encouragement for the American Negro. Especially should we expect guidance and encouragement from our older members who once had to fight for rights we now take for granted.

Any labor leader worth his salt should recognize that the Negro today is being frustrated by the same methods which were used to fight unionization in the 1930's. We've all run up against antipicketing ordinances, against the court injunction which forbade peaceful assembly, against police whose mental makeup was symbolized by the riot stick he carried in his clenched and irrational fist.

These are not much different from the frustrations incurred by Negroes in the South, with the possible exception that tyrants have found that a K–9 corps can do the work formerly performed by Pinkerton detectives.

But how much more refined we are in the North with our subtle ways than is the plantation type of discrimination.

All we need do is ask ourselves who makes up the majority in the vast pools of unemployed, say in Detroit, and we shamefully must admit that it is the American Negro. Who is hardest hit by the curse of automation when the employer looks upon new technology simply as a labor cost-cutting device—the American Negro and other minority groups.

Look around and see who is employed at the dirty service jobs which pay the least. Look around and see who holds the good paying jobs in the country, and who has no opportunity at these jobs because of color. Look at the Nation's slums and see who lives in the cities' rat infested flats—and check the color of the landlord's skin who pockets the exorbitant rent.

Then stop and examine some firsthand knowledge you all have if you belong to the working class of people in this Nation. Regardless of the color of our skin, we all get that hungry feeling in the same place when there isn't enough food to go around. We all hurt in the same place when we know that as head of a household we cannot provide for our families. One who has experienced that can understand how bitterness takes the place of hope if such deprivation is because of one's color. It's not much different than the bitterness in the 1930's of one who found himself blacklisted because he carried a union card in his pocket and could find no job to support his family.

Vice President Lyndon Johnson has said: "Until justice is blind to color, until education is unaware of race, until opportunity is unconcerned with the color of men's skins, emancipation will be a proclamation but not a fact."

The New York Times has editorially taken the Attorney General to task for laughing at the proposal that his brother, the President, accompany Negro students to the campus (University of Alabama) and see that they are enrolled.

Peace Corps Director Sargent Shriver has said that "If we as citizens, and as a nation, can commit ourselves to the solution of this problem, then it can be solved. If we don't, government can never solve it."

We in the Teamsters can pride ourselves in one fact—there are no Jim Crow local unions in this organization. To claim that an international union of 1½ million members is entirely free from discrimination would be the height of naivete, indeed, but in the makeup of our local unions, man is judged on his trade union philosophy and his dedication to the struggle—not by color.

Yet, this is not nearly enough. I want to take this opportunity to urge all Teamster members—in this time when Negroes have become angry Americans—to let brotherhood be their guide.

As the world's largest union, we have but one moral choice—to guard that bigotry and prejudice do not hinder us in our fight against economic and social problems which plague all human beings—regardless of race, color, or creed.

JAMES R. HOFFA.

The CHAIRMAN. Our next witness is Mr. John DeJ. Pemberton, Jr., executive director of American Civil Liberties Union.

I am sorry we held you up so long.

STATEMENT OF JOHN DE J. PEMBERTON, JR., EXECUTIVE DIRECTOR, AMERICAN CIVIL LIBERTIES UNION

Mr. PEMBERTON. I am sorry that the committee is being held by us witnesses so long. I appreciate your courtesy.

I am John Pemberton, Jr., executive director of the American Civil Liberties Union. I am grateful for the opportunity to appear again since the introduction of the administration's bill and in order to accommodate the committee's time, I request leave to submit a written statement, copies of which have been handed to Mr. Foley, and comment only briefly in oral comment in order to avoid duplicating.

The CHAIRMAN. We will accept this statement for the record.

(The complete prepared statement of Mr. Pemberton follows:)

TESTIMONY OF JOHN DE J. PEMBERTON, JR., EXECUTIVE DIRECTOR, AMERICAN CIVIL LIBERTIES UNION ON CIVIL RIGHTS LEGISLATION

For our forefathers, the proposition in 1776 was "that all men are created equal, that they are endowed by their Creator with certain inalienable rights, * * * that to secure these rights governments are instituted among men. * * *" This is our historic mission, our national destiny.

For us the proposition in 1963 must be at least that: All men do enjoy an equal place in the eye of their Creator and their fellow men may in truth accord them no less. Inherent in equality are certain rights, every right consistent with the possession of identical rights by others. The perfection of this equality and the provision of these rights is so central to our national purpose that our Government—unlike governments elsewhere—exists for the primary purpose of securing these rights. Not merely law and order, not merely the common defense or the general welfare, but the securing of these rights—a purpose to which all others are subordinate—is the business of government in these United States.

Our forefathers didn't achieve this national purpose in one fell swoop in 1776. The institution of slavery, for instance, survived their declaration of equality by fourscore and seven years. But they devoted their all to that purpose; they fought and died for it.

The Civil Rights Act of 1963 is likewise not going to achieve in finality—all that our historic declaration committed us to achieve. But, in truth to our professed dedication we dare not fail to achieve every element of that ultimate victory which it lies in our power to achieve now. The centennial of Lincoln's proclamation on slavery and the quickening of the Nation's conscience that have coincided in 1963 provide us with a great new opportunity to advance our national goal of equality. Should it happen that we pass up that opportunity; should it happen that we fail to accord it the supreme priority which our historic mission enjoins us to do, we may enjoy no comparable opportunity in 1964 or thereafter. An aroused citizenry may lose perspective in the emotions which their Government's failure may engender.

But let 1963 be a year of maximum action in dealing justly with those long-ignored grievances and the onward march of this great Nation will resume. The American Revolution was not won in 1776, nor during the lives of the authors of the Declaration of Independence. It will not be won simply by the enactment of the Civil Rights Act of 1963. But it lies in our power to resume the march toward that victory in 1963 and this is the business at hand.

President Kennedy's civil rights bill contains seven major titles—

(1) Voting rights.
(2) Public accommodations.
(3) Desegregation of public education.
(4) Establishment of community relations' service.
(5) The Commission on Civil Rights.
(6) Discrimination in federally assisted programs.
(7) Establishment of a commission on equal employment opportunity.

In some respects the bill is excellent. In other respects, its provisions fall short of the minimum requirements for effective legislation. The administration bill deserves to be supported, of course, though certain of its provisions should be strengthened and some serious omissions repaired.

TITLE I. VOTING RIGHTS

Title I would:

1. Prohibit the application of any standard, practice, or procedure in determining qualifications to vote in any Federal election different from those applied to individuals similarly situated who have been found qualified to vote by State officials.

2. Prohibit denial of the right to vote in Federal elections because of immaterial errors or omissions in registration applications or other acts requisite to voting.

3. Require literacy tests given in connection with registration to vote in Federal elections to be in writing and transcribed.

4. Establish a sixth-grade education as a presumption of literacy in connection with any test given to qualify to vote in a Federal election.

5. Amend the 1960 Civil Rights Act to provide that, when less than 15 percent of potential Negro voters are registered in the area, the court shall issue orders entitling qualified Negro applicants to vote and may appoint temporary referees to take applications for registration pursuant to its order.

6. Provide for expeditious handling of voting cases in which the United States is plaintiff.

We preface our discussion here by stating our belief that where the vote is denied any man in any election, State or Federal, because of his race, Congress has full power to provide a remedy. The combination of the 14th and 15th amendments, each of which provides for enforcement by "appropriate legislation," empowers the Congress to insure that no one is deprived of the right to vote because of his race. The Supreme Court took this view 25 years ago.

"The reach of the 15th amendment against contrivances by a State to thwart equality in enjoyment of the right to vote by ci zens of the United States regardless of race or color, has been amply expounded by prior decisions. * * * The amendment nullifies sophisticated as well as simple-minded modes of discrimination. It hits onerous procedural requirements which effectively handicap exercise of the franchise by the colored race although the abstract right to vote may remain unrestricted as to race." *Lane* v. *Wilson*, 307 U.S. 268 (1938).

Disqualification of voter applicants by means of discriminatory standards and practices in determining qualifications are devices used by registrars in some sections of the South to bar Negroes from voting in both State and Federal elections. The administration bill, however, prohibits these practices only in Federal elections. There is no warrant for distinguishing between the two; the prohibitions should apply to both. There is clear sanction in the 14th and 15th amendments for Federal legislation directed toward the integrity of State voting practices.

The administration's literacy provision provides that completion of six grades of education establishes a presumption that the individual is literate for purposes of Federal election. This proposal is defective in two respects. First, six grades of education should be conclusive proof of literacy. In addition to eliminating the discriminatory administration of literacy tests, such a provision would also avoid the cumbersome evidentiary problems that arise where presumptions are involved. The quantum of proof by which such a presumption could be rebutted remains obscure, would result in the application of subjective considerations and would lead to evasion and further delay. A conclusive presumption alleviates these difficulties.

Second, a sixth grade education should be conclusive presumption of literacy for State as well as Federal elections. Though the standards and qualifications for voting in Federal elections are coincidental with the standards for voting in State elections, these standards are subject to the 14th amendment which forbids the States from denying any person equal protection of the laws, and the 15th amendment which forbids the States from discriminating against any citizen on account of race, color, or previous condition of servitude where voting is concerned. Thus, while any State may determine in the first instance its own voting standards, such standards are unconstitutional when they are racially discriminatory on their face or as applied. *Guinn* v. *United States*, 238 U.S. 347 (1915); *Yick Wo* v. *Hopkins*, 118 U.S. 356 (1886).

When we reach the provisions of the administration's bill to amend the 1957 and 1960 voting rights statutes, we first meet the threshold question whether the judicial enforcement of voting rights under the voter referee scheme is unnecessarily cumbersome. It is our understanding that the Attorney General has filed a total of 38 voting right suits but no district court has yet exercised the option of appointing a voter referee. In 22 of the suits, local registrars are under injunction to cease discrimination, but in these cases the district courts have been more than modest in acting to insure that their decrees are being obeyed. The remaining 16 suits are still undecided. The concrete results of all this litigation is dubious.

In our opinion these elaborate judicial provisions are unnecessary. We believe that more tangible results will be achieved by the adoption of the Civil Rights Commission Federal registrar proposal for both State and Federal elections. Under that proposal, the Civil Rights Commission would determine whether there exists in particular geographical areas large-scale voter discrimination. Where there is such a finding, the President would appoint Federal agents as registrars. Though the Commission recommendation was confined to Federal elections, we see no prohibition against its application to State elections as well. In our opinion such a plan is sanctioned by the 14th and 15th amendments.

If the Congress finds the Federal registrar plan unacceptable, however, we would alternatively support the administration proposal. We particularly support section 101(d) designed to expedite voting suits. This section would provide the means for vigorous prosecution to overcome the delays which inhere in crowded court calendars in order to make real a right which, if enforcement is delayed beyond any given election, is lost forever.

TITLE II. PUBLIC ACCOMMODATIONS

Title II would establish the right to service free from discrimination in places of public accommodation and business establishments. Included would be (1) any hotel, motel, or other public place furnishing lodging to transient guests from other States or traveling in interstate commerce; (2) any motion picture house, theater, sports arena, stadium, exhibition hall, or other public place of amusement customarily presenting entertainment which moves in interstate commerce; (3) any retail shop, department store, market, drugstore, gasoline station, restaurant, lunchroom, lunch counter, soda fountain, or other public eating places, if goods and services are provided substantially to interstate travelers, or goods held out to the public have moved in interstate commerce, or the activities or operations substantially affect interstate commerce.

Those refused service would have the right to sue for preventive relief. In addition, the Attorney General could file suit on receipt of a written complaint, if the complainant is unable to bring suit because of financial reasons or fear of reprisals. If successful, a complainant would be entitled to reasonable attorney's fees. Before filing suit, the Attorney General would be required to refer the complaint to the Community Relations Service provided under title IV of the bill and to any appropriate State agency with authority to prohibit the discriminatory practice.

This provision is the heart of the President's civil rights proposals. Its passage is essential. If adopted and enforced enthusiastically, it will accomplish the purpose which Congress first intended to achieve in its 1875 public accommodations law which was held unconstitutional in the *Civil Rights* cases, 109 U.S. 835 (1883). The administration bill is based both upon the commerce clause and the 14th amendment. We believe there is authority for grounding this provision on either or both sections of the Constitution. We agree with the administration officials who, in testifying on this bill before Congress, have stated their belief that it is not unlikely that the Supreme Court would uphold the constitutionality of this provision as appropriate legislation under the 14th. In addition, it is hardly open to dispute that Congress, through the commerce clause, has the authority to enact legislation which prohibits discrimination of facilities engaged in or affecting interstate commerce. Even in the *Civil Rights* cases, the Supreme Court was constrained to note that—

"Of course, these remarks do not apply to those cases in which Congress is clothed with direct and plenary powers of legislation over the whole subject, accompanied with an express or implied denial of such powers to the States, as in the regulation of commerce * * * among the several States. * * * In these cases Congress has the power to pass laws for regulating the subjects

specified in every detail, and the conduct and transactions of individuals in respect thereto * * *."

Though the preamble to title II of the administration bill invokes both the 14th amendment and the commerce clause, the language of section 202, which defines the scope of the right to equal treatment in places of public accommodation, speaks only in terms of interstate commerce. There is no language in the bill directed toward the enforcement of the right to nondiscriminatory treatment as a right guaranteed by the 14th amendment.

The consequence of this omission is that a large number of facilities—those not engaged in interstate commerce—will be outside the bill's prohibitions. If the bill were amended to include a separate section that prohibited discrimination explicity on the authority of the 14th amendment, it would then reach all places of public accommodation, large and small.

To include such a section, which could be patterned after the 1875 Civil Rights Act, together with a severability clause, would not endanger the prohibitions based upon the commerce clause. Each would stand alone and in the event the 14th amendment section were held unconstitutional, the commerce clause provisions would remain.

There has been considerable discussion directed toward confining this provision's application to places of public accommodation whose gross income is at a fairly high level. We are opposed to such a provision; indeed, we are opposed to the administration provision which limits the application of the bill to accommodations whose facilities "are provided to a substantial degree to interstate travelers," and "a substantial portion" of whose goods has moved in interstate commerce, or whose "activities or operation * * * otherwise substantially affect interstate travel or the interstate movements of goods in commerce * * *." The test of substantiality is vague at best, and though its boundaries would eventually be determined in litigation, it will necessarily exclude fair amount of business establishments from coverage. We think this difficulty will be avoided, and the purposes of the bill best served, by eliminating any such test of substantiality and making the statute applicable to all places of public accommodation which engage in or affect interstate commerce, regardles of size. The only exception we would admit, would be one or two family homes which take in travelers.

As proposed, the public accommodation provision would be enforced by suits to enjoin prosecutions. These could be brought either by an aggrieved party or by the Attorney General. The authority of the Attorney General to file suit is limited to those cases where, having received a complaint, he concludes that the aggrieved person "is unable to initiate and maintain appropriate legal proceedings" and that the purposes of the act will be "materially furthered" by filing of a suit.

These qualifications on the Attorney General's authority are unnecessary. The provision suggests that only the interests of individual plaintiffs are involved in enforcement of rights to equal treatment; but in reality the whole Nation is involved in the shame and human wrong of practices of racial discrimination. Here as in every area of racial discrimination, the time is long past when the Federal Government should assume full responsibility for eliminating discriminatory practices. The Attorney General should enjoy unfettered authority to enforce title II. The evil is a public evil which wholly warrants being attacked with the use of public resources.

TITLE III. SCHOOL DESEGREGATION

Under this title, technical assistance, grants, and loans would be made available to school boards to meet problems arising out of school desegregation or the adjustment of racial imbalance in schools.

The more important part of this title authorizes the Attorney General to institute civil actions for school desegregation upon receipt of complaints and a determination that the complainants are unable to institute legal proceedings.

The administration program is rather too modest. For one example, it contains no requirement that school districts be required to begin compliance with the decision in *Brown* v. *Board of Education* in 1963. We recall that this was a plank in the 1960 Democratic platform.

The administration proposal again is deficient here, as in title II, in that it limits the power of the Attorney General to institute suits to desegregate school facilities by requiring that the complainants be unable to do so themselves, either because of financial inability or because there is reason to believe that institu-

tion of such litigation would jeopardize the employment or economic standing of, or might result in injury or economic damage to, the complainants, their families, or their property. The interest that the Nation as a whole has in ridding our society of segregated schools justifies beyond debate the fullest participation of the Justice Department in every case it deems important. Therefore, as in title II, we urge that the Attorney General be empowered without limitation to file suit as he deems necessary.

TITLE IV. COMMUNITY RELATIONS SERVICE

Title IV establishes a Community Relations Service for the purpose of assisting in resolving disputes arising out of discriminatory practices that impair any rights under the Constitution or laws of the United States or which may affect interstate commerce.

The Community Relations Service, as an amicable and nonlitigative method for resolving problems arising out of discrimination, is most useful. We offer only the caveat that the Service not be mistaken for an enforcement agency. Its function should be supplementary to all the other means, both civil and criminal, for achieving the goal of equality.

TITLE V. COMMISSION ON CIVIL RIGHTS

Title V of the bill deals with the U.S. Commission on Civil Rights, established under the 1957 Civil Rights Act. That act gave the Commission power of investigation in certain specified fields and limited its terms of office to 2 years. The Commission's life has twice been extended for 2-year periods and it is now due to expire in November 1963. The bill would give the Commission a further extension of 4 years.

The bill would also enlarge the scope of the Commission's operations. Under the 1957 act, the Commission was directed to operate in three areas: (1) To investigate sworn complaints that citizens have been denied the right to vote because of their race, religion, or national origin; (2) to "study and collect information" concerning "legal developments" constituting a denial of equal protection of the laws; (3) to appraise the laws and policies of the Federal Government concerning equal protection of the laws.

The bill directs the Commission in addition to serve as a national clearinghouse for information and to provide advice and technical assistance to Government agencies and private institutions in respect to equal protection of the laws, specifically including the areas of voting, education, housing, employment, public facilities, transportation, and the administration of justice. The bill also states that the Commission may from time to time concentrate its efforts in one or more of the areas of its responsibility.

A number of other minor changes are made with respect to the Commission's procedures and fiscal affairs. Thus, the Commission is specifically given power to issue rules and regulations to carry out the purposes of the act. The per diem payable to members of the Commission is raised from $50 to $75.

Contrary to the administration proposal, the ACLU enthusiastically supports making the Commission on Civil Rights a permanent agency.

Among the tools that must be employed to achieve the goal of equal treatment are facts and education. Except for segregation's victims, those of us who are professionally engaged in civil liberties and civil rights work are perhaps more familiar with the nature and extent of discrimination than the public at large because we work with the problems every day. We do not know discrimination as well as its victims, but we know it well enough. But there are large portions of our citizens—mostly white to be sure—who know nothing about discrimination except what they read; indeed, they know little about American Indians, Negroes, or other racial minorities, so efficient are the workings of discrimination.

But the glare of publicity to which race relations have been exposed in recent years has pricked the conscience of our society. And the work of the Civil Rights Commission has contributed richly to this educational advance. The Commission is no publicity hound. The hard facts of discrimination and the statistics that overwhelmingly show the unequal treatment accorded minorities have been gathered and presented in a scholarly and persuasive way by the Commission's hard-working staff which, in terms of the size of the problem, is undermanned and underfinanced.

The work that the Commission has done in the few years of its existence has been extraordinary and invaluable. The information it has collected and distributed has for the first time brought together the statistics bearing on the extent of discrimination. Its exposition of law and policy has been reasoned; its recommendations imaginative.

To mention just a few of the Commission's publications is to demonstrate its usefulness. Its five-volume 1961 report, though only a fraction of its output, is by itself truly a monumental study of discrimination in voting, housing, employment, education, and the administration of criminal law. Each of the volumes examines the law in its field, the modes of discrimination, the depth of discrimination, and sets forth recommendations for eliminating discriminatory practices. The volume on justice, for example, contains a superb summary of jury discrimination practices with valuable statistical data. It also sets forth the law relating to systematic jury exclusion as handed down by the courts.

Some of the other publications, all of which provide the kind of educational and informational data that is absolutely necessary to understand the depth of discrimination, include a 1960 report on discrimination in public higher education, and its two-volume 1962 report on public school segregation in the South, North, and West. Let those who believe the North does not practice discrimination, or that the Commission is carrying on a vendetta against the South, read the fascinating narrative of the litigation over the New Rochelle school system contained in the North and West volume.

One other feature of the Civil Rights Commission that contributes further to its great educational role is its State advisory committees. Some are more active than others, but all of them provide a local base for studying racial discrimination in action and an additional educational channel; and, most important, the involvement of local citizens in eradicating the evils of racial discrimination. This last point must be emphasized. The North Carolina committee, for example, wrote a 250-page report covering all phases of discrimination in its State, and the Mississippi committee has recently published a report of the stark terror employed in that State in the treatment of Negroes. These are truly important forward steps, pointing out to those officials and citizens responsible for denial of constitutional rights, that their own neighbors recognize the crime of racism and are putting their name and reputation behind efforts to end it. The psychological influence of such committees is enormous.

The racial conflicts that plague the country will not be solved in the next 2 years or the next 4 years. The conflict unfortunately is embedded too deeply. Thus it is imperative that there be a permanent Government agency whose sole function is to be concerned with the investigation of denials of the right to vote, collection of information concerning the denial of the equal protection of the laws and policies of the Federal Government in the civil rights field. We urge as well that these duties be expanded to allow the Commission to serve as a clearinghouse for information both to public agencies and private organizations.

It would be disastrous if the Commission were allowed to expire; it would be shameful if its mandate were extended for only a limited number of years. We urge that the Commission be made a permanent agency.

TITLE VI. WITHHOLDING OF FUNDS FROM FEDERALLY ASSISTED PROGRAMS

Title VI of the act contains a single brief section dealing with discrimination in federally assisted programs. It provides that nothing in any statute providing for financial assistance under any program shall be interpreted as requiring that the assistance be given in circumstances in which there is discrimination in the distribution of benefits. It further provides that all contracts made in connection with any such program shall contain whatever conditions the President may have prescribed in order to assure that there will be no discrimination in employment by any contractor or subcontractor.

This section's purpose is wholly commendable but we believe that the President has authority presently to withhold funds from federally assisted programs. Of course, such funds should not be withheld without affording the affected State the opportunity at a due process hearing to meet the charges of discrimination.

Because the President now has authority to realize the purpose of this section, we suggest that it be withdrawn and the record be made explicit that the reason for doing so is the Committee's belief that present Executive power makes legislation unnecessary.

TITLE VII. EMPLOYMENT

The three sections (701–703) of title VII are designed to give statutory basis to the existing President's Committee on Equal Opportunity. That Committee was established by an Executive order issued by President Kennedy in 1961. It succeeded to the responsibilities of similar committees established by Presidents Truman and Eisenhower. It is charged with preventing discrimination in Federal employment and in employment by Government contractors. On June 22, the President issued an Executive Order No. 11114, empowering the Committee to deal also with discrimination by contractors and subcontractors participating in programs or activities that are assisted by Federal funds.

The bill specifically empowers the President to do what he has already done by Executive order. Without establishing a Commission or spelling out the details of its operation, it states that the President may establish a "Commission on Equal Employment Opportunity" having the function of preventing discrimination in the areas described above. It further provides that, as in the existing President's Committee, the Vice President shall serve as Chairman and the Secretary of Labor as Vice Chairman. The Commission is given power to employ an Executive Vice Chairman and appropriate staff.

The one striking omission from title VII is the absence of a general fair-employment-practices provision. No civil rights bill which fails to contain such a provision can be said to be satisfactory. In his June 19 civil rights message, the President explicitly recognized the necessity of Federal fair-employment-practices legislation. Though he stated his support for fair-employment legislation, we think it regrettable that the administration's bill does not contain such a provision.

Congress has an obligation to insure that all citizens have equal rights in employment in interstate commerce. This principle should apply to employers and trade unions alike so that the protection of Federal law may be extended to the right to work on the basis of ability regardless of race, religion, national origin, or ancestry.

This principle has been tested by the wartime Federal agency and by the experience of at least 20 States including the largest industrial States. The operation of the State statutes has won over to the side of fair employment practice some of its most vigorous opponents. Fear of coercive measures against employers have been shown to be unfounded. General recognition of the justice of fair practice is in the spirit of the times. Even the fears of coercion in the South are unfounded in the light of methods used both by the Federal Government in wartime and by the States.

Congress has already legislated in regard to private employment in many ways. It has regulated collective bargaining and has assumed under the interstate commerce clause wide powers over employment policies.

A fair employment practices statute would not compel any employer to hire a particular person. It would ban only the practice of discrimination based on religion, race or national origin or ancestry.

Federal law alone can fix fair standards for the Nation. Elimination of discrimination of Negroes in employment will by itself satisfy a substantial part of the just demands for equal treatment by our Negro citizens. The price paid in denying some of our citizens employment only because of their race is reflected in depressed conditions of living that the availability of good jobs and job security will help to cure.

Of the several proposals for enforcement of a Federal fair employment practices statute, we recommend the adoption of legislation which would entrust the administration and enforcement to a single administrator whose formal complaints would be heard by an independent board, or its hearing officer, with power in the board to issue cease and desist orders. Thereafter, ultimate enforcement would be obtained through orders of a Federal court of appeals (or district court if the higher court is on vacation) with the court's power of review being subject to the substantial evidence rule. We believe the administrator proposal is superior to the creation of a commission and will result in greater effectiveness and greater fairness to the parties concerned. For these reasons we commend the fair employment practices bill recently acted upon favorably by the House Committee on Education and Labor.

We think that experience in Federal agencies demonstrates the administrator-board structure will provide swifter and less expensive due process. If the experience of the NLRB is followed, the likelihood is that a hearing before an

examiner will take place closer to the homes of the complainants and the respondents than will a proceeding in Federal district court, which would presumably be required for enforcement if a commission were established.

We would also emphasize the probably greater initiative which would be taken by a single administrator in affecting the policies of the act. We believe that many studies of administrative procedure has documented the appropriateness of limiting plural bodies to adjudicatory functions and assigning administrative enforcement functions to a staff headed by a single administrator. Particularly in the mobilization of cooperative efforts on the part of officials of other agencies—for instance, Defense Department procurement officers—the initiative of the fair employment practices administrator will be most significant.

We recommend further that the administrator be empowered to initiate proceedings on his own charge. Experience of the State fair employment practices agencies has shown that sole reliance upon complaints initiated by aggrieved persons inadequately reaches the full range of limitations on equal opportunity. Too often the channels of information as to job openings, particularly in the case of higher skilled and higher paying jobs, are informally but effectively closed to most members of minority races. Likewise, opportunities for acquiring the skill which will qualify one for higher positions may for all practical purposes be open only to white persons. The existence of an affirmative power in the agency to initiate procedures, both by conciliation and formal enforcement, without waiting upon the complaint of an agrieved person, is essential for the enactment of generally effective legislation.

Lastly, any statute adopted should negate any blanked inference of Federal preemption and, in addition, should authorize agreement ceding jurisdiction to State agencies. There are many State laws and enforcement agencies whose work in this field has been effective. There is no single road to equality of opportunity in employment and the existence of a Federal program should not supersede effective State and local action. It is inevitable that the incidence of the evil to be corrected will exceed the capacity of a Federal agency to deal with it, and wherever the Federal agency has not acted, or has ceded jurisdiction, State agencies enforcing laws which meet Federal standards should be permitted to operate.

The administration's civil rights proposals fail in two other respects to satisfy the requirements of minimum legislation necessary to meet the just demands made by the victims of discrimination in the Nation. These omissions consist of amendments to section 242 of title 18, United States Code, in order to remove technical but unnecessary impediments to successful prosecutions of State officers who deny citizens their civil rights under color of law, and a broad grant of authority to the Attorney General to institute litigation on the part of individuals who have been deprived of their civil rights, no matter in what form.

CRIMINAL PROVISIONS OF CIVIL RIGHTS ACTS

As interpreted by the Supreme Court, section 242 of title 18, United States Code, presently requires proof of specific intent to deprive a person of a Federal constitutional rights with which we are concerned may be affected when violence 325 U.S. 91. Accordingly, if it appears that a defendant now treated a prisoner in a fit of anger rather than with the aim of depriving him of his rights, the defendant will be acquitted. Although convictions have been had under this section, they are rare. Recent events have indicated that the deprivation of constitutional rights with which we are concerned may be affected when violence results from hatred, malice, or other motives. In examining some of the examples of police brutality given in the report on Mississippi by the Mississippi Advisory Committee of the U.S. Commission on Civil Rights, the acts of the police were often unconnected with any proceeding or charge. Although the effect is obviously to intimidate the Negro population—on several occasions the police indicated that this was their objective by questioning their victims as to their membership in CORE or the NAACP—it is extremely difficult to prosecute under the present section 242.

The difficulties that judges and lawyers have in formulating instructions embodying the requirement of proof of specific intent, and the difficulty jurors have in understanding instructions given, have been pointed out in the 1961 report of the Commission on Civil Rights entitled "Justice."

On its face, the present section 242 does not define the nature of the offense sufficiently to give warning of prohibited conduct. We agree that it was necessary for the Supreme Court in *Screws* to interpret the statute so as to save it

from the taint of unconstitutional vagueness. However, legislation has already been introduced into Congress which will cure that defect and simplify the statute's enforcement by prohibiting six concrete acts, each of which is a violation of the 14th amendment. Proof of the willful performance of any one of those six acts, under color of law, thereby depriving another person of a Federal constitutional right, would be sufficient. Those six acts are:

1. Subjecting any person to physical injury for an unlawful purpose;
2. Subjecting any person to unnecessary force during the course of an arrest or while the person is being held in custody;
3. Subjecting any person to violence or maliciously subjecting such person to unlawful restraint in the course of eliciting a confession to a crime or any other information;
4. Subjecting any person to violence or unlawful restraint for the purpose of obtaining anything of value;
5. Refusing to provide protection to any person from unlawful violence at the hands of private persons, knowing that such violence was planned or was then taking place; or
6. Aiding or assisting private persons in any way to carry out acts of unlawful violence.

The six enumerated acts include the two which are most frequently complained of at the present time: Subjecting arrested persons to violence, and refusing to provide protection from unlawful violence at the hands of private persons. There is no adequate remedy now when police officers stand idly by and permit private persons to attack Negroes who are exercising their constitutional rights of assembly. The Justice Department has indicated that it cannot supply Federal protection under such circumstances because "the responsibility for preservation of law and order and the protection of citizens against unlawful conduct on the part of others is the responsibility of local authorities." The Department of Justice also said that it has "utilized necessary force to suppress disorder so general in nature as to render ineffectual the efforts of local authorities to protect citizens exercising Federal rights."[1] Early action may prevent disorders from becoming general and prosecution under the proposed provisions of section 242 will be useful in that respect.

If the amendment to section 242 is passed, it should be possible successfully to prosecute local police officers both for their own brutality and for turning their backs on the brutality of others. Swift prosecution of local officials who have the responsibility for preservation of law and order will encourage those officials to act before disorders become widespread.

We also recommend amendments to section 1983 of title 42, United States Code, to provide that cities, counties, and other political subdivisions are liable for damages for the unconstitutional acts of their employees. At the present time individual officers may be sued under section 1983 for depriving persons, under color of law of any rights, privileges, or immunities secured by the Federal Constitution of laws. However, the Supreme Court held in *Monroe* v. *Pape*, 365 U.S. 107, that the city or the local authority which employs them is not liable for such acts. In *Monroe*, a Negro sued individual police officers and the city of Chicago, charging that he was arrested without a warrant and treated brutally. The Court upheld the suit against the police officers but held that the city of Chicago was not liable because section 1983 includes only "persons" within the prohibitions, not municipalities.

It is more important to obtain a judgment against a city than to obtain one against an individual officer. It is the responsibility of local governments to assure that their personnel will not deprive members of the public of their constitutional rights. Such rights can be effectively protected only when local governments clearly demonstrate that they will not tolerate their infringement. If legislation of this order is passed, potential liability of cities and other political subdivisions would encourage many local authorities to establish programs to train, instruct, and supervise their personnel to prevent police brutality and other unconstitutional activities.

TITLE III LEGISLATION

Under the terms of the administration's civil rights proposals, the Attorney General would have authority to institute suits on behalf of persons who have

[1] The quotations are excerpts from a letter to John de J. Pemberton, Jr., executive director, ACLU, from Burke Marshall, Assistant Attorney General, Civil Rights Division.

been denied entrance to public schools because of race and also authorizes suits by the Department of Justice to enforce the public accommodations provisions of the proposed legislation. These are desirable improvements, of course, but there is no reason that this power ought not be extended to every area of discrimination where it is now necessary for private persons to carry the burden of litigation, such as housing, hospitals, libraries, zoos, parks, and swimming pools.

In one particularly vexing area, the exclusion of Negroes from jury service, to empower the Attorney General to bring injunctive suits against the offending officials would be invaluable. Although systematic exclusion of Negroes from jury duty on account of their race, color, or national origin is unconstitutional, it is a pervasive practice in some Southern States. The U.S. Court of Appeals for the Fifth Circuit observed that:

"As judges of a circuit comprising six States of the Deep South, we think it is our duty to take official notice that lawyers residing in many southern jurisdictions rarely, almost to the point of never, raise the issue of systematic exclusion of Negroes from juries." *United States ex rel. Goldsby* v. *Harpole*, 263 F. 2d 71, 82, cert. denied, 361 U.S. 838.

It is often very difficult to prove systematic exclusion. The Attorney General is in a better position to obtain the necessary witnesses and records than are most Negro defendants and their private attorneys. In addition, even frequent reversal of criminal convictions on the ground that Negroes have been excluded from the jury, may not result in abandonment of this practice. An injunction against exclusion will undoubtedly be more effective than the objections of numerous individual defendants.

It is ironic that the victims of discrimination should be required themselves to bear the expense of removing the blot of discrimination in our Nation. Individual and private organizational resources are hardly able to bear the entire burden of effecting a revolution through the judicial process. The greater resources of the Federal Government would enable the entire process to be completed more rapidly.

The Department of Justice should also be empowered to bring suits, similar to *Hague* v. *C.I.O.*, 307 U.S. 496, for the purpose of securing to protesting citizens their rights, under the first amendment to free speech and free assembly. The right to demonstrate peacefully is fully protected by the Constitution, yet it has often been lost because of unlawful suppression by local police. The presence of the U.S. Government in court to support directly first amendment rights will inevitably have the effect of increasing the protection of these rights.

The practice of protecting communities by the use of private armies was discarded long ago. The security of our Nation is threatened no less by domestic racism than by aggressors beyond our borders. It is only the habit of ancient usage that requires private litigants to support their own suits to enforce the Constitution. Certainly the right of private citizens to sue for protection of their constitutional rights ought not be limited, but we must also recognize that racial discrimination is a charge on the public and the initiative for its elimination must be taken by the Nation at large.

Mr. PEMBERTON. After the stirring speeches by the representatives of the Synagogue Council and National Christian organizations, it would be unnecessary to add any more about the moral imperatives.

But conditions have arisen that would lead me to make one additional comment in this area and that is that in the Declaration of Independence, after the words that are so often quoted, "that all men are created equal, that they are endowed by their Creator with certain inalienable rights" are the words "to secure these rights governments are instituted among men."

It seems to me in assessing the bearing of our democratic ideals on this legislation, we might remind ourselves of those words, "that to secure these rights governments are instituted among men," that this is our historic destiny, our national purpose.

The protection of these rights is the central business of the Federal Government in the United States. Not merely law and order, not merely the common defense, not merely the general welfare, but the securing of these rights is what we said when we started out on the

road to nationhood, and is what distinguishes us from other governments and is what justifies the rather extraordinary remedies that seem to be needed today to eliminate the blot of discrimination on our national life, the departure from our ideals that are involved. Unlike Mr. Zagri, I feel that I want to speak with enthusiasm of the administration's measure that is before the committee today, H.R. 7152.

This is not to overlook, I think, some serious omissions in it, as a comprehensive bill, and some areas in which it could be stronger for the purpose of achieving its purposes, but it is a great event that a national administration has committed itself as a matter of first priority to achieving a comprehensive civil rights bill and to correcting the evils that are comprehended in that bill.

In its title I, dealing with voting rights are several measures that have been before the committee since the President's message in February on civil rights, and are not new to this bill.

I don't desire to go over any of those.

Let me suggest, simply that the present language I think is subject to the criticism that it might as well deal with State as with Federal elections, that the power granted Congress to legislate in the area of voting rights is granted without respect to the kind of election in which the right to vote is secured, that although the power is reserved to the States of defining voter qualifications, the 15th amendment imposes limitations on the States that discriminate in applying these and the measure that Congress enacts to deal with that discrimination, exercising its power of legislation under the 15th amendment, as appropriately apply to discrimination in this Federal right, the right to vote, the federally guaranteed right, as much in State elections as in Federal elections.

I think the suggestions that have been made to the committee that the limitation to Federal elections be eliminated are well founded in terms of the purpose of eliminating voter discrimination.

The CHAIRMAN. Mr. Pemberton, there are certain things that would be disregarded if you have legislation; you might have to be pragmatic and if you are going to whole hog and demand everything that you think should be in a bill, I don't think you are going to get many bills through.

Mr. PEMBERTON. I hope I am not unrealistically——

The CHAIRMAN. You understand what I am driving at?

Mr. PEMBERTON. I do, Mr. Chairman, and I recognize that there will be much resistance. That is the reason for my opening remarks. There will be opposition to the passage of any bill.

The CHAIRMAN. According to what you say, if we do what you say this bill is doomed.

Mr. PEMBERTON. What I am suggesting to the chairman is that I feel that some of the limitations that are inherent in this bill and in many civil rights proposals are founded on a constitutional misapprehension. I do leave to the committee's judgment what it should report out.

I suggest that it is a constitutional misapprehension that the power conferred on the Congress under the 15th amendment is limited to the power to regulate Federal elections.

Mr. KASTENMEIER. Mr. Chairman, in that respect, yes; I thought the witness addressed himself to a very vociferous position taken by

General Counsel, Mr. Foley, when Mr. Zagri was here, but on the point that my chairman makes I think that we also have to worry, talking about whether it is politically possible in terms of what might happen if there were no bill or a very, very weak bill.

I would think that we should not start from the view of how these bills or how those proposals ought to be modified downward, so that very little is openly accomplished by virtue of the bill. I would hope that we would feel that this committee could pass out the strongest bill possible under the circumstances.

The CHAIRMAN. I didn't mean to imply that we should do anything but exactly that, put out a strong bill, but if we would put the provision in there that might control State elections, that would be a bone in the throat of many, many adherents in the Congress of civil rights and a good strong civil rights bill who might be tempted to vote against it.

I think you and I agree that we want to get a good bill through. I think we can get a good bill through, but I don't want to surround our chances with so many fatalities at the very inception that, as I said before, the bill might be doomed. It might die aborning.

Mr. PEMBERTON. There is the converse risk—and I don't pretend to be qualified to testify on the chances that one bill would have on the floor of the House and Senate as against another bill.

There is, of course, the converse risk that any watering down even of a moderate bill, which I think the administration has put before the Congress, risks a great opportunity for progress in the year 1963 because of the awakened conscience of America and risks the disaster which continued thwarting those whose rights have been denied for so long will bring about.

The objections and the grievances are legitimate and the time is now to deal with them.

The CHAIRMAN. Don't misunderstand me. I want to put everything I can in the bill.

Mr. PEMBERTON. I appreciate your position and I am not qualified to counter that judgment, Mr. Chairman.

I think something similar there could be said of the administration literacy tests proposal, referring to the presumption of a sixth-grade education. The purpose of this proposal, that first came from the Civil Rights Commission where it was not in the form of a presumption but in the form of a conclusive substitute of a certificate of sixth-grade education for the results of a discretionary literacy test, is not to state qualifications for voting, not to state that a State must recognize a sixth-grade education or some other grade as qualifying a citizen to vote and repeal its lesser or other qualification laws, but to eliminate the discretionary test, the test in which the administration can exercise a discretionary judgment and flunk a Negro and pass a white man who performs equally well in the test. The purpose is to eliminate that discretion and substitute for it the certificate of a sixth-grade education.

As I understand the Commission's original recommendation, it would be perfectly proper, if it were enacted into law, for a State to require an eighth-grade education or a college education as a requisite for voting, but the State then might not require a test because that involves an administrative discretion in applying its qualifications.

It eliminates the judgmental factor resting on the administrator. It seems to me that merely making the sixth-grade education a presumption of literacy creates a great many problems and does not solve the problem that the Commission's original proposal was intended to solve.

I earnestly recommend that the committee consider adopting the Commission's original proposal which the administration recommended in the last session of Congress and appears to have deviated from this year.

We do suggest in our written statement that the Commission's Federal Registrar proposal might be considered at this point as an alternative, as a more satisfactory alternative to further refinement of the judicial remedies that are inherent in the 1957 and the 1960 voting acts.

The fact is that so much machinery is necessary to effect a judicial remedy and that all of the machinery that has been applied has brought only 38 or 40 suits in the voting rights areas where there are several hundred counties in which the Commission has found discrimination.

I suggest that possibly the time has come for an administrative remedy. The Commission has suggested such a remedy. It seems to me that it deserves favorable consideration. I refer to the voters registrar proposal as distinguished from the court-appointed referee system that is adopted in the 1960 act and refined by the very useful proposal for temporary referees in the present bill.

However, in the absence of an administrative remedy, we would certainly support the temporary referee plan contained in the present bill.

Mr. CRAMER. Do you have an idea or has a study been made to your knowledge as to how many people in States that have literacy tests would be denied the right to vote who vote now? I understand there are some 16 States and, of course, they are not all in the South.

Mr. PEMBERTON. That is right.

Mr. CRAMER. In New York, California, and a number of other States, how many people presently vote, both negro and white, who would be denied the right to vote if there is instituted either presumptive or conclusive sixth-grade requirement in the literacy test?

How many people are going to be denied the right to vote today?

Mr. PEMBERTON. You mean how many vote today who wouldn't be able to because they have not passed the sixth grade?

Mr. CRAMER. Yes.

Mr. PEMBERTON. I don't know. May I attempt to restate the meaning of the Commission's proposal, which is not to substitute the requirements of six grades of education for present requirements of literacy. It is to substitute the achievement of six grades of education for having to pass a test.

It deals not with the qualifications, but with the manner of administering the qualifications, because the Federal power does not extend to stating qualifications. This is the State power, but the Federal power under the 15th amendment does go to the manner in which they are administered and the elimination of discrimination. Therefore, I don't think it would be necessary to make such a study and determine how many present voters haven't passed six grades of education since this would still be an issue of State law.

Referring to the public accommodations title, title No. II, this, of course, is the heart of the administration's proposal. As a prior witness has suggested, I think what is absent from the administration's proposal, a comprehensive Federal Fair Employment Practices Act may even be more urgently required than this, but this protection is urgently required in terms of the movement of citizens in our intensely mobile country.

Though title II of the administration bill invokes both the 14th amendment and the commerce clause, the language of section 202, which defines the scope of the rights granted, appears confined to the terms of the commerce clause.

If the bill were amended to include a separate section that prohibited discrimination explicitly on the authority of the 14th amendment, it would then reach all places of public accommodation, large and small.

It might be patterned, I suggest, after the 1875 Civil Rights Act, premised as it is on the assumption that the 1883 *Civil Rights* decision might be reconsidered by the court, together with a severability clause which would save the provisions premised on the commerce clause.

I think the important thing is that enforcement of the provisions be effective and for that reliance on the commerce clause will avoid holding up all enforcement during protracted litigation of the constitutionality of the 14th amendment clause. The commerce clause provisions are important for effectiveness, but they will fail to reach all corners of the potential reach of the power of Congress that the 14th amendment provisions would.

Mr. Chairman, what I gathered, there was general thought among members of the committee who are favorably disposed toward the civil rights, to take the two routes, 14th amendment and the interstate commerce route.

Mr. PEMBERTON. And this I would certainly encourage.

Might I suggest that the 14th amendment language perhaps need not be tied to a licensing power, as many have suggested, arising out of the recent sit-in cases, but might well go back to the language of the 1875 Civil Rights Act or something like it, and that it might be joined to the present language, provided there is a severability clause.

Also, in title II, may I raise a question concerning the limitations on the Attorney General's enforcement authority granted there? It seems to us that the limitations that relate to the ability of a private individual to bring a suit are unnecessary. In reality, the whole Nation is involved in the blot of discrimination and the Attorney General is enforcing an ideal, a standard of the national purposes, if you will, in enforcing these prohibitions.

The Attorney General, I submit, should enjoy unfettered authority to bring title II suits and to determine how most effectively to employ the resources of the Department to make the purposes of title II effective.

He should not have to certify that the individual complainant has made a complaint in writing, which might subject him to harassment for having to do so, or is financially or otherwise unable to bring the litigation.

He ought to make a law enforcement officer's determination of whether it is in the national interest to bring this suit.

Mr. MEADER. Mr. Chairman, might I ask Mr. Pemberton a question? Are you located in the Washington office of the ACLU?

Mr. PEMBERTON. No, sir; I am in the New York office.

Mr. MEADER. I can't recall the name of the gentleman here.

Mr. PEMBERTON. Mr. Speiser.

Mr. MEADER. Mr. Speiser?

Mr. PEMBERTON. Yes, sir.

Mr. MEADER. He has appeared before this committee in connection with some requests for additional authority from the Justice Department and I would say with all the vigor he possessed resisted additional power.

I recall the wiretapping bill and the bill granting immunity to witnesses. I think there were some other bills which we passed in the last Congress which he opposed on the basis of their granting excessive power to the Department of Justice, that is.

Mr. PEMBERTON. Yes.

Mr. MEADER. I glanced through your statement rather hurriedly and I didn't find any expression of concern over granting too much power to the Department of Justice. In fact, on the contrary, it seems to me that your statement said that we are not granting enough power.

Mr. PEMBERTON. I think it is correct that my statement does say that.

Mr. MEADER. I wonder if you can reconcile the concern expressed on behalf of members of your organization, with respect to other requests for power that the Department of Justice had made of this committee, with your not only finding nothing dangerous in the power contained in the administration bill, but even going further and injecting the Attorney General into all kinds of private litigation even though the administration itself has not requested it?

Mr. PEMBERTON. I think so, Mr. Meader.

I think the answer is this, if I may compare the wiretapping issue, which I do remember, with this one.

Here we are saying that the Attorney General, as a law enforcement officer, charged with the bringing of suits to enforce the law—this is what he does every day in the prosecution of crimes—ought to be given more authority to enforce this law through the courts, through the initiation of proceedings in the courts.

I remember our specific objection in the wiretapping bill was to proposals to permit the Attorney General to do something without going to court, to authorize wiretapping here on his own certificate, secretly filed within the Department of Justice, with no agencies of Justice looking over his shoulder to make sure that the power was not abused.

Mr. MEADER. Let me ask you: Would you believe that this is an area of such significance and uniqueness that you would recommend even putting more teeth in this bill by authorizing the Attorney General, with respect to the exercise of his powers under this legislation to engage in wiretapping?

Mr. PEMBERTON. No.

Mr. MEADER. Granting immunity to witnesses?

Mr. PEMBERTON. No.

Mr. MEADER. Or to make it illegal to obstruct any investigation conducted for the purpose of enforcement of this law?

Mr. PEMBERTON. Let me qualify my answer to the last. I answered as the question was being asked—not to wiretapping and so forth. It seems to me that what we are involved in is in enforcing one of the great rights guaranteed by the Constitution. I don't think we will ever effectively do so by violating other rights that are granted by the Constitution.

Mr. MEADER. Now, you are getting to the point that I was trying to raise.

Mr. PEMBERTON. I think we must effectively enforce rights as we must effectively enforce law by adhering to due process of law. I find the concept of wiretapping, for example, offensive to the concept of due process of law. I would not concede that this would make the enforcement genuinely more effective and I think wrong means are not justified by a right end.

Mr. MEADER. Thank you.

Mr. CRAMER. One more question on title I. I was getting into the question of his qualifications.

The bill proposes that no person acting under law shall deny the right of any individual to vote in Federal election or employ a literacy test as a qualification, as shown on page 4, paragraph C, unless such tests are administered to each individual in writing. Of course, I understand what the objective is, but I again refer to the 16 States that have literacy tests and a number of those States that I stated before and that I now have the information don't require the person to write to qualify. There are no exceptions in this new proposal, whether a person is blind, physically disabled, or what have you. In Oregon and Washington, for instance, their literacy tests require only that you write or speak the English language. You don't have to write it.

With this requirement involved, let me read some other States—and I ask you the question, wouldn't it result in a number of people who now qualify being disqualified? People in Alaska or Oregon and Washington don't have to write or read. In Connecticut they can read in English any articles of the Constitution. They don't have to write.

Delaware, Maine, Massachusetts and New Hampshire, the only thing they have to do is write their name, read the Constitution in English.

The State of Wyoming only requires one to read the State constitution.

What happens to these thousands, if not millions of people who vote today and who may not be able to pass a sixth grade written test under the Federal law relating to Federal elections? Aren't they going to be denied the right to vote?

Mr. PEMBERTON. In other words, the question is: Doesn't section C, subdivision 1 impose a writing requirement as well as a reading requirement?

Mr. CRAMER. That is right.

Mr. PEMBERTON. And I think the answer is: Not necesarily. There are circumstances in which what must be put in writing does not have to be done by the individual who does it.

Mr. CRAMER In these States nothing has to be done.

Mr. PEMBERTON. I am thinking of voting, which is normally done by placing an X on the ballot, but which is done for a blind person or a person physically disabled, lacking, say, two hands and unable to do so, is done through another person.

Mr. CRAMER. That is avoiding the question. We are not talking about a man who is qualified, but about tests that must be used to qualify a person.

Mr. PEMBERTON. But I am saying with this precedent, any State which feels that the Federal Government is attempting to add a requirement, a qualification to vote, may afford the same facilities to avoid making the ability to write a requirement to vote and provide a judge or registrar who reduces the answers to writing and permit the—well, of course, the person is going to be literate. This is what he is testing. If he can read the answers that the registrar has written for him, he is going to be able to protect himself.

Mr. CRAMER. That is not what the proposal says. It says that no person acting under color of law shall employ any literacy test as a qualification of voting in any Federal election unless such test is administered to each individual wholly in writing. That means that the individual has to write it. There isn't any question about that. Therefore, in the States of Alaska, Oregon, Washington, Connecticut, Delaware, Maine, Massachusetts, New Hampshire, and Wyoming, this is a new test, a new requirement to qualify to vote There isn't any question about that.

Mr. PEMBERTON. I think by the tests of the State in which I practiced law, it permits a test to be reduced to writing. In the case of a person who can't write, such as a paraplegic, this test would be in writing, it would be reduced to writing.

Acting Chairman DONOHUE. Mr. Pemberton, the bells have just rung for a vote on a bill. I don't know what we can do now. It will take a half hour and I will have been sitting 7 hours here and I am entitled to a little respite, too, and so would the other members. I wonder if you can't submit the statement.

Mr. PEMBERTON. I will make the offer to submit the entire statement in writing.

Acting Chairman DONOHUE. You feel that most of the provisions meet with your approval?

Mr. PEMBERTON. We think that the bill is a moderate bill. It deserves to be passed without any weakening and we have suggested ways in which it might be stronger, the most important of which is fair employment practices.

Acting Chairman DONOHUE. Thank you very much, Mr. Pemberton, and we will read your statement.

The CHAIRMAN. We have two other witnesses. I wonder if they would be willing to submit their statements. They have come from far away, from South Carolina, Mr. Bob Bryant.

(No response.)

The CHAIRMAN. Is Mr. Douglas McKay, Jr., here?

Mr. MCKAY. I am here.

The CHAIRMAN. Would you submit your statement?

Mr. MCKAY. Yes; I guess I will have to. I have to go back. I don't have it in writing. May I write it and send it to you?

The CHAIRMAN. Yes, sir.

We will be very glad to receive it.

Mr. MCKAY. It is a short statement. I had about 15 minutes of what I wanted to say, but I will write it and send it to you.

The CHAIRMAN. There is no intention to cut you off. You see the exigencies under which we labor here. We will be very happy to receive your statement for the record and you can write it out or type it, any way you wish.

Mr. MCKAY. I will have to do that when I get back home.

The CHAIRMAN. That is perfectly all right.

Mr. MCKAY. And I will send you how many copies?

The CHAIRMAN. We will be glad to receive it any time within reason that you care to send it.

The meeting will now adjourn and we will assemble tomorrow at 2 o'clock to hear Mr. Roy Wilkins.

AUGUST 7, 1963.

Hon. ALBERT WATSON,
House of Representatives.

DEAR CONGRESSMAN WATSON: As indicated by your letter of July 29, regarding Mr. Douglas McKay's statement before the House Committee on the Judiciary concerning civil rights, you may be assured that it will be made a part of the record of the hearings on this legislation.

I sincerely regret that Mr. McKay could not be heard at that time in view of the expense, time, and trouble he expended in order to be present, but I am sure you realize as a Member of Congress that this was an exceptional occasion. I also wish to advise you that I had a very pleasant private conversation with Mr. McKay and I was indeed impressed by him and am sorry he did not get a chance to present his views personally.

Sincerely yours,

WILLIAM R. FOLEY,
General Counsel.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., July 29, 1963.

Hon. WILLIAM R. FOLEY,
General Counsel, House Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. FOLEY: The enclosed letter by Mr. Douglas McKay, Jr., is self-explanatory. Mr. McKay is a leading attorney in my hometown of Columbia, S.C.

The enclosed statement by Mr. McKay is exceptionally well prepared and warrants most serious consideration. I am hopeful that you and the other members of Subcommittee No. 5 will take time to read it in full. An extra copy is enclosed for insertion in the record of hearings.

With best wishes, I am,

Sincerely,

ALBERT WATSON, *Member of Congress.*

Enclosures.

LAW OFFICES, MCKAY, MCKAY, BLACK & WALKER,
Columbia, S.C., July 27, 1963.

In re administration civil rights proposals.

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
Congressional Office Building, Washington, D.C.

DEAR MR. CELLER: As a concerned citizen I sought a hearing before your subcommittee and was granted leave to appear before it at 10 a.m., July 24. At my own expense I traveled over 1,000 miles to come to Washington, sat in the committee room all day, but because of the excessive long-windedness of one of the prior speakers, I was deprived of the opportunity to say what I had come over a thousand miles to say. I was invited by you to submit my views in writing but I observed the vast reams of writing that were handed to your subcommittee on the day I was present and I assume that it must have trunks full of written materials from other days of hearings. I speak better than I write but I have prepared a six-page statement of my views. I hope that you and the other members of the subcommittee will take 5 minutes to read them.

The civil rights problem is one of desperate seriousness and improperly handled will bring about bitterness from millions of our people, particularly in the South.

With kind regards and thanking you for extending to me the privilege of appearing before your subcommittee (I realize, of course, that you could not control the running of time), I am,

Sincerely,

DOUGLAS MCKAY, Jr.

STATEMENT OF DOUGLAS MCKAY, JR., ATTORNEY, OF COLUMBIA, S.C., REGARDING H.R. 7152 AND RELATED PROPOSALS CONCERNING CIVIL RIGHTS LEGISLATION

My name is Douglas McKay, Jr. My home is Columbia, S.C. I am an attorney. Through my Congressman I had requested to be heard before your committee. I have come here at my own expense to appear. I represent no special group or interest except my own. I express here my concern as a citizen about certain proposals which I regard as inimical to the general welfare of all the citizens of the United States (as contrasted with perhaps the special welfare of certain groups of citizens).

I come to oppose the administration civil rights proposals as set forth particularly in H.R. 7152. I shall state herein the grounds on which I believe the proposals are contrary to the Constitution of the United States—and therefore illegal—or are unduly discriminatory or oppressive.

In order to avoid any misunderstanding as to my sentiments by way of preamble I wish to state unequivocally my belief in the following basic American rights:

1. That no citizen shall be in any way denied his right to vote by reason of race.

2. That every citizen, regardless of race, is entitled to equal protection of the laws of the State. In extension of this, where rights exist by statute or other written law (and rights can only exist under these conditions) I believe that all citizens, irrespective of race, should have equal rights or, to put it conversely, no citizen should be denied his right because of his race.

The problem lies in determining what are "rights" as distinguished from mere privileges or licenses which are not rights. I submit that the bill under consideration creates "rights" out of "privileges". In so doing it destroys rights—presently vested—of certain persons to refuse to extend the privileges to others who have no present right to demand them.

These are provisions of the Constitution, in addition to the 14th and 15th amendments, whose existence is often overlooked by some who support the civil rights proposals. Irrespective of how desirable it may be from humanitarian or political points of view to adopt the administration proposals and make them law, serious consideration must be given to the legality of the methods employed. Civil rights must not be legislated into civil wrongs.

FEDERAL POWERS ARE LIMITED

The other articles of the Constitution—which must be considered—are the following:

Article IX (of the Bill of Rights) relative to "Reservation of Rights of the People" provides:

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Article X (of the Bill of Rights) with reference to "Powers reserved to States or people" provides:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the State, are reserved to the States respectively, or to the people."

To digress momentarily, the only constitutional provisions involved in the bill under consideration—as the bases of asserted rights—are those of the 14th and 15th amendments. Thus, we must look at the 14th and 15th amendments in considering the civil rights proposals to ascertain whether they (the proposals) can in any way be grounded in those amendments.

I disagree that rights not found in the 14th and 15th amendments can be created by the Congress exercising its constitutional powers to "regulate commerce among the several States."

If the commerce clause can be extended to validate such proposals, and to create such rights, then it could be extended to cover any proposal which the Congress sees fit to pass. Under such conditions the integrity, sovereignty of

the States, and the freedom of their citizens to enjoy self-government, would be nullified.

To preserve democracy in this country the Congress must always remember its obligation under section 4 of Article IV of the original Constitution that "the United States shall guarantee to every State in this Union a republican form of government * * *." Thus, the Congress is not only limited in its power by the IX and X articles of the Bill or Rights but it has, in addition, the affirmative—and sacred—duty to protect the sovereignty of each State as to a republican form of government.

THE CONGRESS MUST RESTRAIN THE GOVERNMENT

It must be remembered that the Federal Government is much more remote from the control of the citizens than are the State governments. The Congress is the only branch of the Federal Government which is truly responsible to the voters of the country.

The President is theoretically responsible to the electoral. However, this means little when the voters may only choose between 2 persons out of 180 million, which persons, in turn, have been nominated by parties and conventions over which the individual citizens have little or no control.

In any event, the voters have no control over the executive branch with its myriad bureaucracies. Any administrative branch of government which is beyond the rebuke of the people at the ballot box contains the potential of tyranny and absolute despotism.

The Federal Supreme Court, whose members are appointed for life, and whose decisions are not subject to review, is also beyond the reach of the voting citizen. This Court has assumed authority which for all practical purposes usurps the powers of 180 million American citizens, when, by interpretations of the Constitution reversing earlier interpretations, it is able to amend the Constitution.

The doctrine promulgated in recent years that the Constitution is a flexible document designed to be brought up to date by reinterpretation by the Court is one of utmost peril to constitutional government. It is a concept most dangerous to freedom of the States and their citizens.

This digression on the part of the Supreme Court and the executive branch is called to the committee's attention solely to remind the committee that Congress itself must represent the people. It must hold the Federal Government within the bounds of the Constitution. It must safeguard the rights of the individual States and of the citizens of those States. It must not relegate the rights of the public to executive bureaucracies or to a Supreme Court which is responsible only to its own conscience.

Where there is any reasonable doubt as to the constitutionality of legislation, the Congress must exercise restraint. It must never adopt legislation in the belief that if Congress exceeded its powers the Supreme Court would correct the situation.

Congress, representing the people, must always avoid and resist further erosion, usurpation, or encroachment on its powers and those of the States. Eternal vigilance is the price of liberty.

The power of the executive branch of the Government has grown so greatly that it may now do many things which were protested in the Declaration of Independence. This power should not, under any circumstances, be extended as provided in the civil rights proposals.

The end does not justify the means in a democracy. That concept is solely for authoritarian forms of government. This brings me to consideration of the administration proposals, as noted in H.R. 7152.

TITLE I, VOTING RIGHTS

The 15th amendment already mentioned above provides that the rights of citizens of the United States to vote shall not be denied or abridged by any State on account of race, color, or previous condition of servitude. Congress is empowered to enforce this by appropriate legislation.

Congress is not empowered to proscribe or forbid any other reasonable voting qualification so long as it applies equally to all citizens and does not restrict the privileges and immunities of any citizens. Congress has no right to prohibit or proscribe literacy or other tests which apply to all voters. This is the right of the States and not the Congress.

I personally think that the requirement of a sixth grade education as a voting prerequisite would be a very good thing, as illiterate and ignorant persons are

not sufficiently informed to exercise a responsible judgment. On the other hand, the adoption of such a requirement might tend to disfranchise a great many people all over the country who are now perfectly competent to vote and have done so. It is best to leave the States to decide what tests and criteria they will apply to their individual situations.

The requirement that all literacy tests be in writing and copy given to the voter is impractical. Suppose, for example, a particular State decides that in order to pass a literacy test the voter had to copy a volume of the Encyclopedia Brittanica. He could keep a copy but would the voter ever get to vote? The Congress has no power anywhere in the Constitution to provide for Federal registration of voters. It can only enact laws to prohibit denial of voting rights because of race. To attempt to do more, the Congress would violate the rights of the several States, and of the citizens of those States.

TITLE II. DISCRIMINATION IN PUBLIC ACCOMMODATIONS

This proposal is in many respects the most drastic. It evidences a radical and frightening extension of the Federal power over individual citizens.

Under the guise of "regulating commerce" the bill proposes to force operators of businesses in given categories to serve persons whom they do not wish to serve.

The provisions of the 14th amendment forbid the States and governmental bodies to deny equal protection of the laws to all citizens, or to abridge the privileges and immunities of any citizens. Here the Congress proposes to deny to individuals—not States or political subdivisions—the right to refuse to serve or entertain other citizens because of the latter's race.

The 14th amendment empowers the Congress to require the States to do or not do certain things. It gives the Congress no power—nor can such a power be implied—to direct the conduct of individuals who are not acting as the State or as Government officials carrying out the policies of the State.

The 14th amendment prohibits the "denial of equal protection of the laws." The bill proposes to grant a special protection to a special group of citizens which it does not grant to all citizens. The bill further creates "rights" which are not presently rights at all, but mere privileges or licenses.

Suppose a white man and a colored man separately reach a motel with one vacant room and each asks for it. If the white man is refused he must go elsewhere with no right at all except to find a place somewhere else. On the other hand, the colored man may claim that because he was colored he was refused the room and subject the motel keeper to many types of punishment.

Except to the extent that the several States by their own laws or their concept of common law have required the operators of public facilities such as theaters, hotels, restaurants, and the like, to serve all persons who come to them to use their facilities, no one has a "right" to be served in any such facility. Thus, the owner may perfectly properly decline to serve anyone for any reason he may choose.

Here, the bill proposes to create a right which discriminates in favor of one racial group as against another. I submit that Congress cannot constitutionally do this. The 14th amendment at best prohibits the denial of rights by the State and Congress is empowered to enforce this. It does not direct that the States create or grant specific rights. This bill proposes to grant specific rights to certain groups. The power to implement the 14th amendment by prohibiting the denial of rights by the States to their citizens cannot legally be extended to the creation of new rights for racial minorities by the Congress.

The oppressive civil damages provisions in one instance requiring the restaurant owner to pay all legal fees and expenses of the disgruntled prospective customer are outrageous and foreign to the common law concepts of costs in most States. Even more unique is the provision that the Federal Government provide free representation by the Attorney General under certain conditions. The taxpayers of the United States should not be required to bear the expense of the enforcement of personal rights of individuals in civil actions.

The Government should not proceed against any citizen except to enforce the right of the Government—as distinguished from a citizen—against the citizen. This, ordinarily, is restricted to prosecution for violation of the criminal laws, and to civil actions such as the collection of taxes or the enforcement or cancellation of Government contracts.

The Government should not furnish a citizen with free legal service because of the violation of a private right of the private citizen. A person's rights are violated when he is injured by negligence, when he is slandered, when he is assaulted, when his contract is breached, and in each of these instances the law requires that he protect himself to defend his own rights. If—by this law—he has the legal right to force another citizen to serve him, and that citizen refuses to do so, then the possessor of the right should enforce it at his own cost against the other citizen, not at the taxpayers' cost.

A business is a property, the right to operate a business is a property right, and the decision as to whom to serve is an incident of the property right. The right to enter into or refuse to enter into a contract is a property right. The contract itself is a property right. To force a proprietor in the operation of his private business—the use of his property—surrender his right to select whom he will serve takes away from him his property to that extent.

To force the proprietor to accept a patron who, for any reason, he declines to accept is to coerce the proprietor to enter into a contract, and deny him the right to refuse to enter into a contract. Ordinarily, in the past, a contract entered into by duress of any kind has been held to be illegal.

Here, in order to accomplish humanitarian and eleemosynary purposes, rights are taken from the proprietor of the businesses involved without due process of law, and complementary rights are given to others for racial reasons. This denies equality of protection guaranteed by the 14th amendment and deprives the businessman of his property without due process of law, which the Congress is supposed to guarantee will not happen in the enforcement of the 14th amendment.

Finally, what concept is more foreign to the traditional concept of individual freedom than that which would require one man to serve another whom he does not wish to serve. Enforced service is peonage.

No one should disregard the humanitarian aspects of the hardships worked on Negroes in being served in public accommodations. However, sympathy for the plight of the traveling Negro will not justify or excuse the passage of unconstitutional and oppressive laws which deprive others of valuable property rights without due process of law, and deny them the guarantee of the 14th amendment.

TITLE III. DESEGREGATION OF PUBLIC EDUCATION

This provision implementing the Supreme Court decision outlawing racial segregation goes far beyond the guarantee of "equal protection of the laws" or of the "rights and immunities" of all citizens.

Here again the Attorney General is hired as the lawyer to enforce private rights of individuals. This is done at taxpayers' expense.

Federal moneys taken—without discrimination—from all taxpayers are granted or withheld at the whim of the bureaucrat who is far beyond the reach of the voters irrespective of how he may act.

The correction of "racial imbalance," whatever that means, is a form of discrimination in reverse. The implication is that there must be some quota of races in all schools irrespective of the fact that schools in primarily white residential districts, because of their very location, may be attended by white pupils, whereas colored schools for the same reason may be attended entirely by colored students.

How unfair it is to the individual child of either race to arbitrarily pluck him away from his fellows of the same race and the school which is convenient to his home and carry him away to a distant location in order to bring about a quota balance with students of another race.

Although the Negroes represent approximately 12 percent of the population nationwide, in those schools primarily Negro they are in the majority. However, to move them all around to various white schools insures that they will be a minority in any school they attend. How does this promote the Negro's best interests?

TITLES IV THROUGH VII. COMMISSIONS AND SERVICES

The remaining titles are considered together.

The various Commissions—on Civil Rights, on Equal Employment Opportunities—the Community Relations Service, all further empower the executive branch to agitate the race problem and stir up discord.

These provide an extension of government-by-threat, where the executive branch may harass the States and withhold from them Federal moneys which have been extracted from their taxpayers.

It should be remembered that the Negroes are a minority in all States. The withholding of needed Federal funds will hurt them as badly as it will the white citizens. The race problem will not be solved by such vindictive procedures.

Forced integration is just as hateful, and just as wrong as forced segregation. The only solution to the race problem is the voluntary and willing action of both races.

The Federal Government should stay out of this field. It should not support legislation which attempts to correct racial discrimination against Negroes by providing racial discrimination against whites.

These programs, affecting private businesses (called "public facilities") and employment—public and private—give to members of minority groups—solely because of race—a club to hold over the heads of the whites.

Instead of promoting good will and removing racial discrimination, they set black against white. They must, of necessity, impair rather than improve the status of the minority.

In conclusion, I urge that the Congress not adopt these proposals. The argument is unsound that they should be adopted because they are "moral and right." Morality is merely the consensus of the community. There are many communities in this country each different from the others, thus, there are many moralities. For this very reason the Federal Government should go no further than it has already gone.

(Whereupon, at 4:35 p.m., the subcommittee was adjourned to reconvene at 2 p.m., Thursday, July 25, 1963.)

CIVIL RIGHTS

THURSDAY, JULY 25, 1963

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 5 OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to adjournment, at 2 p.m., in room 346, Cannon Building, Hon. Emanuel Celler (chairman of the subcommittee), presiding.

Present: Representatives Celler, Meader, Rodino, Rogers, Toll, Kastenmeier, and Lindsay.

Also present: Representatives Corman and Mathias.

Staff members present: William R. Foley, general counsel; William H. Copenhaver, associate counsel; and Benjamin L. Zelenko, counsel.

The CHAIRMAN. The meeting will come to order.

The first witness, Mr. Roy Wilkins, is executive director of the National Association for the Advancement of Colored People.

Mr. Wilkins, we are glad to hear from you.

We are very anxious to get your advice and counsel on this bill, H.R. 7152, and other bills of similar importance.

STATEMENT OF ROY WILKINS, EXECUTIVE SECRETARY, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, NEW YORK CITY

Mr. WILKINS. Thank you, Mr. Chairman, and I thank the members of this committee.

My name is Roy Wilkins. I live in New York City and I am executive secretary of the National Association for the Advancement of Colored People, an organization formed in 1909 with the specific objective of securing the constitutional rights of Negro American citizens. This testimony has not been approved by all member organizations of the Leadership Conference on Civil Rights, and is therefore a statement of the NAACP, but it is being submitted to them for their possible concurrence.

First, I wish to pay my respects to the chairman and ranking minority member of the Judiciary Committee and of this subcommittee. It was through their cooperation and joint leadership that Congress was able to consider and pass the Civil Rights Acts of 1957 and 1960, the first civil rights legislation since the post-Civil War period. It is this spirit of cooperation and leadership that makes use hopeful that Congress will once again face up to its responsibilities in the protection of the rights of citizens. Action at this session is imperative.

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The CHAIRMAN. I want to say, Mr. Wilkins, that this committee has done a great deal through cooperative effort. Cooperation between myself and Mr. McCollough certainly helped to bring about the Civil Rights Acts of 1957 and 1960.

There were other members of the committee who were very, very active and vigilant in helping put those through.

Mr. WILKINS. We remember very well the stellar service rendered by members of this committee and in lieu of calling all of their names, sir, I was merely felicitating them through the chairman and the minority ranking member, but we are grateful for everything they did.

We have just observed the ninth anniversary of the decision of the Supreme Court in the case of *Brown* v. *Board of Education*. Since that decision, the Court has ruled in a number of other cases that have involved the principle enunciated in that historic decision. The culmination of this series of decisions came a few weeks ago when the Court ruled that segregation in any public facility is unconstitutional.

As we soon face the opening of the 10th school year since the *Brown* decision, we find that only approximately 5 percent, according to some reckoning and 7 percent according to others, of the colored students in elementary and high schools in the 17 Southern and border States affected by the decision are attending desegregated classes.

We believe that this situation demands the attention of Members of Congress of both parties with a view to fulfilling the promises made in their 1960 party platforms. For the record, I will quote from those platforms.

The Democrats stated:

> We believe that every school district affected by the Supreme Court's school desegregation decision should submit a plan providing for at least first-step compliance by 1963 * * *

Mr. Chairman, that is this year (continuing)—

> 1963, the 100th anniversary of the Emancipation Proclamation.

The Republicans pledged:

> We will propose legislation to authorize the Attorney General to bring actions for school desegregation in appropriate cases * * *

We respectfully urge that this anniversary year of the Emancipation Proclamation is an appropriate time for the redemption of these pledges to the schoolchildren of America.

The denial of equality in public facilities is not limited to schools. Negro citizens and other minority group citizens are denied, because of race, access to hospitals, libraries, recreational areas, and other public accommodations and property. Despite the rules of the Interstate Commerce Commission, law officials still require segregation in some railroad terminals and bus stations and their related facilities.

In addition to these restrictions based on racial considerations, citizens of the United States, both white and colored, are being denied basic protections of the Bill of Rights when they attempt to use these rights in support of civil rights causes.

The tragic slaying of William L. Moore, Baltimore postman, the summary arrest of the "freedom hikers" who sought to follow in his footsteps, the mass arrests, mistreatment, and imprisonment of persons peacefully demonstrating against discrimination are recent evidence of the conspiracy against the Constitution.

I may say, Mr. Chairman and members of the committee, that the arrests and the mistreatment and imprisonment of these persons presently underway in many sections of our country and aggravated by the determination apparently of law enforcement officials to disregard the constitutional rights of these people, is having an influence on the Negro population and is inflaming them, so much so that many of them are able to see the civil rights picture only through the mistreatment that has come about of individuals in these demonstrations.

The use of electric prods by State police and others in Gadsden, Ala., the arrest and mistreatment of other demonstrators elsewhere, and the requirement of the highest bail bonds in the Nation in Charleston, S.C., where 60 persons were arrested and the minimum bond was $10,000 per person, with two bonds being set at $15,000 each. All of these people who engaged with the demonstration were being charged with incitement to riot. The bail bonds in this particular case in Charleston, S.C., amounted to $680,000.

Now in this kind of an atmosphere it is difficult for the Negro population to become objective and detached and to consider its position in anything except the position of intense persecution. Added to that, of course, was the cold-blooded midnight assassination of Medgar Evers in Jackson, Miss., on June 12, last month, which underscores the persecution of citizens because of their color.

Since its introduction in the 84th Congress, the Leadership Conference on Civil Rights has vigorously supported the plan to authorize the Attorney General to file civil injunctive suits to protect civil rights. This plan, which has become known popularly as part III, has on two occasions been adopted by the House of Representatives. We believe that if the Senate had followed the wise action of this House and passed part III, many of the problems now being discussed would be liable to solution through the orderly processes of litigation.

The denial of equal opportunity in employment affects millions of minority group citizens in every section of the country. I will not go into detail on this, as many of the organizations affiliated with the leadership conference have presented detailed testimony on this problem before the subcommittee headed by the able Congressman from California, Mr. Roosevelt.

Suffice it to say that unemployment among nonwhites is 2 to 2½ times that among whites, the average wage of nonwhites is about 60 percent of whites and the gap is steadily increasing. Add to these factors the increased trend to automation, the denial of apprenticeship training opportunity to colored applicants, and the increasing dropout rate among youth of school age and we can foresee a major economic disaster facing the Negro community unless drastic remedial measures are adopted.

The CHAIRMAN. Some of the leaders in the movement are demanding what, for want of a better term, is called the quota system, since

Negroes constitute a certain percentage of the entire population. They want that percentage reflected in employment immediately.

What are your views on that?

Mr. WILKINS. Our association has never been in favor of the quota system.

We believe the quota system is unfair whether it is used for Negroes or against Negroes. While I can understand in certain local situations, perhaps in order to blast through and get started, some advocates would qualify for a quota system, we feel that people ought to be hired because of their ability, irrespective of their color and if one, say, should set a quota of 10 percent for Negro employment, whereas the Negro population suitable for that employment or the Negroes prepared to assume their roles in such categories might exceed 10 percent.

This would mean that if you hired 10 percent of them, you satisfied the quota and that was all there was to it.

Our association does not believe, either, that any white person should be discharged in order to make room for a Negro. We believe, rather, that a solution for both white and colored workers lies in the expansion of the economy, in the creation of more jobs, so that there will be no competition or no more than normal competition for employment and that both white workers and Negro workers will have access to jobs without any ethnic quotas whatsoever.

We don't believe in them. We never have.

The CHAIRMAN. That is a very, very creditable statement, Mr. Wilkins. Some southern leaders also say that there ought to be the same percentage in employment of Negroes in comparison to the entire population by way of atonement by the whites because of past wrongs perpetrated by the whites against the Negroes.

Do you believe in that idea of atonement?

It might involve a lot of innocent people.

Mr. WILKINS. Our whole case, of course, rests upon the attainment of equality of opportunity and we believe that if that is attained and is fairly executed and carried out that there will be no necessity for quotas or for atonement or anything else.

I come, Mr. Chairman, from the State of Minnesota, where the Negro population was almost as small as it is in the State of Nevada. That is difficult to imagine, but there they were.

Could you say that in the town of Alexandria, Minn., or Bemidji, on the Iron Range or International Falls, up near the border, where there was not a Negro within 200 miles, that Negroes ought to have a 10 percent of the employment there because they were 10 percent of the population throughout the United States?

We have to be a little sane and sensible about this, it seems to me, and the minute you go into the quota system or to some atonement business, you get into all sorts of side paths that lead you to all sorts of ridiculous situations and conclusions.

We want equality, equality of opportunity and employment on the basis of ability. That might mean that 50 percent of the labor force would be Negro or it might mean that instead of having 2 executives who are Negroes, you might have 8 or 10 because they would be qualified and you would need them and you drew no line against them, but if you have a quota which says we ought to have 2 or 1

to show off or put 1 in the front office or see that 1 is behind the reception desk or sit them over there so they can see them when they come in but nobody back behind, this is equally deceptive.

I could go on on that theme but I think you understand what I mean in response to your question.

Mr. LINDSAY. Did your question mean colored schools as well?

The CHAIRMAN. Yes.

Mr. LINDSAY. I was wondering whether your answer to the chairman's question on the quotas, which related to employment practices, also was intended to embrace the subject of primary education.

Mr. WILKINS. Well, Mr. Lindsay, I was talking directly about employment, of course.

Mr. LINDSAY. Yes.

Mr. WILKINS. And I think when we get into the field of education, there may be some factors there that would prevent any absolute formula. I am not trying to welch on the question at all, but there would be some circumstances, it seems to me, and some administrative practices and some educational practices and some intangibles about families and parents and children and their relationship to the home and the neighborhood and that sort of thing which might not relate exactly to a formula.

Mr. LINDSAY. Thank you.

Mr. MEADER. Mr. Chairman, might I ask a question while we are interrupting the reading of the statement?

The CHAIRMAN. Yes.

Mr. MEADER. I notice, as you say, in your opening paragraph that your entire statement has not been approved by the Leadership Conference on Civil Rights, but apparently certain aspects of it have been, that is perhaps the part that you have just been reading, for instance, the second paragraph commencing on page 2?

Mr. WILKINS. Yes.

Mr. MEADER. You say the leadership conference on civil rights has vigorously supported part 3 and so on, so I assume that some sections of your statement simply report positions previously taken by leaders of the conference?

Mr. WILKINS. Yes, Mr. Meader.

Mr. MEADER. For the record would you mind stating the names of the organizations that are members of this leadership conference?

Mr. WILKINS. I will be glad to supply them to the committee. There are 55 or 56 organizations, in the national organizations that comprise this leadership conference.

Mr. MEADER. Would it be difficult to supply us with the names of the numbers of members that they have?

Mr. WILKINS. I don't think it would be difficult.

Mr. MEADER. And their home office address?

Mr. WILKINS. I could get that information to you.

Mr. MEADER. This leadership conference has been functioning, oh, since 1946, 1947, along there. It is a loose organization of national groups, who have come together solely in the interest of civil rights legislation on the national level. It does not concern itself with any other type of legislation. Each one goes his own way.

The labor groups pursue their primary interest of labor legislation and other groups pursue their interests, but they come together in this particular conference only to promote civil rights legislation.

They have no constitution and no bill of rights, you might say and no structure—have few officers, a minimum number of officers and it is a very loose group.

Would you say that it includes every major sizable group interested in civil rights?

Mr. WILKINS. I would say it does, yes.

Labor unions and women's groups.

Mr. MEADER. It includes CORE?

Mr. WILKINS. I think it does. I am not sure, if so, they are of recent addition.

Mr. MEADER. The Black Muslim groups——

Mr. WILKINS. The Black Muslims are not interested in what we are interested in.

The demonstrations across the Nation involve more than the immediate tactical objective, the right to use places of public accommodation free from discrimination. They involve, more importantly, the demand that human beings in America shall be treated as human beings with the full dignity that their essential nature commands. They involve a testing of the basic premise on which this Nation was founded, a test of whether in this year of 1963 the United States can fulfill the promise of the Declaration of Independence—

that all men are created equal, that they are endowed by their Creator with certain unalienable rights.

The denial of these rights has too long been the practice in the United States and can no longer be tolerated. President Kennedy in his civil rights message to Congress recognized the growing impatience of colored citizens on one phase of this subject when he said:

No act is more contrary to the spirit of our democracy and Constitution—or more rightfully resented by a Negro citizen who seeks only equal treatment—than the barring of that citizen from restaurants, hotels, theaters, recreational areas, and other public accommodations and facilities.

Clearly, the time has arrived when Congress must act. The present crisis is due in substantial measure to the failure of the Congress to act in past years.

President Kennedy has sent to Congress a civil rights program that is probably the most comprehensive ever submitted by a Chief Executive.

President Kennedy's civil rights message noted well the advances made in securing the constitutional rights of all citizens. But the message quite properly recognized the Nation's failure to implement fully the guarantee of equal protection of the laws contained in the 14th amendment. It discussed major problems facing colored American citizens, problems Congress has not as yet seen fit to meet—the slow pace of school desegregation, limited access to employment opportunities, discrimination in places of public accommodation, and the continuing use of Federal funds to strengthen and extend racial segregation. Importantly, it recognized the necessity of correcting these abuses because they are morally wrong and incompatible with our democratic ideals.

Because the President's message did so eloquently state the need for dramatic and extensive governmental civil rights action, it is regrettable to those who share his objectives that legislative proposals put forth in his program meet only partially the needs that exist,

needs that the President recognized in his message, and needs for which legislative remedies were promised in the party platform and campaign speeches on which he was elected in 1960.

The need for governmental action could perhaps be no more vividly expressed than in the words of the President's message:

> The Negro baby born in America today—regardless of the section or State in which he is born—has about one-half as much chance of completing high school as a white baby born in the same place on the same day; one-third as much chance of completing college; one-third as much chance of becoming a professional man; twice as much chance of becoming unemployed; about one-seventh as much chance of earning $10,000 per year; a life expectancy which is 7 years less; and the prospects of earning only half as much.

The proposals to prohibit discrimination in places of public accommodations and to authorize action by the Attorney General in school desegregation cases, if enacted, would be significant achievements in two important areas.

And this is advocated in the pending legislation.

The present denial of access to many public places and the continuing defiance of the Supreme Court's order in the school segregation cases are high among the limitations on full citizenship rights of Negroes.

The adoption of these proposals would accelerate the removal of significant obstacles to first-class citizenship.

The CHAIRMAN. May I ask at that point concerning school desegregation cases, was your organization keeping a watch on the alleged delays by certain of the U.S. district judges who are handling these desegregation cases?

When I say "delays" I mean deliberate delays permitted by the judges themselves.

Mr. WILKINS. Yes, Mr. Chairman; we have noted the actions of some of the Federal judges in these Federal cases.

A very small percentage of the judges on southern benches, but nevertheless located frequently in strategic areas.

Therefore, their rulings and their actions have attracted unusual attention because they are a departure from the norm.

The CHAIRMAN. Would you care to submit to me, not necessarily for the record although if the committee wishes I will be glad to insert it in the record, any information that you have on that score?

Mr. WILKINS. I could ask our legal department to set forth any unusual and protracted delays on the part of these judges in that respect.

I will be glad to supply it.

The CHAIRMAN. Thank you.

Mr. WILKINS. Of course, I am sure, since you are a lawyer, sir, you recognize that it is sometimes difficult to draw a line between deliberate delays by a judge and delays in——

The CHAIRMAN. I understand. That is why I don't necessarily want to put it in the record unless the committee wants it, but if you will let me have that, I will be very happy to receive it.

Mr. WILKINS. You can also understand the reluctance of an association like ours, which has frequent litigation in these courts, to point the finger at a judge and accuse him of unusual delays unless it is irrefutable, so I will be glad to consult with our legal staff on that.

The CHAIRMAN. I will leave that to your own discretion.

Mr. WILKINS. Thank you, sir.

While recognizing the significance and worthiness of the President's program, it is important to also recognize that it is a most moderate approach to the problems confronting the Nation. In the light of existing conditions and of the platform on which the President was elected, it is apparent that many governmental powers that could be used to further civil rights will not be utilized under this program.

Because of the limited approach used by the President, it is necessary that civil rights advocates in the Congress resist any effort to weaken or to compromise the program. Not only should a fight be made against weakening amendments, but affirmative action should be taken to strengthen the pending bills.

The piecemeal approach to civil rights legislation has proved inadequate. Therefore, if a sincere effort is to be made to enact civil rights legislation, the chief object should be to enact as comprehensive a bill as possible.

In that connection, I should like to refresh the memory of the chairman on historic struggles of 1957 and 1960, in which some civil rights legislation was enacted, largely with the aid and assistance of the chairman, himself, the minority ranking member here, and with others, both in this House and in the other body.

But now we have the Attorney General of the United States, just as did the previous Attorney General, Mr. Rogers, coming forth to the Congress and stating that the legislation of 1957 and 1960 has proved to be insufficient and that he needs more legislation.

That is the reason, sir, we indict the piecemeal approach, as we call it, and hope that there will be a comprehensive enactment at this Congress, so that Attorney General Kennedy will not have to come back in 2 years and say, "Well, this enabled me to reach only an x percentage of the problem and I need legislation to reach still more of it."

The President's civil rights program has been introduced in the House by Congressman Celler as H.R. 7152 and in the Senate by Senator Mansfield as S. 1731.

The program, formally titled, "Civil Rights Act of 1963" contains eight titles, really seven, relating to voting rights, public accommodations, school desegregation, community relations service, Commission on Civil Rights, nondiscrimination in Federal programs, Commission on Equal Employment Opportunity, and miscellaneous provisions.

Mr. MEADER. Mr. Chairman, at that point and before I go to answer my name on the rollcall, may I ask Mr. Wilkins if he won't comment briefly on progress made in civil rights by States and municipalities since the 1957 Federal act and to what extent he believes that the achievement of some of these goals could have been achieved better through State and local action than through Federal action?

Mr. WILKINS. Well, of course, Representative Meader, a great deal of the State actions—I am sure you don't mean to ascribe State actions to the stimulus that was received from the April 1957 and 1960 acts, because the States already were underway with State actions prior to that time.

Mr. MEADER. I was just taking a cutoff.

Mr. WILKINS. Yes. My own State of New York enacted a fair employment practice law in 1945, 12 long years before the 1957 act and similarly the States of New Jersey, Connecticut, and Massachusetts, I believe, and Wisconsin and Colorado were among those enacting fair employment practice laws.

As for public accommodations, a great many States have had these laws on the books for 30, 40, and 50 years.

The CHAIRMAN. Thirty-two States.

Mr. WILKINS. Yes, all together. I am speaking about the States that enacted it prior to 1957. All together there are 32 States with those laws.

I would say that as testimony before the subcommittee on FEPC will indicate in great detail——

The CHAIRMAN. Would you suspend a minute?

Would you like for us to continue?

Mr. MEADER. I will come back.

The CHAIRMAN. It is a rollcall and I don't want to interrupt your testimony. I will sit through this.

Mr. WILKINS. I will wait, Mr. Chairman. I will wait for you, sir.

The CHAIRMAN. I will be willing to sit, because we have two other witnesses and I want to expedite consideration.

Mr. MEADER. I will leave now and perhaps we can come back to my question later on.

The CHAIRMAN. You may continue.

Mr. WILKINS. Mr. Chairman, I don't want to cause any inconvenience. I will be very happy to wait for you to come back. I will telescope this.

The CHAIRMAN. We have two more witnesses besides yourself that we want to conclude today.

Mr. WILKINS. I was going to telescope this in favor of those witnesses.

The CHAIRMAN. No; you handle it any way you wish.

Mr. WILKINS. Very good, sir.

The first title relates to voting rights. It repeats, without substantial change, the administration's voting bill previously introduced in Congress in February.

The moderate approach of the President is apparent in this voting program.

Although it would expedite the handling of the problems in the courts, it does not supply the solution to the problems of mass disenfranchisement.

Four provisions noted apply only to Federal elections, although there is constitutional authority to apply them to State elections also.

The requirement that literacy tests be in writing or transcribed could make proof of discrimination simpler in some instances. This again would be of some limited value.

The provision relating to a presumption of literacy based on a sixth grade education marks a distinct retreat by the administration on this issue. The presumption now proposed would be a rebuttable one. In the 87th Congress, the administration offered a bill creating a conclusive presumption of literacy based on sixth grade education.

If the present literacy test provision is enacted into law, registrars will still be in a position to deny registration to applicants regardless of their educational qualifications. When such registrars are challenged in court, the provision would take effect and create a presumption of literacy in favor of the person applying to register.

The CHAIRMAN. They could say that a sixth grade education was insufficient and overcome the presumption of literacy by asking all manner of questions and then you might have the same difficulty presented as you have now.

Mr. WILKINS. Precisely. Precisely, that is the point.

Mr. FOLEY. On that point of presumption, don't you think that there is a serious constitutional question if it is made conclusive?

Mr. WILKINS. There was danger in the presumptive conclusion.

Mr. FOLEY. The conclusive presumption. First of all, you would not reach the dangerous question of the conclusion, the conclusive presumption until such time as a registrar was held in contempt of court.

Mr. WILKINS. True.

Mr. FOLEY. Assuming this was a criminal contempt, we run into the problem of a conclusive presumption in a criminal proceeding and based upon what the courts have held as to conclusive presumption in criminal proceedings, I am a little concerned, myself, whether the conclusive presumption might prove dangerous.

Mr. WILKINS. Yes, it has its dangers and its weaknesses, as does this approach or both of them have. Yes. Both of them have.

Mr. FOLEY. I agree, but the only enforcement you have under this provision would be a contempt of court citation, isn't that true?

Mr. WILKINS. That is very true.

Mr. FOLEY. And is that—that enlarges the field.

The CHAIRMAN. Wouldn't it be better if we had no presumption and simply say that anybody who is 21 years of age and able bodied can vote? A number of States have it.

Mr. WILKINS. A number of States do have it, and they haven't had anarchy as yet that I have heard of, and they haven't elected any persons to office not able to hold their own with the elected officers of States that have great requirements of the voters.

The CHAIRMAN. Even in Georgia they allow those 18 years of age to vote.

Mr. WILKINS. Exactly.

In a great many—I might say that there is a growing sentiment in the Negro community, particularly among the younger ones, a sentiment of irritation at the restrictions. One youngster said to me, "They call me in the Army to fight when I am 18 years old. Why can't I vote? Why do I have to know so much in order to vote, when I don't have to know so much in order to die?"

The CHAIRMAN. Of course it is difficult to correlate going into the Army with the right to vote.

Mr. WILKINS. Right.

The CHAIRMAN. That is why I would oppose 18-year-olds having the right to vote. They haven't even developed their wisdom teeth yet.

Mr. WILKINS. Mr. Chairman, you said that, I didn't. [Laughter.]

I can see the danger there, but you can also understand our apprehension over the apparent weaknesses of this approach.

Mr. FOLEY. Of course there are only 20 States that have some form of literacy test now, as a voting qualification.

The CHAIRMAN. In other words, most do not have any such requirement.

Mr. WILKINS. The proposed temporary voting referee plan would authorize the appointment of temporary referees to register qualified applicants in cases brought under the 1960 Civil Rights Act when the Attorney General certifies that less than 15 percent of the colored citizens over voting age in a voting area are registered to vote.

As the President recognized in his February civil rights message, disenfranchisement does not result solely from the discriminatory practices of local officials. It is also rooted in economic and social pressures, harassment by law officers, threats of bodily harm, and use of physical violence. These factors are likely to be most widespread in those counties where less than 15 percent of the colored population is registered to vote. It is not likely that the proposed plan will change conditions substantially in these areas.

The requirement of individual action of each aggrieved person and the complicated procedural requirements are other factors that suggest this proposal would have little value, if enacted.

The expedited handling of voting cases may be of some minor help in breaking the logjam of voting cases in the courts.

The bill's voting section needs considerable strengthening to make it an effective vehicle to meet the problem of mass denial of voting rights.

Mr. WILKINS. Unquestionably I say it does meet some of the problems presented. In this case, along with the rest of the bill, our official position is that we want the President's program enacted. We would like to see it strengthened in such ways as it can be strengthened and, if possible, in line with the suggestions we make here, but the failure to adopt all of the strengthening suggestions will not result in us walking out in a huff and saying that we would rather not have it.

Our position is that we want the President's bill, but we want to see it stronger than it is and this appears all through my testimony.

For example, the adoption of such bills as S. 1214 on the Senate side which would remove all arbitrary restrictions on the right to vote and S. 1281 which would permit the Government to supervise all Federal elections, would greatly increase the chance of disenfranchised citizens to vote.

In that connection I would like to say that while this latter suggestion of authorizing the Federal Government to supervise all Federal elections may sound to be highly, highly controversial, to some of our traditional officeholders and politicians, nevertheless, the gross abuses in the South particularly of Negroes who apply for registration in voting and the evidence uncovered, not by Federal officials but by State commissions which have looked into this matter, the gross abuses have prompted this suggestion that the way to settle the whole business is to have the Federal Government go in there and supervise elections and take it out of the hands of the local people all together, because they have abused it over the time, over the years.

Now, this may seem to be a radical suggestion, but it only indicates

how far and how deeply this hurt has penetrated into the Negro community.

The CHAIRMAN. What about State elections?

Mr. WILKINS. We believe that these provisions can apply to State elections and that certain decisions of the courts have so applied them. We don't believe that there needs to be an exception limiting them to Federal elections.

The CHAIRMAN. But my bill is limited to Federal elections.

Mr. WILKINS. Yes, it is.

The CHAIRMAN. Would you apply that standard also to State elections?

Mr. WILKINS. My advisers tell me that it could be extended very easily.

Mr. FOLEY. Not as to qualifications, though.

Mr. WILKINS. Not as to qualifications, no.

The CHAIRMAN. The 15th amendment states—

The right of citizens of the United States to vote,

It doesn't say to vote in the Federal or State elections—

shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

The Congress shall have power to enforce this article by appropriate legislation.

I think we have clear authority to provide for supervision of State elections as well as Federal elections.

Mr. WILKINS. I would think so, Mr. Chairman, especially since the State elections have a great impact on the life of the people and in a sense influence the national policy.

The CHAIRMAN. The only trouble, Mr. Wilkins, is this. If we had added State elections, we could foresee a great deal of trouble, not only in this committee, but on the floor of the House.

I thought about it and in the interests of getting more expeditious action and overcoming as many obstacles as I could, and in order to get something on the statute books, I left out State elections. We might have great difficulty by adding State elections.

I am speaking now as a practical politician and I know you understand the meaning of that word.

Mr. WILKINS. Mr. Chairman, I would defer to your expert judgment in that respect, reserving, of course, the right to stand upon my own feeling in the matter, but it is my conviction that if this provision should be enacted, applying to Federal elections, we will have corrected part of the conditions of which we complained and if the opponents persist in the course that they are pursuing, then we can take up the matter with even greater justification and even deeper complaint than we have now.

The CHAIRMAN. Very well spoken.

Mr. FOLEY. Before you go into title II, the question has been raised by one of the members of the subcommittee relating to section 101 of Mr. Celler's bill—subsection (2) (c)—which refers to the employment of a literacy test as a qualification for voting in any Federal election until such test is administered to each individual wholly in writing.

This member has raised the question whether that particular language requires the individual seeking to qualify to vote to write out the answers himself.

Do you interpret that language to mean that?

It is on page 4, beginning on line 4 through line 6.

Mr. WILKINS. I would interpret that as requiring the applicant to write out the answers himself.

Mr. FOLEY. That raises a very serious problem because many States have literacy tests, which, are not required to be in writing; they can be an oral examination.

Then in some States that do have a literacy test to require the ability to read and write, such as New York, there is an exception in those laws for the physically disabled.

I am thinking about a man who is a paraplegic. He can't write. You may have a man who may be able to qualify but because of some physical limitation, he cannot write.

Now, would this proposal relating to Federal elections, the language now used, require the administration of literacy tests which under State law, which could be administered orally, require that test to be transcribed into writing? If so, you are placing a limitation, a burden, may I say, upon an individual seeking to qualify the vote.

Mr. WILKINS. Yes; in such cases where he is physically unable to write.

Mr. FOLEY. Do you think that should be amended to take care of the case of physical disability?

Mr. WILKINS. I would say yes. I wouldn't want to penalize a person who physically is unable to write and some provision ought to be made there, either optional or oral examination or provide for assistance.

Mr. FOLEY. What about the case now of a State that doesn't require you to put your answers in writing; it is merely an oral examination? Do you think that the Federal Government should impose this condition that that oral examination be taken down and recorded?

Mr. WILKINS. Another amusing matter occurs to me in this connection.

Some years ago the State of Mississippi changed its registration procedures and provided for a written test. And the registrars were required to file and keep these tests, the answers. About 6 months after the law was passed, there was a great protest from the 82 county registrars, saying that this was a terrible handicap to them in keeping down the Negro registration, because it was difficult if any inspectors inspected the files. It was difficult to explain why you failed a Negro, who had given certain answers, yet passed a white man, back to back, as he says, in the files.

Therefore, they were petitioning the legislature to do away with written evidence so there wouldn't be evidence of written discrimination, so this suggests another way on the other side of the coin, that a written examination could be a handicap, not to us, but to the other side.

I realize that this is a question probably requiring some delineation there.

Under title II, as we all know, the public accommodations question, a good deal of question exists on the discrimination in this area.

I would say in view of the national policy which is enunciated, we urge that the Attorney General be authorized to act independently

of individual complaints and of the economic status of the complainants.

The Attorney General, it provides, could enter suit on receipt of a written complaint, if the complainant is unable to bring suit because of financial reasons or fear of reprisals, but we feel that the Attorney General should be authorized to act independently of individual complaints in the economic status, whether they are poor or rich.

Before filing suit, the Attorney General would be required to refer the complaint to the community relations service provided under the bill and to any appropriate State agency with authority to prohibit the discriminatory practice.

Courts would have jurisdiction of actions brought under this provision without the necessity of exhausting administrative remedies.

The bill relies on both the 14th amendment and the interstate commerce clause for the constitutional authority to act. If the President's proposals are enacted, they would insure so far as is legally possible, equal treatment in such establishments.

In view of the national policy enunciated, we urge that the Attorney General would be authorized to act independently of individual complaints and of the economic status of the complainants.

Since this is the most contested title of the bill, there will be efforts to compromise it. The nature of the effort to weaken the public accommodations provisions is already evident—a limitation on the size of the establishment covered by the bill. The mythical "Mrs. Murphy's boardinghouse" has become the symbol of opposition to complete elimination of discrimination.

Such a differentiation between large and small is not morally or legally tenable in our view. There is no more reason for a small store to discriminate against Negroes than a large one.

The CHAIRMAN. Isn't it true that if we draw lines to make the large stores subject to the act, we may exclude the small stores from it? But since the small stores are ones that the Negro, because of his economic status, can patronize, you don't do too much good for the very people you are trying to help.

Mr. WILKINS. Exactly so. This is one other aspect of it, aside from the moral issue. Practically he spends a lot of money with those smaller stores, and that is where the treatment is important. By and large, if he gets to the place, the economic status, where he can patronize the larger stores, with their wider variety of goods, and their higher prices, he is more likely not to be discriminated against by those establishments because he has money to spend on a scale which they welcome. So that this differentiation would work a hardship on it.

The CHAIRMAN. If we would embrace all stores, all restaurants, all places of public accommodation, wouldn't there be an inordinate difficulty in enforcing the statute? Some of the leaders on your side are now advocating a national police. Are you in favor of the national police?

Mr. WILKINS. National police?

The CHAIRMAN. Yes. Federal police.

Mr. WILKINS. Federal police, for this——

The CHAIRMAN. For any portion or any title of the bill, all civil rights, and including the enforcement of title II, there would be

those who advocated the national police. I am very much concerned with that, because we have never had any national police.

Frankly, the Congress has no police powers. Our only powers are to implement legislation which we adopt for the purpose of enforcing legislation, but police powers as such, per se, we do not have.

What are your views on that?

Mr. WILKINS. Mr. Chairman, I am afraid I can't make a definitive comment on this particular suggestion because, as I saw it, it is a newspaper story, or interview, which may or may not be complete and accurate, but as I read it—and I can comment only on what I read—as I read it, Dr. Martin Luther King, I believe, was being interviewed.

He was complaining about police brutality and mistreatment in arrests of demonstrators who were carrying on demonstrations in various parts of the South. He said the mistreatment was so widespread and so universal and aroused so much resentment that he didn't see any way out of it except to have—correction, except to have Federal police. Now this is the extent of my knowledge of this, and I am sure if Dr. King has any plans in mind, he probably will enunciate it a little more clearly.

The CHAIRMAN. Here is the newspaper item, New York Herald Tribune, Thursday, July 25. It is attributed to Dr. Martin Luther King. "A stop must be put to brutality by local, city, and State police." He said he did not think the Federal marshals are equipped to handle the civil rights policing job. "A big Federal police force would be needed at first," he said, "When citizens learned of its existence, the need for it would diminish."

Mr. WILKINS. As I say, Mr. Chairman, this is the report of a newspaper interview, and I can say somewhat ruefully, from my own experience, that at times newspaper interviews may be accurate, but far from complete.

They may be accurate in what they report, but I can't understand this. I can understand the despair and the anger of rank and file and leadership class of Negroes over the continual and deliberate and flagrant disregard of nominal and normal rights, such as are enjoyed in practically every State in the Union, by the police forces in certain areas of our country, police forces who regard it as a crime to carry a picket sign, a crime to protest, a crime to march, a crime to make any sort of complaint whatsoever and they haven't read the U.S. Constitution at all, not even in the sixth grade, and they don't, even if they have read it, they do not relate it to Negro citizens in their area, to whom they are accustomed to telling what they should do and what they can do, and can't do, and so the Constiution means nothing to them.

What Dr. King means is this: That we need some Federal force, if I understand the interview, we need some Federal force now to overcome this attitude and these activities of the local police—not to vindicate the people in any wrongdoing, but to protect them in doing that which is no crime anywhere else, except in the area which regards any protest by a Negro as being a crime against the conditions that exist there.

You may say that you view this with some apprehension, perhaps a great many Americans would view this with apprehension. It

might begin to smack to some Americans as State police in the overall sense of a gestapo. It would be a fearful weapon in the hands of a cunning or a strong Federal power.

The CHAIRMAN. That is my concern. It might be prostituted. Its purpose might be inverted as something sinister.

Mr. WILKINS. That is very true, but Mr. Chairman, I don't think we can afford to lose sight of the fact that until these flagrant abuses are summarily brought to a halt by someone, either by the courts or by Federal action, with the present Federal marshals or the present Federal authorities, but unless someone sort of brings to heel this freewheeling arrest and persecution, and characterization of Negroes who merely are peacefully acting for their rights, unless they bring a halt to this sort of police action, then there will be an increasing demand for it.

Now maybe as they sit thoughtfully and think of it, Negroes, themselves, will recognize the dangers inherent in a Federal police force, but what they are suffering now, sir, is, in effect, a gestapo treatment, Federal-State police treatment, and so naturally they can't be concerned with what might give you apprehension, or other citizens living in free areas apprehension, because they already are living under a gestapo and what they want is relief from it.

The CHAIRMAN. I wouldn't want them to have, in addition to a local gestapo, a Federal gestapo.

Mr. WILKINS. I wouldn't wish that on them either, but you can understand that they would, in their agony, they would strike out for any kind of relief, whether it upset the applecart, whether it was traditional or not.

The CHAIRMAN. That is quite understandable.

Mr. FOLEY. Mr. Wilkins, on that point, one of the witnesses who testified here, said this about this condition: That he thought that what he called the "Federal presence" on these occasions might serve as a deterrent to the local police from engaging in some of the tactics they have engaged in.

Mr. WILKINS. Yes, it would, and it has, and yet these local people have not hesitated to offer insult and embarrassment and affronts to Federal officers. They have attacked U.S. marshals physically, they have made snide remarks to as high an officer as the Attorney General of the United States.

They have not hesitated to insult Presidents of the United States, not only the present President, but Mr. Eisenhower, also, was subjected to insult.

Mr. Chairman, the real correction of these evils in the long run lies, of course, in giving the people in these areas, themselves, the political freedom to determine the climate in their own areas.

The CHAIRMAN. Give them education, give them the ballot and the thing will take care of itself.

Mr. WILKINS. Give them the ballot and let's not be so technical in approaching the destruction of the barriers to the ballot box, because every time this question of the ballot arises, it is a scandal that only 4 percent of the Negro population of the State of Mississippi is registered to vote—less than 4 percent, 3.84 or something like that.

Now there are some 750,000 Negro citizens in the State of Mississippi, and they do not have a single word to say about who is Governor,

who is elected to the State legislature, who is the judge, who is the sheriff, who is the Congressman, and all of these people hold jurisdiction over their lives and their livelihood, and if they had the vote, it is inconceivable that they would have a Governor, such as the present incumbent in the State capitol in Jackson. It is inconceivable.

Now until we loosen up all of our so-called procedures and our reverence for the traditional channels, and make it possible for these people to take charge of their own destiny, then it seems to me we are obligated—I say "we" as the Federal Government, we are obligated to take strong measures to see that they have interim protection while we trickle down to them the weapon of the ballot by which they can achieve their own salvation.

Mr. KASTENMEIER. Mr. Chairman, a collateral point. Mr. Wilkins, perhaps not as serious at the moment, but you did mention it when you talked about police, demonstrations, and the like, and what happens to a number of citizens who demonstrate. You mentioned earlier the type of bonds these people were held on. I am wondering whether you don't believe that we might be able to do something with respect to people who now have the stigma of arrest, criminal proceedings, who probably have been found guilty at local levels, who in later years—and many are young people—will perpetually have on their records this stigma of arrest and conviction for crimes against the State or local authority.

Do you think that there is anything in this field that we might be able to do?

Mr. WILKINS. Well, Mr. Kastenmeier, I am not an authority in that particular area. I am not a lawyer, and I am not prepared this afternoon to make a specific suggestion to the committee.

I do know that in the city of New York we have taken and passed the necessary legislation at the suggestion of the deputy mayor which specifically suggests that for any sit-ins for racial discrimination, which shall appear on the application of any applicant for any employment or any other matter before the city of New York, that this shall not be credited at all. It shall not be a bar.

In other words, New York City has removed this business, this stigma, but I am sorry to say that in many other communities it will be a stigma and a handicap, and people will be classified as having been convicted.

You see, all you need is those magic words "having been convicted." Of what? Of stealing $400,000? No. Of beating a child? No. But you are a convict because you were convicted of disorderly conduct, or misdemeanor or trespass because you were carrying a picket sign and protesting racial discrimination, and I wish something could be done, some notice of this could be taken by the Congress.

Of course, I may say for you, for your information, that in the Negro community itself, irrespective of what may be said, or done, by any other community, this sort of thing is being regarded now as a badge of honor, and no stigma attaches to it—and among a good many white liberals in this country, people who love the Constitution and the American institutions, this is also regarded as a badge of honor. But I don't know what school board, or what employer, or what body down the line will seize upon this 10 years from now and say to this young

man "You were a convict in 1961," and he says "Oh, that was for just marching down the street."

And they say "Well, I don't know. But it says here you were convicted."

And he may not get the job, or his neighbors may look at him, or a real estate dealer may not show him a house, and that sort of thing.

The CHAIRMAN. I remember on a visit to India that Indians practicing peaceful resistance were arrested. I was introduced to Madam Pandit and Nehru, and I was introduced to her followers. She has served several years in prison. She is a woman of conviction.

Mr. KASTENMEIER. I feel this is a problem, and I tried to deal with it in a piece of legislation that I introduced last Tuesday. It may be years ahead. I know how the Government operates on form 57 and I think that this is an area with which this committee ought to concern itself.

Mr. WILKINS. I was going to say in support of what Mr. Kastenmeier has said, just this morning I was confronted in another hearing with an alleged discharge from the Army under certain conditions, a discharge which occurred 17 or 18 years ago, and which in that interim, through a court action and hearings and the proper tribunals has been thrown out and changed and the person has been vindicated, yet here in 1963, on July 25, an alleged discharge for a certain such cause is being thrown up as a roadblock, not to that individual, but if you please, to civil rights legislation in behalf of the group to which he belongs, and this shows you, sir, how far, as you have correctly indicated, how far this can be strung out in some future day.

Mr. ROGERS. I want to direct attention to the form 57, as Mr. Kastenmeier said. You know it is a Civil Service rule that you must speak the truth on this form. If you have been convicted of a sit-in demonstration and you fail to put it there, thereafter the Civil Service Commission usually says that that is grounds for disqualification.

Don't you think we should explore the possibilities of having the Civil Service Commission and the Federal Government look into that rather closely where that is the answer to the question put on the form 57?

Mr. WILKINS. Yes.

Representative Rogers, I would suggest that. That is what our Civil Service Commission in New York City has done and they have been instructed to disregard all such and the applicant, of course, is expected to put down that he was convicted of a sit-in demonstration or a picketing demonstration, and the civil service is thereby instructed to disregard any such in its evaluation.

Mr. MATHIAS. Mr. Wilkins, in your statement a minute ago you referred to the rather shocking statistics as to registered voters in the State of Mississippi. I wonder if you are familiar with the bill which several of our colleagues, including myself, introduced in January—January 31—which has the provision which would put into operation the provisions of the 14th amendment, reducing the representation in the House of any State which penalized its own citizens in this matter, and what your comment on that provision would be?

Mr. WILKINS. We are familiar with that bill, and we have advocated this course for a long time. We believe that the representation of such States should be reduced and we hope success to this legislation

It has to be done, of course, by the Congress itself, you know.

Mr. MATHIAS. While we are on the 14th amendment, I would just like to go forward to the second so-called Republican bill on this subject, the one that deals with Republican accommodations.

I believe as late as last Monday, Senator Keating had proposed a further amendment to the public accommodations section which is supported by the 14th amendment, which in my judgment would just about wipe out the last tailfeathers of Jim Crow, wherever it occurred in the country, and I wondered if you could comment on that?

Mr. WILKINS. You mean this basing of it on the 14th amendment?

Mr. MATHIAS. His provision which, in substance, would require that wherever any discrimination of public accommodations under color of law or local ordinance or usage or custom existed, that it would be prohibited hereafter?

Mr. WILKINS. We are for, Mr. Chairman, maximum coverage. We are for maximum coverage. We are for whatever plan or amendment or original draft of bill which reaches the greatest area of discrimination, and so that Senator Keating's proposal would find no dissent from among us.

The CHAIRMAN. Mr. Wilkins, before you go on to your statement again, I want to make a statement concerning the sentences awarded in New York by a former Member of Congress, Judge Vincent Quinn. I think he suffered a lapse from grace in the sense that he gave some of those demonstrators in New York upward of 60 days in jail.

In my opinion that was most severe and harsh and I do hope that other judges in New York will not follow that example. I think the sentences are 30 days and on to 60 days. I don't think any good comes from handing down sentences of that sort and I am very anxious to have this comment on the record.

Mr. WILKINS. I thank the chairman for that comment because while I would not initiate any discussion of that kind here, my sentiments are wholly in that direction.

Mr. Chairman, title III relates to school desegregation and I am filing a full comment on this with my written statement, but I would just like to say in passing that this is an area that requires summary and thorough action because school desegregation has proceeded at the rate of some seven-tenths or five-tenths of 1 percent a year, depending on the territory you take in and it has gone so slowly as to be a major contributing factor to the unrest and unhappiness of the Negro citizens of this country.

The defiance of the 1954 decision and the slow tortoiselike implementation of it has contributed to their despair, to their frustration, to their belief that the ordinary channels won't get you anywhere and particularly to their feeling that even if you go to the Supreme Court and win a case and win a decision, you lose, so that anything in title III that speeds along school desegregation, especially in accord with the Democratic promise of platform in 1960, would help.

The Attorney General is empowered to accelerate school desegregation by this authority and he sorely needs this power and should be given it. We feel that part III, of course, again, had it been enacted, would have taken care of this situation.

The Attorney General should have the part III authority, so that the Attorney General can act and proceed.

Mr. FOLEY. Mr. Wilkins, right there may I ask you this: In light of the recent decision of the U.S. district court of Virginia and the *Prince George* case, do you think we should still enact this?

Mr. WILKINS. Prince George or Prince Edward?

Mr. FOLEY. It is Prince George, isn't it?

It is Prince George County School Board where they held that it was in the nature of a contract when they accepted Federal funds to erect these schools and that the Federal Government then had authority to enact the case without a statute.

Mr. WILKINS. I am glad you raised that point because it has been our contention that the Federal Government has the power now, and we are so contending in this testimony—that the Federal Government has the power.

The President has the Executive power to withhold Federal funds or to enforce the nondiscriminatory use of those funds. Now, without legislation——

Mr. FOLEY. The Government has brought another suit in Louisiana, in an impacted area on the same basis, the same theory of the contract is being pursued in court.

This *Prince George* decision was just handed down about a week or so ago, but if you exercise the Executive power which you just mentioned, that the President holds, then you cut off the standing of the Government to bring an action because you would not have any formal contract.

Mr. WILKINS. Let me say this:

I believe that the provisions of this bill should go forward.

Mr. FOLEY. Regardless of the court decision?

Mr. WILKINS. Regardless of the court decision.

Mr. FOLEY. That is the point I want to make clear.

Mr. WILKINS. We believe the Federal Government through the Congress and through legislation ought to make this point clear once and for all and irrespective of court decisions which may or may not cover the whole situation or may or may not bring the relief sought, may bring only part of the relief and it may leave whole areas outside and that means that this legislation then steps in and we feel there is no substitute for it.

As a matter of fact, on this whole package, the technique of withholding Federal action and relying on possible local action or State action or relying on possible court decisions or trying to evaluate the court decision, as to whether it gets at the problem or not, is what has brought us to our present situation.

What we ought to have is an across the board comprehensive civil rights package, so that there will be no doubt and then if we must have litigation, let's have litigation under that.

Mr. FOLEY. Go right to the heart of it, it will be incisive.

Mr. WILKINS. Exactly. This is what we would back with all vigor possible and this is precisely what we have been missing in the past.

Mr. FOLEY. We know in view of this decision—and possibly one or two others that may come later on—the argument will be made that you don't need it.

The courts have already said you have a right to bring an action and that is why you have asked that question deliberately.

Mr. WILKINS. We want the legislation irrespective of that.

The CHAIRMAN. I am going to take advantage of your earlier offer and ask that you expedite your paper.

Mr. WILKINS. Very good, sir.

Title IV requires no comment here and title V would extend the life of the Commission on Civil Rights.

Our only comment there is that we would like to see this agency made permanent and not to be extended for a period of years.

Title VI would authorize the withholding of Federal funds from any program and we have already commented on that.

Mr. MEADER. Mr. Chairman, may I interrupt, before you leave title VI.

Mr. Wilkins, you are familiar with the fact that the House Education and Labor Committee on yesterday reported the Gill bill relating I think to five or six programs in the Departments of Labor, Health, Education, and Welfare, in effect under those Federal statutes and that is a mandatory withholding of funds for impacted areas, Hill-Burton funds, Library Services Act and one or two other programs.

When the Secretary of Health, Education, and Welfare was before us, he argued strenuously for discretionary authority in withholding funds which is presently provided for in the phraseology of title VI under the administration bill.

You have used this withholding of funds as grounds that the practice be mandatory or discretionary?

Mr. WILKINS. Well, sir, we always shy away from "discretionary" in these areas. We feel that unless it is made mandatory, all sorts of discretion will be exercised and until it is demonstrated in good faith that discretion means discretion and does not mean discrimination, then we would want mandatory phraseology in there.

You see our basic contention, Representative Meader, is that if these agencies of Government had wanted to use voluntary actions in good faith, they would have used it long ago.

If they wanted to use discretion properly they would have used it long ago. But unfortunately they have not and our hurting is so deep now that we want mandatory requirement that this shall be done.

We feel that this will be a quick corrective to some of the conditions.

Mr. MEADER. I am sure that you are familiar with the fact that frequently in adopting new programs there have been offered the so-called Powell amendment to Federal grant-in-aid programs.

Quite frequently that amendment has been offered by the minority and the charge is often made in debate that that action was designated to scuttle the whole program.

I think that Mr. Powell, himself, has not only voted against such restrictions on granting funds but has spoken against them.

Title VI, it seems to me, is the Powell amendment, across the board on all Federal programs and the Gill bill is to do it statute by statute.

Secretary Celebrezze testified that there were some 8 programs where he believes the statute now instructs him to withhold funds on the ground of discrimination and he is now doing so, but he said that there were 128 programs in his Department alone, totaling some $3.7 billion a year and that he felt a mandatory requirement on all of those programs that funds be withheld were recipients or potential recipients were practicing discrimination, would be unmanageable and impossible to administer.

I am sure that we need to study that rather closely to determine whether it is possible to provide for mandatory controls and I think there is another aspect that disturbs the members of the committee on which I would like to comment and that is that Secretary Celebrezze seemed to take the position that there was no review of any decision that he made certainly no administrative review and no court review.

There seemed to be a difference of opinion and I believe we asked Mr. Rauh, Counsel for the ADA, and we asked our own counsel to brief the subject of whether an aggrieved State or locality which claimed there had been no discrimination had any means of reversing a decision by the Secretary of Health, Education, and Welfare.

Now, I wonder if you have any comments along that line?

Mr. WILKINS. My first comment is that these funds have been willingly accepted and utilized over the years in a discriminatory fashion.

Nobody has taken the trouble to conceal it or to deny it and despite the continued protests of the Negro minority and despite the fact that it has suffered deprivation by reason of discriminatory use of these funds, right now it is suffering them in impacted areas, despite the fact that Secretary Celebrezze has been empowered to withhold funds in certain instances, only after court cases and so forth.

Mr. MEADER. I believe that that is one of the subjects which is in the Gill bill and that presumably he does not have authority to withhold or he does not feel——

Mr. WILKINS. Yes.

Mr. MEADER. Without legislation?

Mr. WILKINS. That is true, he does not think he has authority to withhold, but with respect to whether this should be done or whether they have a review, of course I would want them to have a review. I think their denials and their so-called proof of nondiscrimination would reveal all the more clearly the fact that discrimination is there and the pattern it follows.

It must be rembered, too, that so many of these States and localities are so accustomed to doing business in the way they do it, that they do not recognize discrimination for what it is.

The story is told of the woman from Chile, who was attending a conference in the United States and it was discussing discrimination againts Negroes. She got up and said that she was very happy to be here and hear this discussion, because in Chile they had no problems of discrimination. Somebody arose in the audience and said, "What about your Indians?"

She said, "Oh, they live in a certain section all by themselves."

She didn't even recognize it as discrimination or segregation and a great many of the areas in the South do not. They will tell you on a stack of Bibles that they don't discriminate, but the minute they come into court to defend their position, they get to a place where they can be examined on it.

I would say that they ought to have the right of appeal, of course, but I also say that the funds ought to be cut off.

Mr. MEADER. That raises another troublesome point that we discussed with the Secretary and you referred earlier in your testimony to the provisions of title III in the matter of racial imbalance. I don't believe we got from the Secretary a very clear definition of the phrase racial imbalance in schools. I offered the suggestion that it

seemed necessarily to me that the proportion of Negro students to white students in a school was not the same as the proportion of Negro residents to white residents in a given area.

Mr McCulloch and I questioned the Secretary as to whether or not "racial imbalance" as the phrase is used in title III would not constitute discrimination, as the phrase is used in title VI and lead to withholding of funds for educational purposes.

I asked the further question, since the Secretary had said that sometimes this racial imbalance was caused by school districts gerrymandering their boundaries and that it would necessarily place him in the position of determining what were the proper boundaries of a school district or other local unit of government, which would be required to make them eligible for Federal grant-in-aid funds.

I wonder if you see the problem I am raising.

Mr. WILKINS. Yes; I see the problem.

Mr. MEADER. In other words, would it empower the Secretary of Health, Education, and Welfare or others administering grant-in-aid funds to dictate to a school district how their limits can be set up?

Mr. WILKINS. I can think of some school districts which ought to be dictated to, but I would say, in general, that the question is here whether students or pupils of a certain race are barred from attending a school or are concentrated in a school because of their race.

As far as the Secretary of Health, Education, and Welfare is concerned, since he holds the funds on which these school districts depend for their continuance, at least their continuance on the present level of education, that it is not incumbent on him to determine a school district or to determine how the school board administers that district.

It is up to the school board to prove, it seems to the Secretary of have a discriminatory policy and if it appears to the Secretary of Health, Education, and Welfare—and I am sure it would not appear to him without proper investigation and at least documentary support that any agency would regard as necessary in this case—if it should seem to him that this school district is discriminating, he could act forthwith and let the burden of proof be on the school district to show that its policies, neatly conceived and adequately camouflaged, do not constitute racial discrimination.

You see, I believe this, sir: That we cannot attack this problem forthrightly, if we continue to make our vows in the direction of those people who, themselves, are guilty of creating the problem and we are saying to them: "You are innocent until we find you guilty" or "we want your cooperation in carrying out this scheme and we don't wish to impose anything upon you."

I say impose upon them. I say they have imposed their system on the Negro children all of these years and I would hope that the Congress would not pay undue attention or render undue obeisance to those very elements who have presented Congress with this problem, if I may put it that way, because if they had not conducted themselves in the way they have, you would not be wrestling with these little delineations of authority.

You don't have this in St. Paul, Minn., or in Saginaw, Mich., or Auburn, N.Y., or Wellesley, Mass.

Mr. FOLEY. But you did have it in New Rochelle, N.Y., Mr. Wilkins?

Mr. WILKINS. Yes; you did, but there was a remedy for it and it was rooted out.

It may be added, sir, that in some 70 other communities in the North this subtle segregation is being attacked, but I am talking about now, the overt evidences of racial discrimination which are not concealed and, Representative Meader, they even boasted about it.

The defiance of the 1954 decision is being talked about proudly in southern areas. So there is no question about whether they are or are not segregating, they are and they admit it freely.

Mr. MEADER. I hope you get the idea that what I am concerned about is the technical drafting problem that this committee is going to face and these are some problems that came up in connection with prior testimony and I would like to have your view.

Mr. WILKINS. I can understand those problems.

Mr. RODINO. Mr. Wilkins, did I understand you to say that you believe there should be included in section 6 the right of review of the Administrator's decision, once he finds that a factual situation of discrimination exists and funds are withheld?

Mr. WILKINS. I understood him to say that Secretary Celebrezze said that he did not know that there was any review provided for his decisions. I assume that there is a review. That is what I meant.

Is there not a court review?

The CHAIRMAN. Certainly.

Mr. RODINO. There is a question on that.

Question: Whether or not you support that proposition. It would seem to me that the urgency of the situation is such, and that is why this provision is being written in this legislation, so as to insure that the Administrator's decision is a final one and that funds are withheld. We recognize now there are cases—and the chairman just referred to them—where unfortunately there are going to be delays, so what we set in motion is going to be defeated if you are going to support a position for a review of that nature.

Mr. WILKINS. I am sorry. I misunderstood Representative Meader then. I understood him to say that Secretary Celebrezze said he understood there was no review of his decision.

Mr. RODINO. Yes; only in certain cases of mandamus where review does exist.

Mr. WILKINS. My own feeling was—perhaps I did not express myself clearly—was that I could not conceive of there being no review, final review in this matter.

I don't want any review incorporated in this legislation, if you want a categorical answer.

Mr. RODINO. This is what I am looking for.

I wanted to know your position here, whether you suggest as those who oppose this legislation say, that review is acceptable.

I fear that if a provision like that were written into this law, it would defeat the very purpose that this title is intended to carry out.

Mr. WILKINS. Mr. Rodino, we are suffering so much in this area that I don't want to see the slightest pebble put in the roadway of accelerated action, not the lightest technicality.

I don't want to take advantage of anybody. I don't want to waive anybody's rights, but I don't want anything in this legislation that will stop remedial action but quickly.

Mr. RODINO. Especially where we recognize that historical experience has shown that administrators have, since they have been administering these programs, done a superior job.

Why should we immediately now review, because of this legislation, and begin to throw up roadblocks?

Mr. WILKINS. They have had ample opportunity to correct their course over the years. They have not done so. And we are for a summary action, the quicker the better.

Mr. RODINO. I want to make that point clear. I am sorry if I misinterpreted you but it seems to me that this was the impact of your remark.

Mr. WILKINS. I want to thank you for allowing me to clarify it.

Mr. ROGERS. Mr. Wilkins, we have had testimony from certain witnesses who were asked, with respect to the *Brown* case, "Why don't you recognize that as the law of the land and apply it across the board to your schools in the State?"

They give us the answer that each school district has a separate problem and that they will not recognize desegregation until specific action is filed in these school districts.

Now do you think we should apply that kind of reasoning to the Secretary of HEW and say to him that until there has been an action filed by somebody to desegregate a school that we are still authorized to send funds until that school district has been told by the Federal Government to desegregate?

What is your comment on that?

Mr. WILKINS. No, sir, Mr. Rogers.

In fact, our contention is that the Democrats and the Republicans, but especially the Democrats, because they spelled it out in 1960, should require by legislation that every school district file a plan for desegregation now across the board by a certain date.

This was the proposal at Los Angeles, if you remember.

This is the only way that you are going to get across the board actions. The other way is action by court suit and this has proved to be too slow, of course.

Some of it is deliberately delaying.

We believe that Congress ought to take up the promise made at Los Angeles, embody it in legislation and get at this matter because, sir, education and preparation of underprivileged people in this country, both Negro and white, is one of the most pressing problems before the country and if we don't provide an educated reservoir of citizens, we are not going to be able to operate in the space age.

We can't do it with a small cadre of technicians and scientists that we will be able to train.

Mr. ROGERS. I wanted to get your opinion about that because we had that in the testimony before the committee. You think that if we would provide, in effect, that if there is segregation before the school district can get the money they must file a plan showing that they are doing away with that.

Mr. WILKINS. Exactly so. And it is not difficult to determine whether or not a school district has a segregated system or not. As I say, frequently they brag about it.

Mr. ROGERS. Thank you.

The CHAIRMAN. Mr. Wilkins, I just want to ask you a question which rather bothered me.

I have a transcript of a television telecast in which you participated on June 23 and among other things you said, "We estimated that not

more than 100,000 Negroes would be added to the rolls under the literacy tests."

Where did you get those figures from?

Mr. WILKINS. I got them from a few people in the field.

Now, this, Mr. Chairman, comes through, filtered through his guess, her guess, on down to my guess.

The analysis of the literacy provision as proposed last year in the last session was that it would not offer a benefit to a great number of persons, both because of its provisions and the manner in which it would be administered.

Now, the 100,000 figure may be arbitrary and it may be 200,000 and it may be 75,000 or 80,000, but the point is that in relation to the total number of Negro votes now disfranchised in the South and prevented from registering by one device or another, that the figure that would be released by the sixth grade literacy business would be relatively small figure in the overall picture.

Now, I don't want that to be unduly discouraging to you, but I think it is realistic. I don't think that we ought to believe that the enactment of this literacy test, by and of itself, would result in wholesale enfranchisement of the Negro population of the South.

The CHAIRMAN. But that does not militate against our putting something in.

Mr. WILKINS. It does not ultimately militate against it, because every club in the bag is needed to win this game.

The CHAIRMAN. Suppose you epitomize the balance as fast as possible.

Mr. WILKINS. Yes, sir. I want to say only, sir, that our recommendations are that the Commission on Civil Rights should be made permanent.

Title VII should be amended by the addition of a strong FEPC law with adequate enforcement provisions for reasons that have been set forth. Then to say that there are several other bills before this committee, nearly 100 of them. We would offer special commendation to Congressman Celler's bills, H.R. 1766, 1767, and 1768.

We note Mr. McCulloch, the ranking minority member, has introduced H.R. 3139, an excellent bill, and it contains notable provisions. Then we go on, sir, to commend the package of bills offered, not before this committee but in the other body of the Congress, bills ranging from S. 1209 through S. 1219, an excellent package of bills whose good points we have set forth in our testimony by simply denominating the subject matter with which they deal.

Mr. WILKINS. In conclusion, I would like to beg your indulgence.

Mr. Chairman, the question keeps arising as to whether a civil rights bill will be effective in correcting the evils of racial discrimination. The answer to this specific is that such a bill, if it is strong enough and comprehensive enough, will help to alleviate a shameful condition and to bring a measure of justice to a people that has been long suffering.

It seems patent to us that in the hard realities of the day, the Congress must enact legislation at this session to redress the grievances of American Negro citizens.

For too many years postponement has been the rule. Time has about run out. There is none left in which to tuck away postponements.

Mr. Chairman, as pressing as are the needs of our Negro citizens, there is yet another compelling reason for action. The Congress must act for the sake of our country. In a manner more challenging than ever before, the United States is on trial. We are not just some nation; we are the Nation that came into being on the concept of equality of men and of their freedom.

We must act or we must rewrite our beliefs. What happens to Negro Americans is of great and most urgent importance, but what happens to America, the haven of freemen, has to be of greater importance.

We Negro Americans want freedom for ourselves, of course, but we want freedom for freedom's sake; we want a nation and a world with no second-class citizens of any race or nationality. We want that kind of a nation for our white fellow citizens, in the South and elsewhere.

We look to the Congress to give us that kind of a nation by enacting a strengthened civil rights bill in line with the President's suggestions.

The CHAIRMAN. Mr. Wilkins, I want to state that I personally admire the presentation you have just made.

It is plaintive yet indeed solemn. It is forceful. You are tempered yet wise and prudent and I compliment you on your leadership. The rights of your people are in good hands when you lead them.

May I also offer some praise to your aid in Washington here, Mr. Clarence Mitchell, who has been a great help always to our committee.

Mr. WILKINS. I appreciate your words, Mr. Chairman, and especially the words about Mr. Mitchell who has been of inestimable help to us in charting the course down through the difficult pathways of Washington and Capitol Hill.

The CHAIRMAN. Your complete statement will be placed in the record.

Mr. WILKINS. Thank you.

Mr. MEADER. I have a question.

Mr. Wilkins, when Secretary Wirtz was before us, I read to him a newspaper article which quoted Mr. Hill of your organization as saying that there were only 300 licensed Negro plumbers and electricians in the United States.

I raised the question with Mr. Wirtz, whether or not he had any way of verifying the figure because it seemed to me a shockingly low figure.

Mr. Mitchell was kind enough to bring my inquiry of Secretary Wirtz to Mr. Hill's attention and on July 1, 1963, he addressed a letter to me which I have subsequently transmitted to the chairman, which I understand is not yet in the committee's records.

Mr. FOLEY. That letter will be placed in the record, at that point in Mr. Meany's testimony.

Mr. MEADER. I just want to call attention to the paragraph and I assume that you are familiar with this, too?

Mr. WILKINS. Yes, I recall it.

Mr. MEADER. Mr. Mitchell said:

The names and addresses of all electricians and plumbers who were certified to municipal or State licensing agencies as having completed a series of tests was a matter of public information. By examining these lists specially with reference to residential addresses it is possible to determine a number of Negroes certified as licensed mechanics.

To further determine the accuracy of this estimate, the available information was also checked against the information based on the 1960 census which confirm the figure as an accurate approximation of the number of Negro wage earners who were licensed electricians and plumbers.

The reason I raise this question is because when Mr. Meany was before the committee on July 17, I raised this question with him. He said he did not have any way of checking. He said they had 60,000 local unions, but he said this:

I would assume that there are reasonable estimates of Negro membership but none of them are accurate and I doubt very much that the 300 figure has any accuracy at all—

and he said that he would not be able to supply the committee with any figures.

He estimated that the total number of members of the two unions, electrical and plumbers union, was something like 500,000 people.

Now, I don't know what the census figure you refer to is. If there are accurate figures on this, I think the committee should have them.

Are you familiar with this correspondence?

Mr. WILKINS. Yes.

Mr. Meader, the checking, according to residential residence, to say that on such-and-such a street this man would be likely to be a Negro is sort of inaccurate method of going about it.

Did the research and the exchange of correspondence sustain Mr. Hill's estimate of 300?

Mr. MEADER. I just have these paragraphs of a one-page letter.

Mr. WILKINS. Yes.

I don't know. I can't answer for Mr. Meany, of course, but as I recall it there are only two Negro licensed plumbers.

I could be in error, but I don't think I am in very great error. Two Negro licensed plumbers or two members of the plumbers union in either New York City—New York City, I believe.

Mr. Meany, as you know, is a plumber. If he does not know, has no way of estimating or finding out about Negro plumbers, then I don't know how we could be expected to find it out, except in a haphazard manner, but the number, you can be sure, is very small, very small.

Mr. MEADER. I would be surprised if there were not that many right in the city of Washington.

Mr. WILKINS. That might be a project that you could assign to some Government agency.

Mr. MEADER. I mean if out of 500,000 members of the plumbers and electricians union there are only 300 Negroes in the whole United States, that seems to me to be a shocking condition.

Mr. WILKINS. Yes, it does.

Mr. MEADER. I think you will find unanimity on the voting aspects and the employment aspects, which are your economic rights and it may be that simply setting up a fair employment practice commission, which does not get at the discrimination against employment under the trade unions——

Mr. WILKINS. Oh, it does, though.

Oh, the FEPC bill provides that it is an unfair labor practice for a labor union to discriminate, just as an employer.

The S. 773——

Mr. MEADER. Of course there are different versions, but the one in the administration bill relates only to Government contractors and in effect gives statutory status to the President's Committee on Equal Opportunity of Employment.

Mr. WILKINS. Oh, to be sure, yes; but the bill before Representative Roosevelt, the full scale FEPC bill, to which the President gave his blessing in his message to the Congress but did not include it in his package, this includes labor unions.

Labor unions come under FEPC legislation and such legislation would reach them and would reach the conditions.

Note clearly, Mr. Hill did not say there are only 300 Negro plumbers in the United States.

He said there were only 300 who were members of the union or did he say that?

Mr. MEADER. He said, "There are only 300 licensed Negro plumbers and electricians."

Mr. WILKINS. That is right.

In order to be licensed, you see——

Mr. MEADER. Well, I was shocked by that figure and when Mr. Meany told us there were 500,000 in these two unions, across the country, I just feel that the committee ought to have the facts—if there is any way, if you could point to it, where this information is supported by census figures——

Mr. WILKINS. In the city of New York there was not one single Negro sheet metalworker in the Sheet Metal Workers Union as recently as January 1.

Mr. MEADER. Has your organization made any effort to ascertain the mechanics by which this exclusion occurs?

Have there been applications for membership?

Mr. WILKINS. Oh, yes. There is extensive literature on the subject. It has been gone into in Senate and House testimony time and time again.

It is a matter of documentation in various reports.

The Civil Rights Commission has some reports on this.

The FEPC Commissions in the various States have collected information on it, so that it is well documented.

Mr. MEADER. Thank you.

(The statement in full of Mr. Wilkins is as follows:)

REMARKS OF ROY WILKINS OF NEW YORK CITY, EXECUTIVE SECRETARY OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE ON PENDING CIVIL RIGHTS LEGISLATION

My name is Roy Wilkins. I live in New York City and am the executive secretary of the National Association for the Advancement of Colored People, an organization formed in 1909 with the specific objective of securing the constitutional rights of Negro American citizens. This testimony has not been approved by all member organizations of the Leadership Conference on Civil Rights, but is being submitted to them for their possible concurrence.

First, I wish to pay my respects to the chairman and ranking minority member of the Judiciary Committee and of this subcommittee. It was through their cooperation and joint leadership that Congress was able to consider and pass the Civil Rights Acts of 1957 and 1960, the first civil rights legislation since the post-Civil War period. It is this spirit of cooperation and leadership that makes us hopeful that Congress will, once again, face up to its responsibilities in the protection of the rights of citizens. Action at this session is imperative.

We have just observed the ninth anniversary of the decision of the Supreme Court in the case of *Brown* v. *Board of Education*. Since that decision, the

Court has ruled in a number of other cases that have involved the principle enunciated in that historic decision. The culmination of this series of decisions came a few weeks ago when the Court ruled that segregation in any public facility is unconstitutional.

As we soon face the opening of the 10th school year since the *Brown* decision, we find that only approximately 5 percent of the colored students in elementary and high schools in the 17 Southern and border States affected by the decision are attending desegregated classes.

We believe that this situation demands the attention of Members of Congress of both parties with a view to fulfilling the promises made in their 1960 party platforms. For the record, I will quote from those platforms.

The Democrats stated: "We believe that every school district affected by the Supreme Court's school desegregation decision should submit a plan providing for at least first step compliance by 1963, the 100th anniversary of the Emancipation Proclamation." The Republicans pledged: "We will propose legislation to authorize the Attorney General to bring actions for school desegregation in appropriate cases * * *."

We respectfully urge that this anniversary year of the Emancipation Procla mation is an appropriate time for the redemption of these pledges to the school children of America.

The denial of equality in public facilities is not limited to schools. Negro citizens and other minority group citizens are denied, because of race, access to hospitals, libraries, recreational areas, and other public accommodations and property. Despite the rules of the Interstate Commerce Commission, law officials still require segregation in some railroad terminals and bus stations and their related facilities.

In addition to these restrictions based on racial considerations, citizens of the United States, both white and colored, are being denied basic protections of the Bill of Rights when they attempt to use these rights in support of civil rights causes. The tragic slaying of William L. Moore, the summary arrest of the "freedom hikers" who sought to follow in his footsteps, the mass arrests, mistreatment, and imprisonment of persons peacefully demonstrating against discrimination are recent evidence of the conspiracy against the Constitution. The coldblooded midnight assassination of Medgar Evers in Jackson, Miss., last month underscores the persecution of citizens because of their color.

Since its introduction in the 84th Congress, the Leadership Conference on Civil Rights has vigorously supported the plan to authorize the Attorney General to file civil injunctive suits to protect civil rights. This plan, which has become known popularly as part III, has on two occasions been adopted by the House of Representatives. We believe that if the Senate had followed the wise action of this House and passed part III, many of the problems now being discussed would be liable to soluton through the orderly processes of litigation.

The denial of equal opportunity in employment affects millions of minority group citizens in every section of the country. I will not go into detail on this, as many of the organizations affiliated with the leadership conference have presented detailed testimony on this problem before the subcommittee headed by the able Congressman from California, Mr. Roosevelt.

Suffice it to say that unemployment among nonwhites is 2 to 2½ times that among whites, the average wage of nonwhites is about 60 percent of whites and the gap is steadily increasing. Add to these factors the increased trend to automation, the denial of apprenticeship training opportunity to colored applicants, and the increasing dropout rate among youth of school age and we can foresee a major economic disaster facing the colored community unless drastic remedial measures are adopted.

The demonstrations across the Nation involve more than the immediate tactical objective—the right to use places of public accommodation free from discrimination. They involve, more importantly, the demand that human beings in America shall be treated as human beings with the full dignity that their essential nature commands. They involve a testing of the basic premise on which this Nation was founded—a test of whether in this year of 1963 the United States can fulfill the promise of the Declaration of Independence "that all men are created equal—that they are endowed by their Creator with certain unalienable rights."

The denial of these rights has too long been the practice in the United States and can no longer be tolerated. President Kennedy in his civil rights message to Congress recognized the growing impatience of colored citizens on one phase of this subject when he said: "No act is more contrary to the spirit of our democracy and Constitution, or more rightfully resented by a Negro citizen who seeks

only equal treatment, than the barring of that citizen from restaurants, hotels, theaters, recreational areas, and other public accommodations and facilities."

Clearly, the time has arrived when Congress must act. The present crisis is due in substantial measure to the failure of the Congress to act in past years.

President Kennedy has sent to Congress a civil rights program that is probably the most comprehensive ever submitted by a Chief Executive.

President Kennedy's civil rights message noted well the advances made in securing the constitutional rights of all citizens. But it quite properly recognized the Nation's failure to implement fully the guarantee of equal protection of the laws contained in the 14th amendment. It discussed major problems facing colored American citizens, problems Congress has not as yet seen fit to meet; the slow pace of school desegregation, limited access to employment opportunities, discrimination in places of public accommodation, and the continuing use of Federal funds to strengthen and extend racial segregation. Importantly, it recognized the necessity of correcting these abuses because they are morally wrong and incompatible with our democratic ideals.

Because the President's message did so eloquently state the need for dramatic and extensive governmental civil rights action, it is regrettable to those who share his objectives that legislative proposals put forth in his program meet only partially the needs that exist, needs that the President recognized in his message, and needs for which legislative remedies were promised in the party platform and campaign speeches on which he was elected in 1960.

The need for governmental action could perhaps be no more vividly expressed than in the words of the President's message:

"The Negro baby born in America today, regardless of the section or State in which he is born, has about one-half as much chance of completing high school as a white baby born in the same place on the same day; one-third as much chance of completing college; one-third as much chance of becoming a professional man; twice as much chance of becoming unemployed; about one-seventh as much chance of earning $10,000 per year; a life expectancy which is 7 years less; and the prospects of earning only half as much."

The proposals to prohibit discrimination in places of public accommodations and to authorize action by the Attorney General in school desegregation cases, if enacted, would be significant achievements in two important areas. The present denial of access to many public places and the continuing defiance of the Supreme Court's order in the school segregation cases are high among the limitations on full citizenship rights of Negroes. The adoption of these proposals would accelerate the removal of significant obstacles to first-class citizenship.

While recognizing the significance and worthiness of the President's program, it is important to also recognize that it is a most moderate approach to the problems confronting the Nation. In the light of existing conditions and of the platform on which the President was elected, it is apparent that many governmental powers that could be used to further civil rights will not be utilized under this program.

Because of the limited approach used by the President, it is necessary that civil rights advocates in the Congress resist any effort to weaken or compromise the program. Not only should a fight be made against weakening amendments, but affirmative action should be taken to strengthen the pending bills.

The piecemeal approach to civil rights legislation has proved inadequate. Therefore, if a sincere effort is to be made to enact civil rights legislation, the chief object should be to enact as comprehensive a bill as possible.

The President's civil rights program has been introduced in the House by Congressman Celler as H.R. 7152 and in the Senate by Senator Mansfield as S. 1731.

The program, formally titled, "Civil Rights Act of 1963" contains eight titles relating to voting rights, public accommodations, school desegregation, community relations service, Commission on Civil Rights, nondiscrimination in Federal programs, Commission on Equal Employment Opportunity, and miscellaneous provisions.

TITLE I

The first title relates to voting rights. It repeats, without substantial change, the administration's voting bill previously introduced in Congress in February.

The moderate approach of the President is apparent in this voting program. Although it would expedite the handling of problems in the courts, it does not supply the solution to the problems of mass disenfranchisement.

Four provisions noted apply only to Federal elections, although there is constitutional authority to apply them to State elections also.

The requirement that literacy tests be in writing or transcribed could make proof of discrimination simpler in some instances. This again would be of some limited value.

The provision relating to a presumption of literacy based on a sixth grade education marks a distinct retreat by the administration on this issue. The presumption now proposed would be a rebuttable one. In the 87th Congress, the administration offered a bill creating a conclusive presumption of literacy based on a sixth grade education.

If the present literacy test provision is enacted into law, registrars will still be in a position to deny registration to applicants regardless of their educational qualifications. When such registrars are challenged in court, the provision would take effect and create a presumption of literacy in favor of the person applying to register.

The proposed temporary voting referee plan would authorize the appointment of temporary referees to register qualified applicants in cases brought under the 1960 Civil Rights Act when the Attorney General certifies that less than 15 percent of the colored citizens over voting age in a voting area are registered to vote.

As the President recognized in his February civil rights message, disenfranchisement does not result solely from the discriminatory practices of local officials. It is also rooted in economic and social presures, harassment by law officers, threats of bodily harm and use of physical violence. These factors are likely to be most widespread in those counties where less than 15 percent of the colored population is registered to vote. It is not likely that the proposed plan will change conditions substantially in these areas.

The requirement of individual action of each aggrieved person and the complicated procedural requirements are other factors that suggest this proposal would have little value if enacted.

The expedited handling of voting cases may be of some minor help in breaking the logjam of voting cases in the courts.

The bill's voting section needs considerable strengthening to make it an effective vehicle to meet the problem of mass denial of voting rights.

The adoption of bills such as S. 1214, which would remove all arbitrary restrictions on the right to vote and S. 1281, which would authorize the Federal Government to conduct and supervise all Federal elections, would greatly increase the chances of large numbers of disenfranchised citizens to vote.

TITLE II

This title would establish the right to service free from discrimination in places of public accommodation and business establishments. Included would be any hotel, motel, or other public places furnishing lodging to transient guests from other States or traveling in interstate commerce, any motion picture house, theater, sports arena, stadium, exhibition hall, or other public place of amusement customarily presenting pictures, groups, teams, exhibitions, or other sources of entertainment which move in interstate commerce any retail shop, department store, market, drugstore, gasoline station, or other public selling place, any restaurant, lunchroom, lunch counter, soda fountain, or other public place engaged in selling food for consumption on the premises, and any other establishment servicing the public.

Those refused service would have the right to sue for preventive relief. In addition, the Attorney General could enter suit on receipt of a written complaint, if the complainant is unable to bring suit because of financial reasons or fear of reprisals. If successful a complainant would be entitled to reasonable attorney's fees.

Before filing suit, the Attorney General would be required to refer the complaint to the Community Relations Service provided under the bill and to any appropriate State agency with authority to prohibit the discriminatory practice.

Courts would have jurisdiction of actions brought under this provision without the necessity of exhausting administrative remedies.

The bill relies on both the 14th amendment and the interstate commerce clause for the constitutional authority to act. If the President's proposals are enacted, they would insure, so far as is legally possible, equal treatment in such establishments.

In view of the national policy enunciated, we urge that the Attorney General would be authorized to act independently of individual complaints and of the economic status of the complainants.

Since this is the most contested title of this bill there will be efforts to compromise it. The nature of the effort to weaken the public accommodations provisions is already evident—a limitation on the size of the establishment covered by the bill. The mythical "Mrs. Murphy's boarding house" has become the symbol of opposition to complete elimination of discrimination.

Such a compromise is not morally or legally tenable. There is no more reason for a small store or restaurant to discriminate against Negroes than a large one. While one could agree to exemption from coverage of a small owner-occupied residence used for lodging, the reasons for such exemption do not carry over to stores, restaurants, or other business establishments open to the general public.

TITLE III

Title III relates to school desegregation.

Under this title, technical assistance, grants and loans would be made available to school boards to meet problems arising out of school desegregation or the adjustment of racial imbalance in schools. This could be helpful to communities adjusting to changing patterns in the schools.

The more important part of this title authorizes the Attorney General to institute civil actions for school desegregation upon receipt of complaint and a determination that the complainants are unable to institute legal proceedings.

This provision is a revised version of the proposed part III of the civil rights bill of 1957. It gives the Attorney General authority to act to accelerate school desegregation. This grant of authority is sorely needed.

The question has arisen whether this provision and title II relating to public accommodations do not remove the need for an across-the-board part III. In my opinion, they do not. Part III would reach hospitals, libraries, parks, and other recreational facilities, public buildings, etc., and all other aspects of publicly enforced discrimination. Recent developments have shown the need for protection of the rights to peacefully protest and picket in opposition to discrimination. Any grant of authority to the Attorney General should authorize him to protect all civil rights, including the right to support and advocate 14th amendment rights in the field of race relations.

The President, in his campaign platform, promised support for part III. In addition, he promised additional legislation to speed up school desegregation by requiring school districts to begin compliance with the Supreme Court's decision in 1963. This legislation has been introduced in S. 772 and H.R. 1766.

Congress should amend the President's program to include part III authority for the Attorney General with protection for those persons advocating 14th amendment rights and to include the school desegregation plan proposed in the Democratic Party platform.

TITLE IV

A new agency, Community Relations Service, would be established under this title of the bill. Its purpose would be to help resolve problems arising from discriminatory practices by voluntary action.

Such an agency could serve a useful function provided the bill as enacted provides strong protection for the constitutional rights of minority group citizens. However, it could in no way be considered as a substitute for enforcement authority. Backed up with legislation including enforcement provisions, this agency would be in a position to peacefully negotiate for community changes favorable to civil rights.

TITLE V

Title V would extend the life of the Commission on Civil Rights for 4 years and authorize it to serve as a national clearinghouse for civil rights information and to provide advice and technical assistance to governmental and private persons and organizations.

Because of its record, the Commission is deserving of support for extension and additional grant of authority. It could be hoped that the agency would be made permanent in order to free it of the necessity of constantly revising its plans and to give it the stability it needs to conduct a continuing operation.

TITLE VI

This title would authorize withholding of Federal funds from any program or activity that receives Federal assistance, directly or indirectly, by way of grant, contract, loan, insurance, guaranty, or otherwise.

While we support the withholding of funds under the circumstances covered by this provision, we believe the President has ample authority to act now under his

constitutional powers. Apparently he feels the use of this authority would be easier to justify if supported by a congressional mandate.

In offering such a proposal, the President should make it clear that he would not consider its rejection in any way a limitation on his constitutional authority to act.

TITLE VII

Under title VII, the President's Committee on Equal Employment Opportunity would be reestablished as a Commission and given statutory authority under which to operate.

The authority proposed should be granted. The enactment of this provision is not adequate to meet the problems of employment discrimination. A national FEPC law with strong enforcement procedures, as promised in the 1960 Democratic platform, is one of the most necessary requirements. Several bills establishing an FEPC are pending in Congress. The adoption of one of these as an amendment to the proposed civil rights bill is necessary.

The President's bill is generally good so far as it goes. To more adequately meet the pressing problems of racial discrimination as presently practiced, it should be considerably strengthened. Specifically the following actions should be taken to amend it.

Title I: The provisions of S. 1214 and S. 1281 should be substituted for, or added to, the existing provisions to protect the right to register and vote.

Title II: The limitations on the Attorney General's right to act should be removed.

Title III: The authority of the Attorney General to act in civil rights cases should be extended to include all denials of rights based on race, creed, color, or national origin and to protect those advocating and supporting freedom from racial discrimination. Restrictions on the Attorney General's authority to act should be removed.

The school desegregation plan embodied in S. 772 and H.R. 1766 should be added.

Title V: The Commission on Civil Rights should be made permanent.

Title VI: This title should be changed to make it clear the President has constitutional authority to act in withholding Federal funds regardless of congressional action.

Title VII: This should be amended by the addition of a Federal FEPC law with adequate enforcement provisions.

There are several other bills among the nearly 100 before this subcommittee which have been introduced in "package" form and which deserves the serious consideration of the members as they shape a strong and comprehensive bill for House action.

At this stage in the struggle for civil rights, the piecemeal approach is no longer adequate, if it ever was. Massive problems require massive solutions. No one approach to first-class citizenship can be considered except in relation to other approaches. Therefore, it is incumbent that any legislation considered by Congress touch on all aspects of denials of civil rights in employment, schools, housing, public accommodations, etc.

I wish to commend the chairman for introducing a series of bills in package form. H.R. 1766, 1767, and 1768.

H.R. 1766 would speed up school desegregation by requiring submission of first-step compliance plans by all school districts now segregated. It would also provide financial and technical assistance to those school districts that desegregate. H.R. 1767 would help relieve the problem of unemployment by providing a national FEPC program with enforcement authority.

H.R. 1768 would extend the life of the Commission on Civil Rights, establish a sixth-grade education as conclusive of literacy where a literacy test is required to vote in Federal elections, and give the Attorney General authority to institute civil suits to protect civil rights (pt. III).

These three bills embody, to a large extent, the legislative civil rights program of the 1960 Democratic Party platform.

We support the principles of Congressman Celler's bills, H.R. 1766, 1767, and 1768. We would respectfully urge him and the subcommittee to extend the life of the Commission on Civil Rights indefinitely and apply the voting provisions of his bill to State as well as Federal elections.

We note that only one of these bills, H.R. 1768, is presently before this subcommittee. We are hopeful that the substance of the other bills can be incorporated into any bill that the subcommittee reports.

Mr. McCulloch, the ranking minority member of the committee, has introduced a bill, H.R. 3139, that contains notable provisions.

His provision for establishing the Commission on Civil Rights on a permanent basis is sound. Particularly at the present time, when the Commission is under attack for some of its constructive proposals, a vote of confidence by Congress would flow from the adoption of legislation giving the Commission permanent status.

While we support part III authority for the Attorney General in all aspects of civil rights litigation, the use of this authority to accelerate school desegregation, as proposed in H.R. 3139 is a constructive suggestion.

We would, however, ask the subcommittee to delete the provision of the bill requiring the exhaustion of State remedies before this authority could be used Our experience in school cases indicates that a speedup of the judicial processes, rather than any requirement of exhaustion of remedies, is needed.

Our support of FEPC in no way precludes our endorsement of the establishment of an Equal Employment Opportunity Commission with a legislative base, as proposed in H.R. 3139. Provisions of the bill prohibiting discrimination by labor unions and federally supported employment service offices are sorely needed.

We regret that the voting literacy tests coverage of the bill is limited to Federal elections and creates only a rebuttable, rather than a conclusive, presumption of literacy.

The conclusive presumption of literacy based on a sixth-grade education (not limited to Federal elections) was a constructive feature of the Republican Party platform of 1960.

We regard the present limited version of this proposal as a reaction to the awesome power of the filibuster in the other body of Congress.

In short, we suport those features of H.R. 3139 that are constructive steps in protecting the rights of citizens, while at the same time asking that the House strengthen it and extend its coverage.

Eleven bills introduced in the Senate March 28, 1963, are not yet before this subcommittee. They are S. 1209 through S. 1219 and it is our hope that they will reach the House before this body acts finally on civil rights legislation. Although technically not under official consideration by this subcommittee, these bills can serve as guidelines for strengthening the civil rights proposals sent over by President Kennedy.

The 11 bills embody, in the main, the recommendations of the U.S. Commission on Civil Rights, offered in accordance with the authority granted by the Congress. They are sponsored by men with long and sincere records in pressing for civil rights legislation. In addition, they are comprehensive in meeting the issues squarely.

Because of shortness of time, I cannot analyze these bills. By mentioning the subjects with which they are concerned, I trust I may give some idea of their scope and worth. They would, if enacted, provide a federally enforced school desegregation plan; grants and loans to facilitate desegregation; technical assistance in desegregation problems; restrictions on Federal assistance to schools that segregate; physical protection for persons (including the children) involved in school desegregation; part III authority to the Attorney General; prohibition of employment discrimination in interstate commerce, in the District of Columbia, in Federal employment, under Government contracts, and in Federal grant-in-aid programs; a guarantee of decent housing to those displaced by interstate highway construction; removal of all arbitrary restrictions on the right to vote in both Federal and State elections and the establishment of the conclusive presumption of literacy for graduates of the sixth grade; the broadening of coverage under existing civil and criminal civil rights statutes; Federal assistance to improve State and local police practices; prohibition of discrimination in some places of public accommodation operating in interstate commerce; elimination of discrimination in the Hill-Burton hospital program; and establishment of the Commission on Civil Rights as a permanent agency with increased duties and authority.

The proposals contained in these 11 bills constitute the most potent reminder that not only must there be absolutely no weakening of the President's modest program, but there must be a strengthening of it in the ways indicated above if we are to reach the areas of irritation—employment, public accommodations, education and voting—in effective fashion.

Mr. Chairman, the question keeps arising as to whether a civil rights bill will be effective in correcting the evils of racial discrimination. The answers to

this specific is that such a bill, if it is strong enough and comprehensive enough, will help to alleviate a shameful condition and to bring a measure of justice to a people that has been long-suffering.

It seems patent to us that in the hard realities of the day, the Congress must enact legislation at this session to redress the grievances of American Negro citizens. For too many years postponement has been the rule. Time has about run out. There is none left in which to tuck away postponements.

Mr. Chairman, as pressing as are the needs of our Negro citizens, there is yet another compelling reason for action. The Congress must act for the sake of our country. In a manner more challenging than ever before, the United States is on trial. We are not just some nation; we are the nation that came into being on the concept of equality of men and of their freedom. We must act or we must rewrite our beliefs. What happens to Negro Americans is of great and most urgent importance, but what happens to America, the haven of free men, has to be of greater importance. We Negro Americans want freedom for ourselves, of course, but we want freedom for freedom's sake; we want a nation and a world with no second-class citizens of any race or nationality. We want that kind of a nation for our white fellow citizens, in the South and elsewhere.

We look to the Congress to give us that kind of a nation by enacting a strengthened civil rights bill in line with the President's suggestions.

The CHAIRMAN. Our next witness, Mr. C. W. Lokey, comes from Texas. He is a constituent of Representative Henry G. Gonzalez.

STATEMENT OF C. W. LOKEY, DIRECTOR OF THE METHODIST MINISTRY TO SPANISH-SPEAKING MISSIONS IN THE SOUTHWEST; CONSTITUENT OF REPRESENTATIVE HENRY GONZALEZ, OF TEXAS

Mr. LOKEY. As a matter of introduction, I am Clarence Lokey, a Methodist minister. My Congressman asked me to identify myself and give any degrees which I have, which I have done on the paper before you, and some outline of my background and my services through the years.

I am now director of the Methodist Ministry to Spanish-Speaking Missions in the Southwest.

My 44 years as a Methodist minister has been spent almost entirely, by my own choice, in helping direct the work of the Methodist Church to serve the difficult places, the minority groups and the people who need but have little to support a development of spiritual, intellectual, and cultural life.

My ministry with the Methodist Church missions began with an effort to increase the support of the Negro ministers in the South, particularly in Louisiana and that area. My first effort with that board was to increase the support of those ministers from a very unsatisfactory minimum to another not too unsatisfactory minimum.

In other words, at that time, which was about 20 years ago, we increased the support of that group from $1,200 a year to $2,400 a year by insistence and earnest labor to that end.

We have increased the support of more than 100 ministers to Spanish speaking people from approximately $900 a year to now a maximum of $3,600 a year.

My concern has been primarily, if not entirely, that we might be able to equalize opportunity and privilege for those who need us in our own country.

This document which I place in here in your hands is not a brief. It is not well written because of the fact that my time did not permit,

if I were capable, and I am sure I am not capable of presenting a brief to this body of deliberation.

I have tried, however, to give you some measure of background, however this was done by my secretary and she included in this document a good many things on my personal life and service which I might not have included, had I done so, and the type material is primarily material that I dictated to her in a hurry.

In the past 4 weeks which I have been planning and hoping for this opportunity, I have spent in Minnesota, in Mississippi, in Louisiana, and various areas of Texas with very little opportunity to concentrate on this message. However, my concern has been of long standing. My interest is deep and abiding and I think my understanding is worthy of some consideration.

As I have listened this afternoon to the presentation of Mr. Wilkins, I have been convinced more than before that this matter is being handled on an emergency basis which is not legitimate management for a matter of so great concern. There are many statements made which I do not think are justified concerning the fact that in the 100 years there has not beeen any advance.

I have seen things in my lifetime which would shock you and have shocked me in this matter, and I am still being shocked by things that are going on, but the progress that has been made has been very encouraging and makes me very hopeful concerning the relationships and the human welfare in the United States if our National Congress and our national leadership will recognize the real forces that are playing in this matter and give them proper consideration and hold them in their proper perspective.

You recognized, and we have all seen this afternoon, the urgency that was presented in this case and I suspect if either one of us were in the position of the person presenting it, we might present it in the same way.

I am not denying that it is urgent, but if we look at the thing as a matter of the long years, the lifetime of a man is brief. His opportunities are few and not of very long period, but the life of a nation ought to be much different. God is certain that man will move on, if given opportunity and God gives him opportunity.

If we are to look at this thing, certainly none of us would ever question the importance of every competent citizen in the United States having the right and the opportunity to vote. That cannot be overemphasized.

The right to education, and the best education available for every citizen in the United States ought never to be neglected; however, the handling of these matters ought not to be under the pressure of prejudice or under the pressure of those people who are suffering most from it, who are bound under all conditions to yield to the acts of urgency.

I certainly would not for one moment accuse any person on this committee or any person who has ever been before this committee of being a Communist. That would be the last thing I would do, and I hope none will accuse me of being a Communist, though some have said that the Protestant ministry was infiltrated deeply by communism. Such has not ever been the case and is not now.

I think we should recognize, however, that this act or this legislation, if carried out to the ultimate, will build the same conditions that

we called communism in Russia, East Germany and elsewhere in the world. Had the rulers of Russia been told 100 years ago that they were building the foundation for communism in Russia, they should certainly have denied the charge. And I am sure with honesty in their own hearts, but history does not justify their confidence in themselves.

The great tragedy that would be enacted, if this legislation is enacted or if it shall be enacted without great modification, would be the destruction of democratic constitutional government, the destruction of local authority in government and local control.

I am convinced that all the ultimate objectives of this enterprise and of this legislation are and ought to be accomplished and I am further convinced that they will best be accomplished, not by the adoption of this legislation. I am convinced that this legislation will further delay the progress of the United States in democracy.

I think in the first place, Mr. Chairman, that we must hasten the day when we don't separate the people of the United States into groups or into separate divisions. An American citizen is an American citizen, whether he is black, white or any stage in between, and ought to have the rights of an American citizen, but he ought not to be singled out under any condition.

The Government was right when it said, "You must not discriminate in employment and you must not put on the application for employment the race of the applicant." That is good judgment and good business, but when there comes orders from Washington to any local entity of government saying, "You must fill all vacancies and make all employment from now on from the Negro race," you are violating all the principles of the thing that has made us a people of one group and one concern, each for the other, and that order came from Washington to a department of government in San Antonio, Tex., last week.

We are allowing ourselves to accept the separation of the people in the United States from each other and placing them one against the other or one opposed to the other. The quicker we destroy all separation of people and cease to think of groups as groups and place them on a pro rata basis or any other basis that recognizes divisions, the sooner we do away with that, the sooner we will promote real democracy and build a unified nation and build for a world of better leadership around the world.

I would like to comment, particularly on title II, the discrimination in public accommodations. Nobody could regret that more than I. Nobody could hope it could be done away more than I, but I think we are making a sad approach to it, when we begin to establish what you set forth in title II under relief against discrimination of public accommodations. There are many things that will take care of themselves over the long road, and some people will suffer, but multitudes will suffer in this thing, whichever way we go.

This, as it is set up in this legislation, destroys the right of private property, ownership and control.

It just happens that I am the possessor of 6½ acres of land adjacent to an area in San Antonio that is developing rapidly. Just this last week a contractor announced a contract for $10 million worth of construction within a half-dozen blocks of my property. There is under development right now across the road from that property a hospital area or a medical center which will cost in the area of $100 million within the course of the next 5 or 6 years.

I have been told by certain investors that I could have whatever loan I needed to develop that property. There was in mind the development of the property so as to provide employment for at least 100 people, 100 people who would be employed strictly on the basis of their ability and their willingness to serve, regardless of race, color, or national origin.

If this should be enacted, I am satisfied that under the conditions that abide in that area, the offer of a loan to develop that property will be withdrawn, because, as a matter of fact, if for any reason a colored person presented himself to us for employment or for accommodations and we were not able to accept him, and he became discouraged or disgruntled about it, he could take it up with the Attorney General and in less than a week he could be on my neck and I could be thrown into bankruptcy. It could absolutely happen.

Mr. FOLEY. Not under this bill, not within a week's time.

Mr. LOKEY. Well, let's put it off a month. Would that help any? If they got into bankruptcy, it would not be very much relief to have it just delayed 3 weeks, but it could happen and not only could happen, but very definitely might happen.

Mr. FOLEY. What kind of a project was this that you contemplated?

Mr. LOKEY. We anticipated a motor hotel, and some accommodation for older people. It will be a multiple unit, multiple purposes served, accommodation for older people, a motor hotel and some longer period residents.

If that were opened up—and now there isn't any person in America who would like to see it open to every person who was fitted to share in it or participate in it, regardless of color or regardless of national background—and our group in San Antonio are mostly people of Mexican background, rather than Negroes. When that order comes in from Washington to employ only Negroes, you are employing from a 7 percent of the population, when another depressed group makes up 48 percent of the population.

This will seriously hamper the employment of Negroes as well as the employment of other people, and will ultimately move on to that condition which we call communism in other lands.

I don't think that there is a single person here who has more dislike for communism than I do, nor any more realization that we must avoid everything that leads to it, but taking the long look in the centralization of power that this bill, these bills give and in the destruction of private ownership and private management of property, it is moving definitely in the direction that has made Russia what it is and gives a threat of communism.

There is another feature to this bill that I think ought to be considered very carefully——

Mr. CORMAN. Doctor, at that point, may I ask, really, are we put to that choice? We either have to maintain segregation or go to communism? Have we no alternative, really?

Mr. LOKEY. I think we definitely have an alternative. It isn't a question of one or the other. It is a question of whether in our urgency we are going to take courses that lead to the other. That is your alternative, whether you are going to be willing to take the time that it takes to live through difficulties.

Now, it is going to take time.

Mr. CORMAN. How many years?

Mr. LOKEY. A whole lot less than you think. A whole lot less than you think.

Mr. CORMAN. We so often hear that in 50 years we can work this out, but many folks don't figure that they will be here to enjoy it.

Mr. LOKEY. I realize that it may take a longer time than some of us live, it may do that, but it has improved so much in my lifetime that I am delighted with the progress we have made. I seriously regret that it hasn't been more. I do not put my stamp of approval on the slowness that we have participated in.

I do not approve of that. That does not have my stamp of approval.

The thing is, I am convinced that we ought to be very careful today and we can be very careful and we can go on as a great nation, but we must be careful not to use the methods that lead to the destruction of the democratic principle of government. The principles of this legislation, that destroys local self-government, are seriously a matter of concern to those people who would like to take the long look at the life of the Nation and the good of the world.

The CHAIRMAN. Mr. Lokey, I am going to ask you to condense your statement within 5 minutes, the balance of it, please.

Mr. LOKEY. Well, I would be glad to give that time to questions, if there is some question that you would like to ask. I would like to say on this matter of school integration, I have been interested to clip an article from the Times-Picayune, New Orleans, last week, in which they quoted from the New York Times. [Reads:]

> New York City is doing some hard and needed thinking these days about how to give the Negro his equal opportunity in everyday education, jobs, housing, everything. That is good, but the Negro equality with the white man should be wary of easy solution and quick remedies seen to promise instant success. One of these is inherently unjust and inhumane. It is the quota system. It has the temptation of surface plausibility. If the population of the city is 15 percent Negro, why shouldn't the Negro have 15 percent of the jobs? If the population of Manhattan is 25 percent Negro, then he should have 25 percent of the jobs in Manhattan. Easy, isn't it, but go on from there. If this reasoning were valid, the quota should be immediately applied to every business in every industry and on every level, whatever their qualifications of applications might be and it would apply to religion, national interests and how many other kinds of divisions. Every floor in every office building would have to have its quota, shade or color, race or what not. To the State the proportion is to show its ability and also its inherent evil.

Now let us look at the public school. With the best will in the world how in Manhattan can quota be achieved, even if the desire is to do so. The Negro, the Puerto Rican children in that broad total is 76½ percent of elementary school enrollment and 71 percent in the junior high school enrollment. Citywide there are 117 elementary schools whose pupils are Negro and Puerto Rican by 90 percent or more. These schools cannot be made white. A satisfactory percentage of integration can be achieved neither by business nor by zoning nor by Government fiat nor by magic wand.

What is possible in this impossible solution, the board of education can do its best with the full use of the tried, previous methods which include open enrollment and policy of moving some Negro children under utilized schools into the white or mixed districts.

You can see immediately what the situation is. This is becoming the realization of this Nation of ours and if this Congress should by any chance fail to understand what the Nation is beginning to understand, North and South—this is not a problem North or South—then

we will miss our cue and we will be moving in the direction far from democracy and away from justice and peace to the Negro as well as to all other parts of this population.

I hope this committee will see fit to see to it that this legislation does not pass and this Congress will be well advised if it stays in session until the last possible day to defeat the whole matter and give this Nation a chance to move in the direction of democracy and justice for all.

The CHAIRMAN. Thank you very much.

(The complete statement of Mr. Lokey is as follows:)

CLARENCE WALTERS LOKEY, A.B., M.S., PH. D., D.D.

Offices: 535 Bandera Road, San Antonio, Tex., 78228, 1701 Arch Street, Philadelphia 3, Pa.

(The master of science degree with major studies in rural sociology; doctor of philosophy in economics.)

Military service: Served as a commissioned officer in the heavy artillery assigned to the 1st Army, AEF, France in World War I.

Work history: Was employed as traffic superintendent with Southwestern Bell Telephone Co., 2 years immediately following return from France.

Became a Methodist minister in Houston, Tex., in 1920. Has served small and large churches, district superintendent and missionary secretary for the Texas conference, and the general executive secretary of home missions for the Methodist church (elected general executive secretary in 1944, with offices at 150 Fifth Avenue, New York, N.Y.; has served with the Division of National Missions since that time).

Has, by preference, spent almost entire ministry directing the forces of the Methodist church in reaching and ministering to depressed areas and groups including our Negro neighbors. Has never made any prejudicial distinctions on the basis of race, color, or national origin.

Present work: Principal ministry at this time is directed to Spanish speaking missions in the Southwest. Also assists in better support for the Methodist Indian and Negro ministry in the Southwest.

The following page is the budget for the Spanish speaking support through his office for the year 1963–64, now in progress. These figures do not include funds secured for our Negro neighbors, or our ministry to our Indian neighbors, nor does it include assistance for buildings and other mission needs.

Deep concern for the advancement of all people was expressed in a memorial message given before approximately 2,000 members and visitors at the Texas Methodist Annual Conference at Houston, Tex., June 3, 1963, press report attached:

CIVIL RIGHTS LEGISLATION NOW BEFORE CONGRESS

TITLE I

The voting rights of every competent citizen should be inviolate and should be protected by every good citizen, and should be kept out of the reach of politicians lest exploitation be their destruction. Public opinion is the great and proper force for correction of evils in all phases of Government, though it may seem all too slow for the brief span of human life. Properly cultivated, it will prove a source of strength and longevity for the Nation. The least national legislation and exertion of force in this field, as in all other Government, the better.

TITLE II

Injunctive relief against discrimination in public accommodations, destructive of ownership, and control of private property is the destruction of more human rights by a new set of prejudicial and discriminatory legislation.

According to the public press the social security office in San Antonio, Tex., received an order from a high official in Washington to fill all need for new employees with Negroes—if you can't find them, we will send experts from Washington who can.

A few years ago I went outside of the city limits of San Antonio and purchased 6½ acres of land to serve as a base of operation, storage of materials and equipment needed in our mission enterprise, etc. The church had no money for the establishment, but it just happened that a $10,000 20-year endowment policy converted from World War I Government service policies, came due and I was able to buy the property on my own.

Today San Antonio is moving rapidly to envelop my property. I had hoped to develop the property for my contribution to the needs of people, and an employment when the years retire me in 1965. A $10 million business and professional center is developing on my side of the street a half dozen blocks south of me. A multi-million-dollar medical center is developing just across the street from me. Investment concerns have indicated that I could borrow adequate funds for developing my property; i.e., before there was any thought of tighter national controls of private property. I had expected a development that would employ no less than 100 people at the best possible wage we could earn for them.

If this legislation is enacted, and on the complaint of any colored person, for a lack of our ability to employ, or otherwise serve them—which they might by any possible twisting of the facts, make look like discrimination, have the whole force of the Attorney General's Office on our neck, our whole investment would be jeopardized and could very well be thrown into bankruptcy. This prospect however, would probably withdraw the interest of investors and would certainly limit my willingness to venture. I do not want all of my good fortune and accumulations of a life of frugal service to be lost, and me be compelled to live out my days in poverty after having fought for others all my life.

This destruction of private enterprise is one of the most vicious pieces of legislation of the whole package of this whole vicious program.

The control may have been conceived in an ignorant good faith or in the heat of youthful political ambition—but however it was conceived, it would if enacted, work with both hands, to establish state control of all business—which we have feared and called communism in Russia and China and East Germany, and which even Nikita K. is beginning to realize doesn't work.

The suggestion that things move too slowly under private management has some merit, but it can in the long run be hastened through respect for the rights of all, and not more vicious prejudicial and discriminatory legislation. A mania for speed will have disastrous results exactly as it does on our highways.

The Congress will be well advised to take whatever time it may require and use whatever methods are required to defeat any enactment of legislation under whatever guise it may be presented that destroys the right of local self-government and increases the powers of a few that could be very dictatorial and destructive of all freedom and human rights. A totalitarian state would be the end product.

All of this proposed legislation presumably to protect the civil rights of a minority, puts the rights of all, including the minority, in jeopardy at the whim of a powerful central authority.

As private citizens who have sought by every legitimate means the fullest freedom and broadest possible rights for every individual under a constitutional government, my forebears, my generation, and my children have borne arms to secure and defend those freedoms—from the Boston Tea Party and the Green Mountain Boys of Vermont, to the Battle of the Bulge in the Second World War and the Korean conflict. We have not and never will consent to oppression from any source, or the bullying of any mob law, from any source. I think the blood of Patrick Henry still flows in the veins of a great majority of sound-thinking American citizens. And though they have an earnest concern for all poor, displaced, and needy people, they will not be bullied by any, into the destruction of their national heritage—freedom and opportunity for all. I am confident a sound Congress, and a firm law enforcement on the local level will be able to convince the lawless elements that peaceful processes of the law can and will serve all people best. This does not mean to put my stamp of approval upon the injustices so evident to multitudes in our own land—not only Negroes but multiplied thousands of every area and group who suffer from lack of opportunity for education and character development, for whatever reason. Too often these matters have been treated as having sectional reference and unanimous support of all Negro people, but that is not the case, as you know.

I think this Congress should recognize the difficulties that confront our country, for what they are, and not fight blindly in the dark. Our present plight is

not the product of race prejudice and hate that now seems to be the only consideration of those now recommending further false moves in legislation.

Our difficulties arise largely from the industrial revolution that has and is, displacing millions of people (not Negroes only) and will continue to do so until the source of our real troubles are properly diagnosed and we begin to function in keeping with eternal laws, that the Supreme Court cannot abridge or amend, and the Congress cannot augment or change.

The Negro citizen is not the only unemployed—and the sooner we cease to try to correct discrimination against some by a greater discrimination, the sooner we will be in a position to alleviate the distresses of all.

A recent news release in a San Antonio, Tex., daily, quoted a directive from a high authority in Washington, to hire only Negroes, and if you can't find acceptable Negro applicants, experts from Washington will see that you do.

There is a good deal of complaint that unqualified Negro employees are doing a great injustice to the Negro cause. This can be remedied by the reeducation of all people who need training to qualify them to be productive employees. The industrial revolution in agriculture has pushed a great majority of our Negro neighbors into that great stream of moving Americans with very little or no fitness for the industrialized community and large cities to which they have been compelled to go for employment and a livelihood.

Agriculture over the entire Nation has reduced its work force and released many millions of people because they are no longer needed to produce the food and fibers needed, and the end is not yet.

I asked a Detroit, Mich., Methodist district superintendent about two decades ago to indicate the people who lived in a community for which he wanted to establish a church with national missions help. He indicated that the community was made up of Negroes and southern white people who had recently moved into Detroit's industrial community for employment. This revolution and the present unemployment is not of Negroes only. The greatest number of unemployed today are not Negroes. It just happens that the Negro is easily identified and has always had the sympathetic concern of all white people—South and North, and his cause is easily dramatized, and easily catches the imagination; and our sympathy usually goes to the ones farthest removed from us. The Negro leadership is rapidly destroying the good will that has so ardently supported him even in his extreme measures, but will not continue for long.

This is a dangerous political issue for two reasons—it can destroy good government, and make much worse the condition for the object of its supposed interest—the Negro.

TITLE III

Desegregation of public education has been ill conceived and blunderingly pursued to the greatest destruction of educational values that has ever taken place in civilized history. Millions have been squandered in its destructive movement that could well have been to improve the quality of education for this Nation. And this is not a private and individual opinion. I have here, an editorial from the New York Times which indicates clearly that realization of this fact is spreading rapidly among thinking Americans—Negro and white.

The blunder at Oxford, Miss., where a foolish leadership in government, following a poorly guided Negro thinking, spent millions of dollars and caused unnecessary strife and loss of life to break the foolish pride of a great body of white people of Mississippi, to satisfy the equally foolish pride of a few misguided Negroes. That is now water under the bridge, but we all should learn from our mistakes.

The Negro people have produced some of the finest minds and spirits in the history of this Nation but we are not creating conditions for any successors to those great and good men who have added greatly to that noble line of American life. Mr. Meredith was not being deprived of opportunity for the best in education before he enrolled in Ole Miss, and his opportunities for education were not improved thereby. On the contrary.

Our Negro neighbors have a great stake in the American heritage and deliberate, forced mixing of the races is not a part of it. They have much in their own right. Where conditions are right, if they are ever right for mixing of the races, that will take care of itself and needs no forced conditions. The Government has no field of service in this area, and should not use or exploit false ideas for political advantage, lest it prove disastrous for politicians and us all.

All money for better education for Negroes and all others should be used for better prepared and better paid teachers, more and better textbooks, buildings,

and facilities, and not one cent for breaking down the community school lines for forced mixing of racial groups. When he gets beyond the community public school, I see no reason why any individual should not pursue his education in any educational institution whose requirements he can meet, educationally and economically, and where he will and can adjust himself to the environment. Public opinion and good will will better adjust these matters than legislative action and force.

TITLE IV

Establishment of community relation services: The legislation on this subject is much misguided and will be very expensive and not helpful in any respect. It is a vicious piece of legislation and I sincerely hope it will be defeated. Measures most valuable to the protection and well being of the local community and all of its citizens would be laws making it a Federal offense for persons to cross State lines for purposes of agitation, demonstrations, and participation in any activity in violation of State and local law. Agitation by irresponsible persons end ill conceived by well-intentioned people, has cultivated disorder and caused bloodshed in many communities. We just aren't prepared to be the judges of the far places and people.

TITLE V

The Commission on Civil Rights is an important Commission, but its responsibility should be limited to collecting information for the enlightenment of Government and the people and acting as an intelligence and advisory committee.

TITLE VI

There should be no legislation authorizing the withholding of Federal grants, loans, or contracts, or payments, other than the legitimacy of the project and performance.

TITLE VII

There are already too many commissions lavishly spending American dollars that threaten the dollar itself. More study should be given by commissions already established and financed, to the stabilization of the dollar, our national economy and providing more jobs for the employment of all usable manpower where it can be most productive.

Gentlemen of this Judiciary Commitee, I want to thank you for the privilege of appearing before you to speak my convictions on these very important matters. This is a democratic procedure which should help you to understand the thinking of the people. Your responsibilities are heavy in these matters and the great majority of the people are expecting you to yield not one inch to the bullying efforts of a few ill-advised leaders who do not even represent the best of Negro people, though it has been easy for many of them to think the Government will divide the riches of our land with them—no character, ability, or work required. I feel confident that knowing the rising tide of resentment in the country you will defeat this whole packet of prejudicial, discriminatory, and destructive legislation.

Thank you.

The CHAIRMAN. Our last witness today is Dr. Edward L. Young, chairman of the Physicians Forum, Boston, Mass. You have some doctors with you, have you not, Dr. Young?

STATEMENT OF DR. EDWARD YOUNG, CHAIRMAN, PHYSICIANS FORUM; ACCOMPANIED BY DR. BENJAMIN SELLING, CHAIRMAN, MASSACHUSETTS BRANCH OF THE PHYSICIANS FORUM

Dr. YOUNG. I would like to divide my time between myself and my associate, who is chairman of the Massachusetts chapter. Together I think we can take very little of your time. What we have to say is very brief.

The CHAIRMAN. Have your colleague come up with you. For the record, Dr. Young's associate is Dr. Benjamin Selling, chairman of the Massachusetts branch of the Physicians Forum.

Dr. YOUNG. I am Dr. Edward L. Young. I am a surgeon practicing in Boston and Brookline, Mass. I am a member of the American College of Surgeons. I am certified by the American Board of General Surgery and certified by the American Board of Urology and I am an honorary surgeon of the Massachusetts General Hospital.

I am chairman of the Physicians Forum.

The Physicians Forum is a national membership organization of a little over 800 members concerned with all phases of medical care. It is especially interested in the improvement in the quality and better distribution of medical care for all people.

We appreciate the privilege of this opportunity to testify in favor of the "The Civil Rights Act of 1963."

Primarily we believe that discrimination is immoral. We believe it is contrary to the principles on which our Government is founded.

We are particularly interested in the medical aspects of this bill. The science of medicine has reached a very high level in this country, but the best that can be had is not available to everyone. Only the very rich everywhere, and any of the very poor living near a big medical center can get the best of medical care.

In diminishing degrees the rest of the inhabitants may be deprived of it. At the bottom of the list is the Negro. Although the colored race makes up approximately 10 percent of the total population of the United States the colored physicians are less than 2 percent of the whole number of doctors. According to the census there are 230,000 doctors in the country and of those only 4,000 are colored.

Add to this that in certain parts of the country the number of hospital beds available to the Negro is very limited. I am sure you have, all of you seen from time to time incidents that were so flagrant that they made the headlines in the papers. A colored woman in active labor, for instance, being refused admission to a hospital and having to deliver her baby on a blanket in the snow on the sidewalk in front of that hospital. A colored boy in a serious accident refused admission from hospital to hospital and dying before he could get medical care. These are matters of record. These facts on top of the poor economic level, in which a large part of the colored race lives, results in a demonstrably lower level of health.

There are plenty of figures which prove this. I am sure that you have been deluged with them so I will not go into detail, but mention only two which I think are worth repeating.

The deaths from pulmonary tuberculosis are more than twice as frequent among the colored population than among the whites. The larger the number of cases of this disease remaining anywhere, the greater the danger to everyone and the longer and more difficult it will be completely to eradicate it. With the modern drugs which we have at our command, medical drugs which should be available to everyone, tuberculosis could be controlled.

More than twice as many Negro babies die during the first year of life than do the white babies. Carry that through with the ill health of the others and it goes a long distance. ("Vital Statistics of the United States 1959," vol. 1, table 25.)

As a physician I am keenly conscious that an infection of a finger or toe represents a danger to the whole body and unless controlled and cured may even cause death. Just so because the colored race in this

country is part of the United States, its lower level of health weakens the whole body. Every attempt should be made to improve the situation and the passage of this bill will be a big step in that direction; it will contribute in large measure to eliminate discrimination in medical care.

Although the reasoning written into title II of this act for public accommodations applies equally well to all nongovernment health services I respectfully suggest that an addition or additions be made to make this definite and clear. In other words, all medical facilities should be made readily available to all regardless of race or color. That addition is something that you with your technical knowledge can do much better than I. Perhaps you say it is not needed, but I would like to see it written in so many words.

Discrimination in education has been one important factor why so few members of the colored race have been acceptable candidates for medical schools, but discrimination has also had its place even with well-trained applicants, and certainly we want more well-trained applicants in the colored race because they can be the members to make valuable contributions. Those of you who have been in the hospital have on your record a "negative Hinton"—at least I hope you did. This test was discovered by Dr. Hinton, a colored man, one of the great scientific medical men of this country.

Title VI can be of value in this situation when Government aid to medical schools becomes necessary and this is, today, a crying need for many such institutions. Elimination of all discrimination should be one of the requirements for such aid.

Ttitle VI would also invalidate the acceptance of the separate but equal clause in the Hill-Burton Act. Up to date I think there have been 90 grants in the Hill-Burton clause where there is complete discrimination in the recipient of that aid. It could be particularly valuable to us as I have suggested because the granting or withholding of the dollar is a wonderful persuader.

We believe very strongly in the idea enunciated over 19 centuries ago and clearly stated by Abraham Lincoln, "A house divided against itself cannot stand."

May I thank the committee for the privilege of making a statement, brief though it is. I would like to emphasize that we of the Physicians Forum think it is of the greatest importance for the future welfare and strength of this country that it be passed.

May I hand over the baton to my colleague?

The CHAIRMAN. Yes.

STATEMENT OF DR. BENJAMIN SELLING, OF THE MASSACHUSETTS CHAPTER OF THE PHYSICIANS FORUM, INC.

Dr. SELLING. Thank you, Mr. Chairman and members of the committee, for this opportunity to present my views to you. I am going to present two crucial results of segregation: First, the unique handicaps faced by Negro youth who wish to study medicine and the later limitations on their practice due to segregation; and second, an example of the detrimental effect of segregation on the health of the Negro citizen.

Regarding the first point, in our Nation as a whole, 1 out of every 900 citizens has completed medical school and become a doctor. But among Negroes, instead of 1 doctor education for every 900 citizens, there is only 1 out of every 5,000. Or, to put it another way, a Negro youngster has only one-fifth the opportunity a white youngster has of becoming a physician. And although an increasing number of Negroes are becoming accepted at medical schools, the rate of increase is much, much slower than that of the Negro population. In other words, one's chance of entering medical school if one is a Negro was better in 1940 than it is now.

Our country is facing an increasingly severe shortage of physicians, and we must tap this reservoir of talent.

As things stand now, we cannot. Competition for admission is so keen and the cost of medical education so staggering—over $50,000—that only a great improvement in the standards of education beginning in the primary school and in economic status of the Negro community will ever put more of them into a position to take up the profession. This is the importance of the civil rights bill to the medical profession: this bill, by providing equal opportunity in education and occupation, will definitely help improve the status of Negroes to the point where more can become doctors.

Turning to the graduate M.D., throughout the Nation, discrimination by white doctors prevents Negroes from joining medical societies. Now this is a very important point, for the great majority of hospitals require medical society membership before a doctor is allowed to use them. The doctor who cannot join his society cannot hospitalize his ill patients. He can only practice "half medicine."

Furthermore, the local medical society is a source of professional contacts and scientific education, the very breath of life to a physician.

Thirteen years ago the AMA urged local societies to remove racial restrictions. Some progress has occurred, but at a snail's pace. It is our opinion that action taken in communities under the stimulus of the civil rights legislation will so change these communities that integration of medical societies will rapidly and voluntarily improve. And this of course will improve the quality of medical care in these areas.

My second point concerns the direct dependence of one's good health upon one's status as a citizen. Public health authorities throughout the world have long recognized that one of the best indexes of how civilized a country is are the maternal and infant mortality statistics. These particular figures are used because it is precisely the most civilized countries which are the most concerned with the preventive medical care of pregnant women and of infants, and are the most able to provide the housing, nutrition, and comfort necessary for their survival.

The standard story of the healthy woman in the primative tribe stopping along the path to have her baby and a few hours later catching up with the group is a myth—our modern mothers and infants survive far better. However, in our country, maternal mortality among Negroes continues to be six times that among whites. That this is an economic rather than a medical fact was found by a recent study in New York City, for when the economic status of Negroes improved, maternal mortality immediately dropped. And what is true of ma-

ternal mortality is also true of infant mortality and, of course, of death due to all kinds of specific diseases, including cancer and heart disease.

As a physician, I consider this mortality excessive, unnecessary and tragic. The means of prevention are at hand, but they do not lie within the power of the medical profession. Rather, they depend upon a rapid improvement in the entire social and economic position of Negro citizens. And a vital instrument to this end is the civil rights bill.

From the standpoint of compassion alone, I sincerely hope it will pass.

Thank you.

The CHAIRMAN. Thank you, Dr. Young and Dr. Selling, for coming down here to give us the benefit of your counsel today.

The committee will now adjourn to meet tomorrow morning at 10 o'clock, when we will hear from Gus Tyler, assistant president of the International Ladies' Garment Workers' Union; Mr. Norman Thomas of the Socialist Party; Mr. James Farmer, national director of CORE; Mr. Oscar Brinkman, cochairman of the legislative committee, the National Apartment Owners Association, Inc.

We will adjourn until 10 o'clock in the morning.

(Whereupon, at 4:45 p.m., the committee was adjourned to reconvene at 10 a.m., Friday, July 26, 1963.)

CIVIL RIGHTS

FRIDAY, JULY 26, 1963

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 5 OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to adjournment, at 10 a.m., in room 346, the Cannon Building, Hon. Emanuel Celler (chairman of the subcommittee) presiding.

Present: Representatives Celler (presiding), Meader, Rodino, Jr., Rogers, Toll, and Kastenmeier.

Also present: Representatives Corman and Mathias.

Staff members present: William R. Foley, general counsel; William H. Copenhaver, associate counsel; and Benjamin L. Zelenko, counsel.

The CHAIRMAN. Our first witness today is Mr. Gus Tyler, assistant president of the International Ladies' Garment Workers' Union.

STATEMENT OF GUS TYLER, ASSISTANT PRESIDENT OF THE INTERNATIONAL LADIES' GARMENT WORKERS' UNION

Mr. TYLER. Mr. Chairman, Mr. Toll, my name is Gus Tyler.

The CHAIRMAN. The members will come in as you go on. Don't worry. You may be seated.

Mr. TYLER. My name is Gus Tyler, and I am the assistant president of the International Ladies' Garment Workers' Union.

May I at the outset express the thanks of the organization I represent for the opportunity to appear before you this morning. The sentiments that I will express this morning are not purely my own, nor merely of an abstract organization.

Our legislative representative informed me this morning that she has in possession more than 60,000 signatures of members of our union attached to a petition on behalf of the basic content of the Civil Rights Act of 1963. These will be sent to the individual Congressmen and I expect that before LaborDay we will have three or four times that amount. I merely mention this to indicate that this is not just the testimony of an individual or of an abstraction, but is the feelings and sentiments of our membership overwhelmingly.

In order to avoid repetition before this committee and in order to spare your valuable time, I have tried to stay abreast of the testimony that has been submitted to you.

So far as the general content of the Civil Rights Act of 1963 is concerned, we would like to associate ourselves with the basic statement presented to this committee by George Meany, president of the American Federation of Labor and the CIO.

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The CHAIRMAN. Do you wish to place your formal statement in the record?

Mr. TYLER. I should like to submit my formal statement to the record.

The CHAIRMAN. It will be accepted for the record.

Mr. TYLER. What I say I hope will be briefer than the formal statement.

I should like to underline two points contained in President Meany's statement, namely the need for full employment, although that is not immediately before your committee, and the need for a fair employment practice act. We are in agreement that the primary step in allaying the present wide and justifiable discontent in the Nation is both full and fair employment.

I have come before you to address myself to one question and one question only, and that is:

Is there need for legislation, or can this problem be resolved through a series of voluntary acts?

I appear before you addressing myself to this one question because our organization, over 63 years of existence has, we believe, acquired a tremendous body of experience in this particular area and that body of experience may be useful to this committee and to the Congress of the United States.

We have a sort of special interest in this matter because of the nature of our organization. We are congenitally involved with minority groups and we are historically, deeply concerned with human rights. We are a union of minorities. The workers in our trade come from every part of the United States, and from everywhere in the world.

We have had to wrestle with the problem of creating a union, a oneness out of people who speak many languages, believe in many religions, and represent many different races.

Secondly, the early founders of our union established a tradition. It was a tradition based on their own experience very largely, the flight from oppression and tyranny. Therefore, we have a historic interest in the continual battle for human rights.

The CHAIRMAN. How many Negroes and Puerto Ricans are there in your union, and what is the total membership of the union?

Mr. TYLER. 440,000 members in our union. I would make a rough estimate—we are compelled to make rough estimates because, as you know, we keep no rolls by race or religion—that we have about 100,000 Negroes and Spanish-speaking members in the union, and of the Spanish-speaking, they are overwhelmingly Puerto Rican. Of that 100,000, my guess is that approximately 40 percent, or between 40,000 and 50,000 are Negroes.

This applies not merely to New York, but all of the United States. While in New York our Spanish-speaking membership is overwhelmingly Puerto Rican, although not exclusive, we have large bodies of Spanish-speaking members in Miami, where they are primarily Cuban, and in the Southwest, where they are primarily Mexican-American, and on the west coast.

The nature of our organization, originally an immigrant organization, has not fundamentally changed. We may have fewer immigrants, but more migrants, so that we are constantly facing the problem of the integration of new ethnic groups into the organization.

Let me cite three experiences indicating the effectiveness of voluntary action, and yet the limits of voluntary action.

In 1934 our union met in convention in Chicago. We discovered on the very first day that some of the facilities were segregated. We spoke to the management and protested. Our protests were unavailing, and so we picked up our convention and moved to another hall, also in Chicago. Since that time, many organizations, many unions and other organizations, have done the same, and there has been progress. Yet I was interested to note that just last week I received a letter from one of our regional directors in which he said to me he was trying to organize a staff conference in a convenient place and at an appropriate time, and he was unable to do so, because he could not find integrated facilities. This is 30 years later.

I am certain that if this regional director just tries hard enough and puts up with enough inconveniences, he will be able to find a place in his area, but his success at doing so will merely point up in a sense our overall failure to handle the total problem in this 30-year period. He will have found, if he does find a place, that there is a straw of civil rights in a sea of social work.

Let me submit another example. In 1934 our union submitted a resolution to the American Federation of Labor convention in which we proposed that the executive council, the ruling body of the federation, speak with the executive bodies of the various national and international affiliates in order to carry through a program of desegregation and the elimination of discrimination within the unions affiliated with the A.F. of L. That resolution, submitted by the ILGWU, was carried by a unanimous vote at the A.F. of L. convention in San Francisco, the year 1934.

The CHAIRMAN. Are there any Negroes on your executive council?

Mr. TYLER. We have no Negroes on the—the executive council of the AFL–CIO has a Negro on it. None on the ILGWU, although we have a large volume of Negroes who hold second-line positions.

The CHAIRMAN. There has been a charge, as you know, by a Member of Congress in New York, that you have no Negroes who are officers of your union.

Mr. TYLER. We have, ILGWU has, many Negro officers, organizers, business agents, educational directors. I am certain that if the Negroes in our union, in the process of integration, follow the pattern of all other groups that come into the union, they will ultimately have members on the executive board of the ILGWU and, if the present trend continues, I assume that in my lifetime they will be a major voice in our union at all levels.

But 30 years after our resolution was carried unanimously at the AFL convention, George Meany, as you know, appeared before you asking for FEPC legislation to strengthen the hand of the AFL in carrying through a program to eliminate discrimination inside trade unions.

One final example: In the early thirties many Puerto Ricans began to pour in the ILGWU and we faced a very real problem of integration, because many were not members of the international for 2 years and not of the local for 2 years and, therefore, could run for no office. Inquiry was made if it would be possible to allow these people to run for union positions by waiving the constitutional requirement.

The president of the union, David Dubinsky, wrote a letter to a local making the inquiry saying that, in the case of the newcomers into the union, the Puerto Ricans, we ought to waive the constitutional requirement and allow them to run for office in the union so they could play a policymaking role. That was, again, 30 years ago.

In that period of 30 years we have seen the Puerto Ricans become first-class citizens of our union, a step toward becoming first-class citizens in our community. Yet in the State of New York at the present time, many of the Puerto Ricans who play an active and effective role in our union and have done so for many years, are unable to vote because they cannot pass a literacy test in English and they cannot take a literacy test in Spanish.

I mention these three examples, not merely to tell what we have been doing to establish our credentials in a sense, but, also, to indicate that alongside of success, we must note the failure. We are asked, "Has there been no progress?" We think there has been progress, and that we have contributed toward progress in integration in the United States, but it is only progress as measured against the past. It is hardly progress as measured against present social expectancy, because over the last 30 years there has been an accumulation of frustration and there has been an accumulation of expectations.

The American Negroes and other Americans have become Americanized, and their becoming Americanized means that they do look upon this as a land of opportunity and, therefore, the progress we have been able to make through voluntary action, when measured against the background of social expectancy, is painfully inadequate.

For this reason, we suggest the need for legislation. We think legislation is the proper and the peaceful way of making necessary social adjustments to meet the growing frustrations and hopes of people; where the legal channels are closed, extra legal channels are forced open.

Law and order are not one word. When law is based on justice, it makes for order, but when law or custom with the power of law is based on injustice, it tends to incite disorder.

May I once more submit the experience of our own labor movement. One hundred years ago the American worker was almost exactly where the American Negro is today: denied certain basic rights. Because he was denied these rights, he was denied a proper income and denied the respect due a human being.

From 1864 on for the next 75 years, the history of American labor was a history of uninterrupted violence, from Homestead to south Chicago.

Violence, unparalleled almost anywhere in the world. And then came recognition, and with recognition of unions came recognition of rights; and with recognition of rights came growing respect and a growing sense of responsibility on both sides.

I am not now saying that there are no differences between labor and management, but once the rights are established, these differences can be expressed in debate, and adjudicated through peaceful settlement.

I would like to suggest to this committee that this analogy ought to be meaningful to us at this moment in our history when we are

repeating and reexamining the same circumstance: a large body of people reaching out for their rights.

There is a second reason that we think legislation is important. We think that legislation protects the man who wants to do the right thing against his competitor who wants to do the wrong thing. We are inclined to believe those merchants who say that if they integrated at the present time—and they would like to—they would lose business to their competitors and, therefore, the man who wants to do the right thing is not free to follow his conscience, because he fears the competition of a man who is doing the wrong thing. A body of legislation, especially when it rests on our avowed ideals, tends to liberate the man who wants to do the right thing so he can follow his conscience. A body of legislation doesn't only check the wrongdoer: it frees the rightdoer.

Here we have decades of experience. We know our employers. We know that some of them without a union would like to pay a higher wage. They don't dare to. They say, "If I pay a higher wage, I am ruined by my competitor."

Once we organize an industry, the man of decent and generous conscience who wants to pay the high wage is free to do it and his competitor, who may be a cheapskate and a skinflint, is compelled by our contract, the legislation of the industry, to pay the decent wage.

Our experience is that an industrywide contract, like legislation for a nation, doesn't just go after the wrongdoer, it come as a moment of freedom to the rightdoer. Because this has been our experience, I would like to suggest to this committee that much of the debate as to whether we should do this through legislation or voluntary action is an artificial distinction because when legislation is passed in line with the avowed ideals of a nation and in line with our national purpose, then the legislation creates a social atmosphere within which many people, ultimately most people, will do the right thing without any compulsion. Compulsion is not necessary.

Let me cite two very recent and heartening examples—I have to move around the country because by position is national. I attended a convention in Washington, D.C., of delegates from our Southeastern States and another one with delegates from the Southwestern States. You know those parts of the country. These were integrated conferences. Our delegates met together, ate in the same hall, visited their Representatives and Senators as an integrated delegation.

There wasn't a single incident. Now, these people who come from our Southeastern and Southwestern States who were members of the ILGWU are not superhuman beings. Their behavior patterns are similar to other people in their area, but they feel that when they are at a union meeting, the right thing to do is to accept one another. In the union this is the social norm; this is the atmosphere; this is the way it is.

Two examples: One member of our union in a Southeastern State who was active in an organizing drive was unable to find a hall for the members of the union to meet in, a hall where they would accept integrated membership. She invited the members to her home and she was very frank in her feelings. She said, "I would never invite these people to my home socially, because I just don't believe I want to. But I will let them come with others to my home for a union meeting, because that is the way it is in the union."

That is the establishment of a social norm.

Another case out of the Southwest: I was listening to one member from Kansas explain the meaning of all of this civil rights business to another member from Arkansas and she said, "Here is the way I see it: It does not mean that we have to love them, although as good Christians we should, but it does mean that we have to let them use our public library because, as an American citizen, that is their right."

What I am trying to say here is that when a broad body of social behavior is established, either by custom or by law, and this broad body of social behavior is in line with ideas that fundamentally we all accept, that we will find most people going along with these ideas without the necessity of compulsion.

One final point: the question as to whether or not Federal legislation will not interfere with and destroy property rights and States rights.

May I say briefly that we think both the rights of property and the rights of States are important. I, personally, would be somewhat worried if all property and all decisionmaking were concenrated in Washington, D.C. The experience of our generation is that freedom is safer where power is scattered, and property is power, and State government is power, and the scattering of power is one of the safeguards against centralized tyranny; but power can also be abused. Trusts have abused power. We passed antitrust legislation.

The CHAIRMAN. We have permitted the scattering of power by giving power to the States over a hundred years ago and the States have not yet solved this problem of race. Therefore, we have to do something different than has been practiced over the years. That is why we have this bill before us.

Mr. TYLER. Mr. Chairman, this is the point I was wanting to make. I would like to indicate that this is not singling out a group. We have done this in regard to trusts, where the private combinations known as a trust abuses power. Where employers have abused power we have passed legislation. Where banks and railroads and brokers and, if you please, where unions have abused power, we have also passed legislation to curb the abuse of power and the same is true in the States.

The CHAIRMAN. Mr. Meany admitted that many of the local unions still practice segregation and that he is striving with might and main to put his own house of labor in order.

Mr. TYLER. And we would like legislation to strengthen his hand in this particular case.

I am sometimes amazed at the foresight of the people who wrote the Constitution. In going through the Federalist Paper I ran across one essay in which the writer of the Federalist Paper was making a tremendous point about the need for a Federal Government. In it he pointed out that there is less danger of tyranny in a Federal Government than there is in a single State because, he said, "In a single State a few men can get together, organize a conspiracy and impose a tyranny, but when many people from many States come together, they are less apt to do so."

Therefore the Constitution, article IV, specifically gives to the Federal Government the responsibility of maintaining the republican form of government in all of our States.

It is almost a mandate to Congress, I think. It says:

You are the guardian of freedom in the United States and separate States.

Each one of us has a favorite politician in each party. I want to close with the thought of one of my favorite Republicans, Russell Davenport. He wrote a series of essays put in a book entitled "The U.S.A, Permanent Revolution."

He was making the point that the United States, founded in revolution, was a rather remarkable Nation in that it was constantly able to renew the purpose of the Founding Fathers by extending itself to include ever new groups, newly awakened groups with their new demands. To him this was the permanent revolution, the capacity to fulfill our purpose by a constant renewal of our purpose, a constant refreshing of an ideal contained in the pledge of allegiance to the flag that said we are "one Nation, indivisible, with liberty and justice for all."

I should like to append one very specific suggestion, a small but meaningful amendment to the proposed act. This refers to the problem of the Puerto Ricans to which I alluded earlier.

Puerto Ricans, many of whom cannot presently pass a literacy test in English and many more of whom are embarrassed to run the risk of failing such a test, are not uninformed about political affairs. There is a vigorous Spanish daily press, several Spanish language periodicals, and several radio stations with daylong Spanish programs. To enfranchise the many Puerto Ricans educated in Puerto Rican schools is not to give the vote to illiterates, but to enfranchise literate Americans whose accident of birth caused them to be brought up with another language.

In the light of the above, I should like to propose that the language of title I, section (b) be amended to strike out the words "where instruction is carried out predominantly in the English language."

The section would then read as amended: "* * * it shall be presumed that any person who has not been adjudged an incompetent and who has completed the sixth grade in a public school in, or a private school accredited by, any State or territory or the District of Columbia, possesses sufficient literacy, comprehension and intelligence to vote in any Federal election * * *."

Mr. COPENHAVER. Mr. Tyler, are any of your organization's locals still segregated?

Mr. TYLER. We have no segregated local in the International Ladies' Garment Workers' Union. If a local of the International Ladies' Garment Workers' Union wanted to segregate, we would not hide behind local autonomy to allow any segregated local to exist. We would apply pressure, first; education, plus pressure second; and the most appropriate constitutional action third, either to remove the officers, change the character of the local, or bid them goodby.

Mr. COPENHAVER. In other words, you believe that if a local is discriminating, and that measures such as education or a trusteeship do not eliminate discrimination, then you would order expulsion?

Mr. TYLER. While I cannot, as an individual, speak for the board or convention of our union, I can assert that every measure would be considered for use—including expulsion. We would have to. We would not accept segregation as part of the union.

The CHAIRMAN. Well, thank you very much, Mr. Tyler.

I want to say that your union, the International Ladies' Garment Workers' Union and its locals, are good examples of successfully integrated groups, and may I finally say: "May your tribes increase."

Mr. TYLER. Thank you, Mr. Chairman.

(The complete text of Mr. Tyler's statement is as follows:)

TESTIMONY OF GUS TYLER, ASSISTANT PRESIDENT, INTERNATIONAL LADIES' GARMENT WORKERS' UNION

My name is Gus Tyler. I am assistant president of the International Ladies' Garment Workers' Union and am appearing on its behalf.

We are an organization of some 450,000 men and women in 40 States and several hundred localities. Thanks to our 63 years of activity, not only in our industry but also in our greater political community, many members of your committee and of Congress know us almost as well as we know ourselves.

There are two special qualities and interests of our union, however, that have impelled us to accept this opportunity to appear before you briefly today.

We have a congenital involvement with minorities and a hereditary concern for human freedom.

We are a union of minorities—all continents and all creeds. We have had 63 years in which to learn firsthand the meaning of "e pluribus unum." We have made it the work of many generations to make "one out of many." We have never had difficulty with the "e pluribus" part, the coming of the many, for they have come from everywhere. But we know firsthand the difficulties of making "one out of the many," to build a union, to give some real meaning to our formal union greeting of "brother" or "sister."

We feel that a distillation of our experience may serve some purpose here because, in a way, it is a distillation of the American experience. "E pluribus unum" was written across our early history as a nation to signify the union of 13 States into one Nation. Since then, the symbolic phrase has gained added meaning: one people out of many people. That, too, is the quintessence of our union.

Our members have not only come from everywhere, but have all too often come in flight—flight from oppression. They have come to us with fear and with a dream, with a sensitivity to injustice and a sense of justice.

We, therefore, look upon ourselves as part of the long tradition of minorities—racial, religious, economic, or political—reaching out for their human rights, whether it be against czars, Communists, Fascists, economic royalists, or racists.

As part of this movement, we like to think of ourselves as having developed a degree of sophistication about those moments in history that are called revolutionary. We know that revolutions can be betrayed, often by their own leaders. We know that revolutions gone astray can often provoke monstrous counterrevolutions. But we also have come to know the meaning of America as the land of the "permanent revolution," to use the language of a favorite Republican, Russell Davenport: America as a nation where the ideal of "one Nation indivisible with liberty and justice for all" has been constantly renewed by recognizing the rising expectations of newly aspiring peoples, whether economic or ethnic.

We are at one such decisive moment right now, a moment of fulfillment through renewal.

Before coming here today, I tried to acquaint myself with the testimony before your committee and also before you senatorial counterparts, to avoid repetition and to spare your valuable time.

I found a heartening consensus. It seems to be agreed that the American Negro is entitled to equal opportunity to a job, to housing, to education, to voting rights, to the use of public accommodations.

The great debate seems to revolve around the question of whether this desirable goal shall be attained through voluntary action or through Federal law. I wish to address myself to this sole point and to rely heavily on our own experience.

In 1934, our union met in Chicago in a hotel where we found that some of the facilities were segregated. When our protests were unavailing, we moved the convention out of the hotel into another hall. Ours was a voluntary act. In the intervening 30 years, many unions and other organizations have done the same.

Yet, just this last week, one of our regional directors informed me that he could not find a suitable meeting place for a staff conference because integrated facilities were not available.

After 30 years, despite a measure of progress, the old problem continues.

I am certain that if our regional director persists and is ready to put up with some inconveniences, he will find a place. But his very success in doing so will demonstrate our failure as a society, will serve only to dramatize the fact that he was found a straw of human rights in a storm of social wrongs.

In the area of public accommodations, we have found that voluntary action is not only inadequate, but, measured against the rising tide of social expectation, is almost useless.

Permit me another example. In 1934, our union's delegation introduced a resolution at the AFL Convention in San Francisco "instructing the executive council to confer with the executive boards of affiliated national and international unions with the object of securing the eradication of all practices, whether sanctioned by law or custom, tending to bar colored workers from unions, or to discriminate against colored members, or to abridge their rights." The convention minutes report that the resolution was adopted unanimously.

Now, 30 years later, despite progress in eliminating discrimination in unions. President George Meany appeared before you to plead for legislation, for a Fair Employment Practices Act, to strengthen the hand of the AFL–CIO in dealing with discrimination in its own ranks and in dealing with the greater problem of discrimination in employment in our total economy.

In the area of equal job opportunities, then, experience has established the limited and inadequate power of purely voluntary action.

One final example. In the early thirties, many Puerto Ricans enrolled into our union in New York. Because of their recent entrance into the union, they were constitutionally ineligible to run for certain posts requiring a year of membership in the local and 2 years in the international. In 1934, the president of our union, David Dubinsky, wrote a letter to a local in which he proposed that the newcomers be exempt from the constitutional proviso. "In this way," he wrote, "these Spanish workers will be afforded an opportunity to take part in the administration of the affairs of the local."

These Spanish-speaking workers became first-class and first-rate citizens of the union. Yet, today, some 30 years later, Puerto Ricans in New York may not vote, although they are born citizens and are literate, solely because they are not allowed to take their literacy test in Spanish.

I list these three cases, in part, because we are proud of what we have been able to accomplish on our own, but primarily to emphasize the limits of progress through voluntary action.

Progress in human affairs is a relative thing; to be measured against human expectation and human frustration. By this measure, the progress made by voluntary action is unsatisfactory.

To meet the rising aspirations of awakened people is one of the functions of legislation. We have come to associate the words "law" and "order" so often that they often sound like one word. But law that does not change with the changing needs of our people is no maker of order. Law based on social justice brings order. Law based on social injustice provokes disorder.

In a democratic society, human needs seek expression through legal channels. When citizens are denied voting rights, their basic right to act through the avenues of law and order, frustration accumulates. When such people are denied an equal chance at jobs, homes, schools, access to public accommodations, whether by law or by custom tolerated through lack of law, frustration is piled upon frustration.

Creative legislation is the means whereby the angry torrent of frustration can be channeled into creative energies for the whole Nation.

May I once more ask your indulgence to dip into the experiences of American labor. One hundred years ago, the worker found himself in a situation not altogether unlike that of the Negro today. Certain human rights, implicit in the American idea, were denied to working people in practice and were not spelled out in law. The worker found himself the victim of de facto oppression without de jure relief.

The history of labor-management conflict for almost 75 years was a protracted series of violent episodes from Homestead to South Chicago. Employers, accustomed to absolute rule, used all the instruments of terror, while workers, frustrated beyond all patience, paid back in kind.

Then came recognition. Recognition that workers had rights. Recognition of unions. Recognition spelled out in Federal legislation and in court decisions.

Union recognition did not end all differences between labor and management. But it did create legal and legitimate channels for expression and adjudica-

tion. And with the mounting recognition of rights came a sense of respect and responsibility—on both sides.

Legislation then is, first of all, a peaceful avenue for the righting of social wrongs.

Legislation has a second function. It protects the individual who would like to do the right thing against a competitor who is doing the wrong thing.

We are inclined to believe many of those merchants who say that they would desegregate if they were not afraid of competition. These merchants want to do the right thing. But they are restrained because business may go to a competitor.

This is one of the real shortcomings of the purely voluntary approach. It can punish the man who would do the right thing and reward the man who is doing the wrong thing.

Because legislation often legalizes decency, it not only restrains the wrongdoer but liberates the rightdoer to follow his conscience.

We can cite decades of experience to support this point. Our union is a kind of legislature that tries through collective bargaining to legislate wages and working conditions in an industry. We have more than half a century of experience with decent employers and with cutthroat employers, the saints and sinners of our industry. We know that many employers would have liked, in the past, to pay a better wage but that they could not do so because they feared cutthroat competition. When the union established a basic wage condition in the industry as a whole, the more generous employer could pay the wage he always wanted to pay and the skinflint employer had to follow the lead of his more fairminded competitor.

Where there are no legal restraints, the bad guy sets the tone. Where a legal norm is established, your more fairminded employer, merchant, or citizen sets the tone. The pressure is reversed from "down" to "up."

For this reason, too, I would like to suggest that the difference between progress through voluntary action and progress through legislation may not be as great as it is often portrayed to be in the public debate. Legislation, especially when it is in line with our avowed ideals, creates a social atmosphere within which most people will voluntarily do the accepted thing. Compulsion becomes unnecessary.

I can cite many recent experiences. Within the last 2 months, I attended two regional conferences of our union: One with delegates from the Southeastern States and the other with delegates from the Southwestern States. Both these conferences were integrated. They took place, in these months of passion and crisis, without a single disturbing incident.

I do not believe that our members, whether white or Negro, are vastly different from the other people of their towns. But, in the union, they have an understanding. Here it is the norm, it is the right thing, it is the traditional thing, it is the union thing for Negroes and whites to work together for a common cause.

Very recently, in a southern organization drive, a white member invited other workers to her home, because the union could not find an appropriate integrated meeting place. The hostess was frank about her feelings. "I would never invite Negroes to my home socially," she said, "because I just don't believe I want to. But I will let them come with other to my home for a union meeting because that's the way it is in the union."

I heard a companion view stated by a delegate from Kansas to another from Arkansas at a union conference. "The way I see it," said our Kansan, "is this: You don't have to love them although as a good Christian you should, but you have to let them use the public library because they have the right as American citizens."

Now I don't know whether legislation can make a good Christian out of everyone. Nor do I know whether legislation can make one member invite another member to his or her home socially. I doubt it. Legislation can not wipe out prejudice; but it can cut down discrimination. We can't legislate love; but we can legislate rights.

Mr. Chairman and gentlemen of this committee, I do not wish to appear before you in the posture of superior self-righteousness, as spokesman for almost half a million people who have no tinge of prejudice in their hearts. We know firsthand the tensions that exist between Jew and gentile, between Negro and white, between Italian and Latin American, between midwesterner and easterner. We know all these tensions and dozens of others. We see them daily in

our shops, in our union meetings. Our members don't all love one another. But they do know that in the union and in the union shop they must respect the rights of one another. Sometimes, they just have to put up with one another. But this they do: First, because this is the way it is in the union and, secondly, because they know only too well the value of standing together.

There is one last aspect of this question I should like to touch on briefly; namely, the need for Federal legislation in areas where such action appears to conflict with property rights and with States rights.

We believe in the rights of property and of States. We should not like to see the day when all property or all political decisions are in the hands of Washington, D.C. We feel that the base of freedom is more secure when property and power are widely distributed. Indeed, that is why our union favors an ever wider distribution of income and an ever wider use of the franchise.

We are all safer when power is scattered—and since both property and State government represent such a scattering of power, we favor the perpetuation of both.

But power can be misused—both by individuals and by States. Trusts have misused their power to crush competitors. Companies have misused their power to starve and mistreat workers. Banks and railroads and shippers and, if you please, even unions misused power. And, as a result, we pass laws—Federal laws—to protect the individual and the public interest against the abuse of power.

Similarly, the power of individual States can be misused to deny to individuals their rights as citizens of the United States. The denial of voting rights is a most egregious example. In such cases, the Federal Government clearly has the duty of using its power—whether it be legislative, executive, or judicial—to protect the rights of its citizens against the abuse of any State.

The writers of the Constitution foresaw the possibility that within a State a group might arise to seize power, deny democratic rights, and establish a nonrepublican form of government. And for that reason, article 4, section 4, gives to the Federal Government the responsibility "to guarantee to every State in the Union a republican form of government."

And because the Federal Government is the guardian of the Republic in our 50 States, this committee and the Congress presently carry one of the gravest responsibilities in our national history. This moment is a challenge to greatness. And we look to our Congress to rise with the occasion, to enact a broad, comprehensive, human rights program that will once more renew the spirit of freedom in America.

The CHAIRMAN. Thank you very much.

Our next witness is a very distinguished gentleman. He certainly has made his mark on the pages of American history, Mr. Norman Thomas.

Mr. Thomas, we are very happy to have you with us and to give us some much needed enlightenment.

STATEMENT OF NORMAN THOMAS ON BEHALF OF THE SOCIALIST PARTY

Mr. THOMAS. I thank you very much, Mr. Chairman. I am very happy to have a chance to come. I wish I spoke for a stronger party numerically, but one reason why it isn't stronger numerically is that you Democrats and even some of the good Republicans had the good sense to take some of the ideas called Socialist, but you didn't take them all, and we are always ready to oblige with further suggestions of this sort.

A committee has prepared a rather careful statement, of which there are copies here, and I am not going to take time to read it all, assuming that you are all literate.

The CHAIRMAN. I want to say that I read it last night and it is a very good statement.

Mr. THOMAS. Thank you very much. I do want to comment on two things that have come more or less into public notice since we prepared our statement.

One is the charge that the Negro agitation is largely the result of Communist agitation. None of you have had as much experience with communism as I have, or have had Communists try to do to you what they tried to do to me, and I know something about it.

I also have the honor of knowing most of the leaders of the Negro movement and I want to say most emphatically that there is nothing more ridiculous than to say that what is hapening is the result primarily of any kind of Communist intrigue or any kind of Communist action. It is the result, as you have been told so many times that I don't need to repeat it, of the fact that for 100 years we have given to men free from chattel slavery not the rights of real free American citizens, and the Negroes would be less than men unless they felt that.

I want especially to say that while I have no official relation whatever to that proposed march on Washington, I have great confidence in the men who are planning it. I have admired their plans and I believe that it is a necessary form of expression. None of us would respect men who didn't act for themselves and the alternative in our troubled world to violent action is nonviolent action, but there has to be a chance to act and this is an orderly plan of impressive demonstration, and I have too much regard for you gentlemen to believe that it is the kind of thing that will coerce you or that you will judge it by failures.

It is the kind of thing that will show where American citizens stand and they will show it, I think, in very orderly and very impressive fashion. I think we owe an enormous debt, by the way, to men like Dr. King and to others, and to some of the younger men for their success in keeping a movement against so many great outrages so free from aggressive violence.

This, I want to go on record as saying in this connection.

Now, I will turn to the summary of our statement which we sent you. I want to emphasize the things that are somewhat different. Of course, if it were a "Yes" and "No" matter, we would say "Yes," emphatically, to the President's proposals which are before you. I do think that there are certain respects in which they can justly be strengthened and strengthened without any impairment of anybody's real right.

I had heard what Mr. Tyler said on the general subjects of States rights and I should agree. Of course, I believe that States have rights, but I don't believe that any State has a right to impair the basic rights of American citizens.

While I don't believe that the rights we want for American citizens can all be guaranteed forever just by law, they can't be guaranteed without law.

I think it is now no more possible to give the Negroes what they have by right without legislation, than it was possible to give them what they ought to have by right without the Emancipation Proclamation. That is a strong statement, but I mean it. It has to be the base for further action. The right by which, for instance, Senator Eastland speaks for Mississippi is low, when I think how small was his vote compared with the total population of Mississippi. It is a facade, a

false facade, this talk of States rights, and a false facade of talking about property rights when what is meant is a right to discriminate against fellow Americans on grounds of color.

I am a Socialist, but I believe that there ought to be more of certain kinds of property rights and one of them is for Negroes to get property—for example, houses and jobs—better than at present.

The defense of injustice in the name of property right, of course, is something that we would strongly condemn.

We are fully persuaded that there ought to be legislation for fair employment, and I shall speak in a minute of a particular suggestion, but we are also fully persuaded that fair and full employment are tied together and that a large part of our task has to be to take up the question of full employment for everybody, the Negroes being more disadvantaged by lack of equality in education and other discrimination against them.

Some of these discriminations exist even within the labor unions which I think now are being rapidly corrected. It is high time.

While I shan't take time now, I want to insist that full employment and free employment have to go together. It would be a disaster in the United States, it would be a cause of trouble in the United States if it should prove necessary in order to give fair employment to Negroes, to give unemployment to whites. We have to couple fair and full employment together to have a successful solution of our very difficult problem, but it has to be remembered that the Negroes are peculiarly victims of unemployment because of imperfect education, because of the kind of schooling that doesn't provide motivation and all of the rest of the discriminations against them.

Therefore, we would go beyond the bill that has been suggested, and suggest that—somewhat in an analogy to the National Labor Relations Board and some other boards—that there be set up a board which can take its own actions in order to look after fair employment. The way we word it there should be set up by law a FEPC Board with powers analogous to the National Labor Relations Board.

The Board and its subdivisions should be empowered by law to compel the elimination of all religious and racial segregation in hiring or upgrading. It should actively encourage a program of minority recruitment by managements and unions who control hiring and have an important voice in upgrading in certain trades and industries. This is in addition to what is now before you.

Since we prepared our statement, I have a copy of H.R. 6028, introduced by Mr. William Fitts Ryan, of New York. It is a bill that interests me very much. I think that his commission against all discrimination would have too big a job and perhaps you will need more commissions on various features of our fight against discrimination. But I am particularly glad that he has that general idea which is along the line that I am now urging; namely, a commission or board similar to the National Labor Relations Board in the field of fair employment.

On school segregation, our principal additional suggestion would be that every school district through the existing educational public school setup be required to present a plan for the prompt legal desegregation and the maximum possible de facto integration of every school.

May I say quite frankly that I don't believe that you can get de facto integration completely as long as you have ghettos, and this

shows how all of these problems are tied together, the problem of employment, housing, education and the rest. They can hardly be dealt with one by one, and that is why we have used the words "maximum possible de facto integration of every school." We want that possible integration to be increased by attacks on the whole problem of housing, which we are not discussing at the present time, except to point out its vital importance.

I do want to say in this connection something that I think is imimportant. This Negro revolution began with a struggle for status and dignity. In the South it has been thus far not primarily of an economic sort, but what shall I say? Sociological—that is too cold a word. What the Negroes began by asking was status, equivalent status, the right to be treated like a white man.

That isn't as important, I suppose, in the long run as the right to a job, but it is a right that can be given, and given very promptly. I think it is a very interesting thing and I think Karl Marx ought to be interested to find how much the concern is a concern for status, that you don't go in different doors, that you are allowed to eat at the same lunch counters, et cetera and so forth.

Our white discriminations have been of the most irrational sort, and those discriminations have been the strongest precisely where the physical contacts between colored and white have been closest, namely in the South. Segregation in public facilities and services is, in other words, a ridiculously irrational thing. While I don't think you can legislate love, I certainly think you can legislate an absence of the expression of bigotry and discrimination.

This becomes very important as a basis for all the economic things that I am also urging in this connection. It is very important that the voting rights be given, and it is a scandal that we have to tackle this 100 years after the Emancipation Proclamation.

I think you gentlemen will agree with me from your experience that one of the glories of America, compared with other nations, ancient and modern has been the fact that while not perfectly—there are plenty of things that are wrong—but better than anybody else we managed to integrate immigration from a great many white countries.

We could have done better, but we could also have done far worse.

I thought way back in the First World War—of which I wasn't very fond—that it was a wonderful thing that in cities like Milwaukee and Buffalo you had men going out to the conflict so peacefully together, although some of them were Polish, some of German ancestry, and the war so bitterly divided them abroad.

One reason our United States did that was that it gave economic opportunity of a sort, and another reason was that it made it easy to be naturalized and to get the vote. We have done an immense harm to the Negro by allowing it to be made so difficult for him to vote by all sorts of pretexts and devices, and the right to vote is, therefore, of the utmost importance in this whole program.

It is essential to any decent assertion of States' rights that the States claiming rights should grant the right to their own citizens to vote. If there is, therefore, to be a literacy test, I would endorse the suggestion that has been made that a completion of a sixth grade be an automatic qualification for the literacy test.

The Attorney General and others have given amusing, but disgustingly amusing, examples of the ways by which, in some States, the literacy test has been enforced wholly for the exclusion of Negroes.

We also believe that it would be well to have Federal registrars—I think this could be done legally under certain circumstances—rather than merely Federal referees, because as a member of a minority party I have learned that the right to appeal for justice after an election isn't too good. Registrars can act immediately.

I have known lots of funny things to happen at the polls, but what is the use after the election is over. It is before that we want to have an assurance, and the prospects of justice through referees is slow.

I think, therefore, there should be arrangement for Federal registrars under certain circumstances. I would say that all legislation to enforce a sure right to vote should be backed up by section 2 of the 14th amendment providing that the basis of representation of any State in the House of Representatives shall be reduced by the number denied the right to vote.

I started urging that, along with other things, in my early campaigns. Perhaps I didn't urge it hard enough. Nobody listened. (I began when I first ran for President back in the dark ages of 1928. You understand that anything before 1932 was dark ages, don't you, or 1933?) Well, back then I began to urge application of the 14th amendment and I still think that that is in order. I hope it will not have to be used, and I think that it should be a reserved power rather than for immediate use. Our other proposals may make it unnecessary.

The CHAIRMAN. I said for the record yesterday that if our efforts to get equality for the Negro fail, after the passage of a bill which I hope will be reported out by this committee and passed by the Congress, if equality fails, then I think we have no other recourse but to resort to that provision of the Constitution which provides for cutting down the representation among those States where it is needed.

Mr. THOMAS. I am glad you said it, Mr. Chairman, I think it is high time. It is a good deal of a national scandal that the whole 14th amendment was practically a dead letter except for the protection of corporations until well within our own time.

If anybody wants to debate that, we could do it outside.

Now, I want to conclude this brief summary of a much more careful statement that we have issued and sent to you by saying that we do recognize that the goal of fraternity and equality of opportunity toward which the Negro revolution is directed will not be achieved simply by law. I say "Negro revolution" advisedly, because that is what it has become, and it is a just revolution.

Recognizing that the goal of fraternity and equality of opportunity toward which the Negro revolution is directed requires more than law, we still say that it certainly requires, as a basis, the kind of law we urge upon Congress and which we are pretty sure that this Congress will enact. I say this deeply regretting that the Democratic Party has been so unsuccessful in dealing with filibusters and with the shocking situation in which enemies of your platform preside over some of your important committees. That is a side remark.

That completes what I want to say, except for your questions.

Mr. MEADER. Mr. Thomas, I must say that I am gratified that you took a whack at both parties.

Mr. THOMAS. You have no idea how neutral I am in this matter; but, being neutral, I applaud whoever comes nearest the truth.

The CHAIRMAN. You believe in equality in that regard.

Mr. THOMAS. I beg pardon?

The CHAIRMAN. You believe in equality in that regard.

Mr. THOMAS. Yes, that is right.

Mr. MEADER. You don't believe in discrimination where you are talking about Republicans.

Mr. THOMAS. That is right. Some of my best friends are Republicans. You have heard that—also Democrats.

The CHAIRMAN. I can say, Brother Thomas, that you are the best example I know of, concerning what I think it was Webster once said, that one man with courage is a majority.

Mr. THOMAS. I don't mind verbal bouquets. As I have said before, I would have taken votes instead. I am one who would rather be right than President, but I took a chance on both. However, that is of the past.

The CHAIRMAN. Any questions?

Mr. MEADER. Mr. Thomas, can you give us some idea how many members the Socialist Party has today?

Mr. THOMAS. No, I can't, because I don't know. I felt, as a good American, I thought I ought to retire from something when I was 70, so I said I wouldn't be on the active governing committees, and therefore I don't have to bother about so many statistics, but I will tell you that I am sure it is under 10,000. But then, Sodom and Gomorrah could have been saved by 10 righteous men.

The CHAIRMAN. Any other questions?

(No response.)

The CHAIRMAN. Thank you very much.

Mr. THOMAS. Thank you, gentlemen. We have a tremendous opportunity to improve our record around the world and here at home. In years gone by I have traveled a good bit and had a chance to talk to a good many people in many countries. One of my most painful experiences was in the city of Lahore, where a Pakistani, at a meeting of mine, began to ask me questions, showing that he had a most exaggerated idea, but I couldn't say altogether a false idea, of the low status of Negroes in our democracy.

His statement tended to wipe out practically all I had been talking about. He charged us with all kinds of crimes toward Negroes. It is sadly amazing how men who know very little about us think they know that we are even worse than we are in this field of discrimination. We can and must change the facts behind the exaggerations.

Thank you very much.

The CHAIRMAN. Thank you, sir.

Your statement will be placed in the record.

(The statement of Mr. Thomas is as follows:)

STATEMENT OF NORMAN THOMAS ON BEHALF OF THE SOCIALIST PARTY USA

Mr. Chairman and members of the subcommittee, my name is Norman Thomas and I appear before you on behalf of the Socialist Party, USA. We are grateful for the opportunity you have given us to express our views to your committee and to the Congress.

The Socialist Party, which was founded in 1901, is proud of the many signal contributions it has made to American life. As the main pioneers of social thought in the United States in this century, we were the early proponents of many of the reforms that have been adopted in the past three decades: the minimum wage, public housing, social security, unemployment insurance, child labor laws, the National Labor Relations Act, and TVA, to mention some.

Today, if our Nation is to cope successfully with the crises that beset us in so many areas—unemployment, automation, depressed areas, the low rate of economic growth, agriculture, the schools, housing, and transportation—then our fellow Americans would do well to consult the current Socialist platform, which is a unique and valuable guide to action for a better American and a peaceful world.

The Socialist Party has long regarded civil rights as the Nation's leading domestic problem. We have seen it as the area of American life most desperately in need of a great act of national conscience, yet our Government's policy has largely been determined by outmoded 19th century concepts of States rights and the sovereignty of private property over human rights.

That some progress has been made seems to us as impossible to deny as it is useless to proclaim. For the amount of progress has been ridiculously minute when placed alongside the size of the problem.

Now, after a long and unconscionable delay, the President has placed before the Congress a set of civil rights proposals. In spite of their extreme lateness, they are a step in the right direction and we support them, as far as they go. But they do not go nearly far enough. There are whole areas of discrimination to which they are blind; as, for example, housing. In other areas they are much too timid, too cautious, not deepgoing enough to actually root out the cancer of racism.

Later in this testimony I will spell out what we think needs to be done in each of these areas. But may I say now, Mr. Chairman, that it is incredible to me that leading Members of Congress, from both major parties, should at this desperately late hour talk of the President's proposals as "too radical" and an "invasion of property rights." We warn that in the situation in which the country now finds itself nothing could be more dangerous than trivial concessions grudgingly given. which do next to nothing concretely to satisfy the just demands of the Negro people.

Let the Congress pass high-sounding but meaningless legislation that does not afford quick effective relief from the inequities of race discrimination and you invite trouble. Such a course will only result in deep frustration out of which will come a mood of disbelief in the very method of legislative action as a way of remedying the ugly injustices that exist. That mood, in turn, will strengthen the irrational, racist, and authoritarian tendencies already in existence in embryonic form in the Negro community.

That the current administration is faced with this choice stems from its refusal to fully confront and meet the basic issue—the demands of Negroes for immediate and complete elimination of all forms of discrimination and segregation. The five main civil rights organizations have long fought for such a program and have provided militant, democratic, and courageous leadership in the civil rights struggle. I refer, of course, to the National Association for the Advancement of Colored People, the Congress of Racial Equality, the Southern Christian Leadership Conference, the Student Nonviolent Coordinating Committee, and the Negro American Labor Council. It is their program and demands that the administration must fulfill because they represent the only course to a just and democratic solution to the problems of race in our society.

Mr. Chairman, 9 long years have passed since the Supreme Court's historic decision outlawing school segregation, and still 90 percent of the Negro children then attending segregated schools remain entirely unaffected by that decision. Many have been forever denied the precious possession of a decent and democratic education. We have no right to demand of children that kind of sacrifice with all that it means for their future lives. Yet we have done it. Will we now make the same kind of demand of their little sisters and brothers in order to appease the race hatred and bigotry of a minority of American adults? Any such course would represent a monstrous misuse of power—the triumph of nullificationism which has been specifically repudiated by the courts. This is one of the grave challenges that now faces this committee and the Congress.

Another is the continued disfranchisement of hundreds of thousands of Negro citizens a full century after the adoption of the 13th, 14th, and 15th amendments to the Constitution. Not only is this shameful practice a crime against its vote-

deprived victims, but it is also a conspiracy against all the rest of us. For, in combination with the disproportionate rural domination of State politics, it has helped to return to the Congress, year after year, arch-reactionary politicians whose very presence in our Senate and House shames this Nation in the eyes of the world. Many of them, like Senator Eastland, of Mississippi, preside over powerful committees by virtue of the undemocratic minority rules that prevail in the Congress.

Their performance is not confined to blocking civil rights legislation that would benefit their voteless Negro constituents, but frustrates every significant effort toward national reform and social welfare. As a result we cannot even get broadened medical care legislation, which the great majority of Americans want and need. If political democracy prevailed in the South, the President's bill to further extend Federal aid to distressed areas would not have been defeated by the House of Representatives, as it was on June 12. Because only 4 percent of Mississippi's Negro voters are permitted to vote, white workers in Pennsylvania will suffer increased economic deprivation.

Similar racial injustices continue to prevail in other areas. In housing, for example, the Presidents' Executive order banning discrimination in federally assisted housing has proven itself to be entirely inadequate. It affects only 25 percent of such housing, whereas more than 90 percent of all housing construction now underway receives some form of Federal assistance, direct or indirect. Those who so vehemently decry violence in the Negro ghettos would do better to direct their energies toward breaking up those ghettos. Only the blind can believe that Negroes prefer to live in the slums of Harlem or Chicago's south and west sides, rather than in decent, reasonably priced housing.

We have hardly begun to remedy these situations and time is fast running out. Negroes will no longer tolerate these things and they are a thousand times right. Why should any human being allow himself to be denied the right to eat a sandwich and a cup of coffee in a store that gladly takes his money for other merchandise? Or the right to read a book in a public library, or swim at a public beach or pool, or take his children to a public amusement park? It is incredible that I should sit here, before a committee of learned and powerful Members of the U.S. Congress and have to ask such questions. Yet, they must be asked, and, more importantly, they must be answered by prompt legislative action.

We support all of the civil rights proposals that have been put forward by President Kennedy. However, some of them need to be strengthened and others need to be added to. Specifically:

1. We support the President's proposal for a guarantee of equal access to all public facilities—hotels, restaurants, retail stores, and the like. It should be based, as he has suggested, on both the 14th amendment and on the commerce clause of the Constitution. We also believe that it should cover every firm that caters to the general public, without regard to the volume of their interstate business; even one dollar's worth of such business should qualify them for inclusion under the rules of the act.

Furthermore, in this proposal as in all others in support of civil rights, we support the President's position that the Attorney General shall be authorized to bring suit on behalf of an aggrieved party. However, we recommend that the qualifying provision proposed by the President—namely, that in order for the Attorney General to act, the aggrieved party shall be too poor to bring action or shall be in fear of reprisals against himself—should be stricken. Such a qualification, in the former case, would require a means test, which is objectionable and degrading; and in the latter case, would be difficult if not impossible to prove. The qualifications should be stricken and the Attorney General should be required to act to protect these constitutional rights of all citizens. Is this not the very purpose of a proper Department of Justice?

2. We support the President's proposal for action by the Attorney General on behalf of school desegregation, but with the same qualifications mentioned above. We also support his recommendation for technical and financial assistance for those school districts that desegregate their schools.

However, we insist that these proposals are entirely inadequate without a provision that every school district in the land should be required to present forthwith a plan for the prompt and complete desegregation of the schools under their jurisdiction. It is time to stop the shameful evasions and flouting of the Supreme Court's decision that we have witnessed for 9 long years.

3. We agree with President Kennedy that the U.S. Civil Rights Commission should be renewed and its functions broadened. We favor making it permanent.

4. The President has proposed the appointment of Federal referees where vot-

ing rights are denied to Negroes. He also suggests that the completion of a sixth grade education should create a "presumption" that the applicant is literate.

Both proposals are inadequate. Where American citizens are unable to vote because local authorities chose to deny them this inviolable right, then Federal registrars should be appointed to actually register them. Registration of voters must be guaranteed not only in Federal, but also in all local and State elections. Where literacy is a requirement for registration then a sixth grade education should be accepted as proof, not "presumption," of the applicant's literacy. We further propose that criminal penalties should be applied to those who illegally take it upon themselves to deny citizens the fundamental right to vote.

5. Finally, I come to the President's proposal that the Federal Government shall not be required to furnish any kind of financial assistance to any program or activity in which racial discrimination occurs. We find it odd that he proposes this for action by the Congress when in fact he has the authority to carry it out by Executive order. In any case, in the form that he proposes, it is an entirely inadequate concept. It ought, without any qualifications whatsoever, to make mandatory the policy of no Federal support to discriminatory activities. At the very least the President should now issue an Executive order fully embodying this concept in all federally supported housing. All of the above measures are necessary, yet even as a minimum of what is needed now, they are far from adequate.

The President, in his message, made no mention of the role of the Federal Bureau of Investigation in the numerous instances where existing civil rights have been denied in the Southern States. Yet it is an open secret that the FBI has failed miserably to protect the rights of Negro citizens. Negro churches have been bombed, civil rights leaders have been threatened and have had violence inflicted upon them, wholesale intimidation and reprisals have occurred against persons trying to exercise their constitutional rights, and the FBI, again and again, has done nothing. This has been testified to by dozens of reputable Negro leaders in the Southern States. We propose, therefore, that a new Federal law enforcement agency should be formed within the Civil Rights Division of the Department of Justice and that this new agency shall be given exclusive Federal jurisdiction in cases involving the violation of civil rights of American citizens. This new agency should be entirely separate from the FBI and should be recruited carefully with an eye to the sincere devotion of its agents to the civil rights of all American citizens.

We also see no valid reason, Mr. Chairman, for the President's failure to mention the need to begin to enforce section II of the 14th amendment. This provision of the Constitution, you will recall, calls for the reduction of congressional representation in States where Negroes are denied the right to register and vote.

It is time that the Congress stopped ignoring this section of the Constitution. We respectfully submit that you have no right to regard the Constitution as if it were a smorgasbord dinner at which one picks and chooses only those items that suit one's taste. This committee in particular, the Judiciary Committee of the House, should take action to see to it that section II of the 14th amendment is implemented promptly and fully.

Finally, I want to come to the most basic aspect of the problem of racial discrimination in America: the denial of equal economic opportunity to the Negro.

It has recently become fashionable to emphasize that racism knows no geographical boundaries, that its pernicious influence is exercised in the North as well as the South. To the extent that these statements are aimed at spotlighting and eradicating all forms of discrimination and segregation everywhere, we applaud them.

On the other hand, it has often seemed that such statements are really intended to take pressure off southern politicians and to make false equations between northern and southern race relations. That de facto segregation in housing, education, and employment exists in large northern cities is well established. Similarly, police brutality is not unfamiliar to northern Negroes. But the fact remains that Medgar Evers was secretary of the NAACP in Mississippi, not in New York or California; that thousands of civil rights demonstrators have not been jailed in Michigan; that the mayor of Philadelphia is not a member of the infamous White Citizens Council; and that in the North, Negroes bearing college degrees are not turned away from the polls on grounds of illiteracy.

Yet it is precisely because northern Negroes are free of the most primitive forms of Jim Crow but find themselves nonetheless exploited and denied equal opportunity that the northern situation is potentially the most explosive.

In large cities like New York, Chicago, and Philadelphia, de facto school segregation is increasing. While in some instances this is the result of conscious racism, it reflects to a greated degree residential segregation, which in turn flows largely from racial-economic exploitation.

We contend that whatever optimistic pictures of progress are projected, fundamental economic forces are at work, threatening the American Negro with a new and in many ways unprecedented crisis. Many of the "new opportunities" for education and employment presumably opened to Negroes in recent years have in fact been confined to a relatively narrow stratum of the Negro middle class. The absence of Government action to broaden these opportunities to include the great mass of Negroes corresponds on the economic level to the acceptance of tokenism on the social and political levels. As the latter forms of tokenism have not succeeded in dampening but in encouraging the heroic protests of the Negro community, the economic variety of tokenism will only exacerbate and intensify those "fires of frustration and discontent" of which President Kennedy has spoken.

The fact of the matter is that no major effort has been made to improve the relative position of the Negro in the American economy. In the first quarter of 1963, when white unemployment was 5.9 percent, the percentage of Negro unemployed was nearly 12.7 percent. This 2 to 1 ratio has remained virtually constant for 100 years. More important perhaps is the fact that Negroes, though only 10 percent of the national population, constitute over 23.8 percent of the long-term unemployed. Automation, which strikes hardest at the unskilled and semiskilled jobs, is obviously not an exclusively Negro problem. But because Negroes have been traditionally relegated to these jobs, automation-for-profit has taken on a racial dimension.

Studies have shown that the unemployment gap between Negroes and whites decreases in periods of high employment and widens in periods of economic distress. This fact demonstrates that the cancer of racism cannot be attacked in a vacuum, but must be an integral part of a massive Government program to insure full employment for all Americans.

Without full employment, there can be no genuine remedy to the problem of job discrimination. It is here that our Socialist economic program is supremely relevant to the racial situation. For, so long as unemployment plagues this country, as it has almost constantly since the end of the Second World War, all attempts to end economic discrimination are fraught with immense difficulties.

This does not mean that we ought not to make every conceivable effort to equalize economic opportunities now, even while unemployment exists. On the contrary, we dare not delay such efforts and I will shortly spell out a program that we seriously urge you to adopt. But the fact is that when companies are laying off workers, their agreement not to discriminate in hiring remains theoretical; it doesn't do the unemployed Negro worker any good right now.

We assert that the answer to this problem of unemployment lies in a vast expansion of the public sector of the economy under a program of social planning. This is not some impractical Socialist dogma. Even now, today, we can see the tendencies. According to Secretary of Labor Willard Wirtz, in the last 5 years private business has been able to create only 175,000 new jobs each year although in the preceding 5-year period the private sector created 700,000 new jobs a year. Almost two-thirds of the new jobs added to the economy in the past 5 years were in State and local government.

President Kennedy has reported that unemployment is costing the Nation from $30 to $40 billion a year. This, in a country where 40 to 50 million people live in that "other America," of which our Socialist Party member Michael Harrington has written so brilliantly.

We need planning, based on an intelligent and humane order of priorities, to wipe out the miserable deprivations suffered by "the other America." This is the path to full employment; a path that will also bring a better and richer America and will provide the setting that will enable us to end racial discrimination in economic opportunity.

Regardless of any progress we may make in all the other fields of discrimination, if Negroes cannot earn a decent living, if they cannot support themselves and their families as well as white citizens can, then we shall have failed miserably to end second-class citizenship in America.

While we support President Kennedy's economic proposals, we are especially critical of his failure to place top priority on the need for fair employment legislation. His perfunctory mentioning of FEPC showed a lack of understanding of the urgency for effective action in this field.

The Socialist Party proposes a new, boldly conceived plan to meet the problem of job discrimination head on.

First, we propose the establishment of a National Fair Employment Practices Board, with powers equivalent under the law to those of the National Labor Relations Board. The Board should be made up of prominent, proven civil rights advocates, Negro and white, who shall be charged with organizing fair employment practices committees in every branch of commerce and industry in the United States.

We maintain that experience in the 23 States that have adopted FEPC laws shows that such laws, desirable as they are, prove that the Commission approach to the problem is too limited in scope. In all of these States progress has been entirely too slow. In place of the usual commission we favor this new concept of a Board empowered to actively intervene and to shake up the entire traditional pattern of Negroes being the last to be hired and the first to be fired.

The Board and its subdivisions should be empowered by law to compel the elimination of all racial and religious discrimination or segregation in hiring or upgrading. Its committees should examine each industry, company by company and union by union, to enforce the national policy of integration in employment.

Where a firm or union is found to discriminate, after a fair hearing conducted by the Board, it should be ordered to change its discriminatory policy. The Board should be empowered, as is the NLRB, to back up its decisions by court action where necessary. The National Fair Employment Practices Board should, in addition to prohibiting discriminatory employment practices, actively encourage not merely merit hiring but a program of minority recruitment by management and unions who control hiring in certain trades.

One means of carrying out such a program should be the awarding of an emblem, such as the emblem of the blue eagle under National Recovery Act, to companies that have fully integrated their staffs on all levels. Such an emblem could be displayed or attached to company products so that they could be readily seen by consumers. The entire public should be made conscious of the meaning of the emblem and be urged to buy where they see it. There ought to be a vast publicity and education campaign surrounding the program. Beginning with the President, all leading Government officials and outstanding figures from private life, from the civil rights movement, labor, industry, the fields of art and entertainment, should be recruited to lend it their prestige.

If America is to begin to make real, for this generation of Negroes, the ideals we espouse and the provisions of the Constitution, then this is the kind of sweeping program that is needed in the field of economic opportunity. The crisis of civil rights, we maintain, is no less urgent today and requires no less imaginative new departures than did the economic crisis of 1932.

Second, the Federal Government must take the lead in establishing and encouraging large-scale apprenticeship and job retraining programs with a particular view toward reducing Negro unemployment. It is ridiculous to sit around wringing our hands and moaning that we are caught in a hopeless cycle because Negroes have suffered educational, social, and economic disabilities and hence are not qualified for the more skilled and better paying jobs. We can act now to smash that cycle. The Congress should crack down on any employers and unions enforcing discriminatory apprenticeship training policies. They must be opened up and deliberately integrated. If qualified Negro youngsters cannot be found to apply, we must set up short term preapprenticeship programs in night schools and elsewhere, and they must be located where Negroes live.

Further, we must expand the entire apprenticeship program in this country. A conference of the National Association of State Apprenticeship Directors in Washington, D.C., earlier this year insisted that the United States needs 1 million new apprentices. President C. J. Haggerty, of the AFL–CIO Building and Construction Trades Department, told the conference that the figure was "probably an understatement, rather than an exaggeration, of the need." The President ought, by Executive order, to insert a new clause in all Federal contracts calling for the mandatory hiring of at least one apprentice or trainee for every five journeymen, and for minority youngsters to be actively recruited for these apprenticeships.

But integrating apprenticeship programs is, at best, only a small part of the job that needs doing. We need a vast vocational training and retraining pro-

gram to which students are actively recruited from among Negroes, Puerto Ricans, Mexican-Americans, and other minorities as well as white citizens of all ages. The President's proposal in this area is too timid compared with the huge needs that exist. Why cannot we take a lead from social democratic Sweden, where people, young and old, are constantly and successfully trained in new skills? They apply a policy of paying the students at decent rates while they're learning and they see to it that adequate training facilities are available. When the students graduate they are helped to find jobs and if they need to relocate they're given generous assistance in moving and establishing new homes for their families.

I must emphasize that in any such training programs, the key to success will lie in a policy of active recruitment of Negroes and members of other minority groups. It will not do simply to establish the facilities and open the doors to all. The weight of centuries of discrimination and exploitation lies upon the American Negro and has deeply affected his psychology and his expectations. Society must be the first to hold out its hand.

Third, as an immediate step, we propose that Congress authorize a large-scale public works program to help absorb many unskilled and semiskilled Negro workers. If this country is to avoid a terrible explosion in every Negro ghetto in the land, we have got to provide jobs immediately at decent pay with useful purpose to the able-bodied youths and men who everywhere find themselves unwanted and unnoticed. If society will not willingly notice them, then they will force it to notice them and they will be entirely justified in so doing.

Mr. Chairman, it is sadly true that various forms of racism have become interwoven into the fabric of American life. A study of race relations history will show that this was possible because the Federal Government after 1877 was content to leave the so-called Negro problem in the hands of the intelligent white men of the South.

We may spend many years reaping the bitter fruit of three-quarters of a century of congressional indifference to the just demands of the Negro people. Birmingham, Jackson, and Montgomery—as well as Philadelphia, New York City, and Englewood, N.J.—are not the culmination but the beginning. But bitter years will certainly stretch into bitter decades if Congress and other branches of Government do not move now to extirpate all forms of racism within reach of the Federal Government.

We believe that the need for strong civil rights legislation is recognized by the vast majority of Americans. If such legislation is not forthcoming, if Congress permits itself to be stymied by an entrenched minority of wax museum politicians, then surely the Negro people are justified in continuing direct extralegal action to win their rights. They are justified in taking to the streets.

Mr. Chairman, these recommendations should form a package and should all be enacted in this session of the Congress. We recognize the problems that exist in the Congress as a result of the various undemocratic practices, formal and informal, that still prevail here: seniority rules that heavily favor the Dixiecrats; the filibuster; inordinate powers in the hands of the House Rules Committee; and above all that pernicious alliance of reactionary southern Democrats and northern Republicans who choke to death every decent and progressive measure that comes before the Nation.

But the glorious struggle now being waged by the American Negro will not be stopped by all of that. Either the Congress will see the handwriting on the wall and do what each of you knows perfectly well you should do, or it will be done the hard way, on the streets of every town and city in the country. The Socialist Party takes its place without reservation in the ranks of the great movement for freedom now.

The CHAIRMAN. The meeting will now adjourn, to reassemble at 2 o'clock.

(Whereupon, at 10:55 a.m. the subcommittee recessed, to reconvene at 2 p.m.)

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

Our first witness for the afternoon is Mr. James Farmer, National Director of CORE, New York City.

Mr. Farmer, I understand you have no prepared statement?

STATEMENT OF JAMES FARMER, NATIONAL DIRECTOR, CORE, NEW YORK, N.Y.

Mr. FARMER. I have no prepared statement, unfortunately, Mr. Chairman.

The CHAIRMAN. I assume you are pretty busy on a number of fronts?

Mr. FARMER. Indeed. As a matter of fact, I just returned from Gadsden, Ala., and I saw the necessity for strong legislation to prevent police brutality.

The CHAIRMAN. Proceed.

Mr. FARMER. Mr. Chairman and members of the committee, I am grateful for this opportunity to express my views and the views of the organization which I represent, the Congress of Racial Equality, on the pending legislation in the civil rights field.

The CHAIRMAN. Will you explain what the organization is, briefly, for the record?

Mr. FARMER. The Congress of Racial Equaliy, better known as CORE, was founded in 1942 as an interracial organization, using Ghandian techniques of nonviolent action.

As a matter of fact, we were having sit-ins and stand-ins, and wait-ins back in the early forties successfully in many, many northern and borderline cities.

The organization is 21 years old and we now have 76 chapters, North and South. They are all interracial, they are all nonviolent.

It is our belief that these are historic times, Mr. Chairman, in the very little sense that history has at last caught up with us and we now have to deal with this challenge or we will do ourselves and our children and the National a moral disservice.

Every day the burden, the brutality of racial discrimination grows more vivid for all to see and now it has to be dealt with. This legislation is in our view an important stride in that direction.

It is of prime importance, however, for us to remember that pragmatically speaking, laws exist only when they are enforced. We have many, many laws in my own State of New York in the field of employment and housing, but yet the problem still exists.

For many years CORE and its sister organizations in this field have seen their role as that of dramatizing and ending the barbarity of segregation and discrimination.

The time has come for our entire Nation to be cast in that role. You, as its elected representatives, must not only enact legislation to guarantee the rights of the country's minorities and to enforce the protection of these rights but first must instill in all citizens a perpetual vigilance which will breathe life into this organization and thus bring to an end a long and shabby history of hate and racism.

This is true not only in the South but also in the North.

This is a good bill that is before you, presented by the administration, hundreds of years late in coming and desperately needed and welcome. I believe, however, we must face the fact that it does not go far enough. I have been astounded to hear comments in some quarters that this is an extreme bill, an extremist bill.

Nothing could be further from the truth. It is, in essence, a very moderate bill and leaves out many of the things that we feel must be

dealt with. It, for example, does not include the so-called part III of the 1957 bill which would have given the Department of Justice the right to file suits against all violations of civil rights, not only voting and not only schools and we feel that that part III should be included, incorporated.

The CHAIRMAN. Well, it is in that bill that we are considering. It is one of my own bills.

Mr. FARMER. It is in your own bill and I think it should be included in whatever legislation comes out of this committee and should be adopted.

The CHAIRMAN. We don't know what shape the so-called administration bill will take. We are considering something like 170 bills.

And, Mr. Farmer, a number of the bills contain the so-called part III, which, incidentally, passed the House on one occasion, in 1957.

Mr. FARMER. Well, there are other things that were left out of the original administration bill.

The CHAIRMAN. But you know, Mr. Farmer, too often we hear it said that we don't seem to get any modicum of praise for what we have done. We simply get clobbered for not doing enough. That side of the shield is emphasized too much.

I have listened to you very frequently and I want to say that you have done a masterful job for your people, but sometimes you don't give a fair degree of credit to those who are trying to help.

Mr. FARMER. Mr. Chairman, we do, of course, applaud the good things that are done but we see it as an important part of our role to prod people to do more and it seems to me one penalty that all of us have to pay when we are in public life—and we pay it in our organizational life.

We are criticized for the things which we fail to do, which we don't do well enough and are not praised adequately for those things which we do, but you know it is often said that the ill a man does lives after him but the good is oft interred with his bones.

I think it is the same way in the legislative field, but please do not get the impression that we do not applaud the things that have been done by the Congress.

All that we are saying is that not enough has been done and that considering the present, real evolutionary stage of the civil rights struggle, we now have to make a crash effort to get the problem solved and get it behind us.

I agree, Mr. Chairman, when I think of the terrible waste of talent and energy and skills and intelligence and money that goes into working on a problem which should have been solved a hundred years ago.

I wish that we could release all of these things, to work on the problems such as wiping out disease, wiping out poverty, such as providing full employment, providing adequate housing, but unfortunately we have these things before us and we have to deal with them now.

There are whole areas of discrimination which today remain unrelieved. Provisions for enforcement include many major steps forward but are far from sufficient.

I personally and for my organization welcome this opportunity to discuss with you in some detail each title and subsection, pointing to these weakneses in giving you my views on how they may be mitigated.

It should be, of course, a source of national shame that we even

require laws to affirm the most basic human rights which are granted to all Americans by our Constitution, but it is a fact of life that bigotry, racism, segregation, both de jure and de facto, are spread across our land in every State, city, and town in some degree.

These laws and further laws must be enacted to give us new tools with which we can search out and eliminate the remaining pockets of hate.

Title I in the bill which I have before me, this was the President's bill——

Mr. FOLEY. H.R. 7152?

Mr. FARMER. Just a second.

Mr. FOLEY. The chairman's bill?

Mr. FARMER. This is the chairman's bill. This is the legislation which I have before me now.

Mr. RODINO. Do you have the President's message?

Mr. FARMER. The President's message and the legislation.

The CHAIRMAN. You were speaking on title I?

Mr. FARMER. Title I on voting rights, yes.

We think that there are some areas of weakness in this particular title of the bill.

For example, the first four sections refer to Federal elections only. We feel that they must refer to all elections and not only Federal elections, because the right to vote must not be limited to Federal elections.

As long as the language used calls for a presumption of literacy——

The CHAIRMAN. Let me ask you a question on that.

Mr. FARMER. Please do.

The CHAIRMAN. I agree with you that the bill should include all elections and I think there is ample constitutional authority for congressional action thereon in the 15th amendment.

That was left out deliberately, not on principle but on expediency. It would be very difficult to get the bill through, the whole package through, if we had such a provision. I would like to ask you, Is a half loaf better than no loaf at all sometimes? Because of political expediency, the whole bill might be destroyed if we put that in. That is the problem that we on this side of the rostrum have to face.

Mr. FARMER. I understand the practical, political problems which you have in getting the legislation through, but what so often happens is that when we ask for one-half of a loaf we get one-quarter of a loaf.

The CHAIRMAN. We have had these provisions in bills since 1957. I did not have to be prodded by your organization. We put them in.

Mr. FARMER. When I say "we," Mr. Chairman, I am including you, too.

I mean all of us who are on the side of the angels in this struggle. We need to ask for more than we expect to get. I am an old trade union organizer and I know that when you are negotiating for a contract you certainly ask for more than you expect to come through. If you ask for what you want, you are going to get much less than that, it is our feeling.

We think, too, Mr. Chairman, that at the present stage of the civil rights struggle we must stop asking for the expedient half a loaf and now must exert all of our energies and the intelligence of this committee and many other people to figuring out ways in which we can get the entire loaf, because the rights of people—and when I say

"our people" I don't mean just Negro people, I mean many white people, as well, are being abridged and we must not tolerate this because it is a moral issue.

I think therefore that we favor including all legisaltions and all elections in such legislation.

The CHAIRMAN. As I said, I agree with you. I would like to put that in myself.

(Discussion off the record.)

Mr. FARMER. I think we ought to ask for what we want and then fight for it.

Mr. FOLEY. One thing that has been asked for in the past has been the poll tax amendment.

Mr. FARMER. Well, as a matter of fact, what you are asking for has been asked for in the past.

Mr. FOLEY. Since 1957?

Mr. FARMER. We have not gotten that.

The CHAIRMAN. The best illustration is the poll tax provision, which was my bill. I offered that bill in the House.

It got through but I got it through because I had to leave out State elections. I did not want to leave out State elections, but if I had included State elections, I would not have gotten the poll tax amendment.

Mr. FARMER. Mr. Chairman, the thing I am afraid of and I planned to say it later on in my testimony but I might as well say it now and that is that in the event that what comes out of the Congress is a weak bill and an emasculated bill—now, I am considering the possibilities——

The CHAIRMAN. It is not going to be a weak bill.

Mr. FARMER. I am not suggesting that a weak bill will come out of this committee but if it should be watered down——

The CHAIRMAN. A weak bill will not come out of the House either. I can assure you of that. Just fancy, 170 bills have been offered by many Members. That shows a pretty healthy spirit for a good civil rights bill and that refers to Republicans as well as Democrats.

It is genuine, bipartisan support. What you and others have done is to rouse the Nation and shock them into the sense of responsibility and the conscience of the Nation has been pricked.

We need to do something.

Mr. FARMER. It seems we have not done it well enough.

The CHAIRMAN. You have done an excellent job. Don't deprecate it.

Mr. FARMER. The reason I said we have not done it well enough is that you are telling me that there is little possibility of including all elections in such legislation, so we need to prick the consciences more.

I have seen people try to register and they want to vote not only in Federal elections, but in local elections. They want to change the political climate in the cities, towns and States in which they live. They are interested in a livelihood and paved roads across the tracks where Negroes live. They won't get those by voting in Federal elections only. They will have to vote in local elections, too, so Negroes in the South are equally concerned about State and local elections as they are Federal elections. That is why I stress so much the importance.

The CHAIRMAN. Of course, if we pass it with Federal elections, there would be a likelihood of a bobtail ballot. They would have to have two kinds of ballots, one for Federal and one for State elections. The inclination might be to follow the pattern of the Federal ballot. I think so, but I may be wrong.

Mr. FARMER. I think that you underestimate the ingenuity of many people in some areas of the country in abridging rights.

I have not read in full detail another piece of legislation, a bill presented by Mr. Kastenmeier, but I note from the little reading I did do of it that he included all elections and not just Federal elections.

The CHAIRMAN. If Mr. Kastenmeier in executive committee sessions offers that amendment, we are going to support him.

Mr. FARMER. Fine.

May I proceed then to the other sections, Mr. Chairman? No attempt is made in the voting section to deal with outright intimidation. For example, task force people, these are volunteers in our organization who give from 2 months to a year of their lives fitting a Negro to work in the area of civil rights. Many of them are particularly interested in voter registration and they go in to hard-core areas of the South, Mississippi and Alabama, working on voter registration. They are being harassed and intimidated and I think that in order for a voter registration to be accomplished, then some legislative steps must be taken to prevent such harassment and intimidation.

I just returned from Gadsden, Ala., as I told you, and found there that two of our field secretaries, and three of the task force members who were there had been arrested and not only were the field secretaries arrested, but they were brutalized by State patrolmen, troopers with cattle prods, those electric things which they use to move cattle.

They showed me the scars over their bodies where the things were jammed into them repeatedly, beaten into bloody pulp, knocked down and stomped and kicked, done by people who swore to uphold the law.

This is the kind of thing we run into when we try to register people to vote. It is all right to have those provisions granting those rights in the legislation, but unless we find some way to stop the intimidation——

The CHAIRMAN. I think sections 241 and 242 would cover that, of title 18.

Mr. FARMER. Title 18?

The CHAIRMAN. It is not in the bill. It is a statute. It may not be enforced——

Mr. FARMER. Oh, you mean in existing law?

The CHAIRMAN. Existing law.

Mr. FARMER. I must say, Mr. Chairman, that we have time after time provided the evidence to the Department of Justice.

The CHAIRMAN. We will get that section.

Mr. FARMER. We have presented the evidence to the Department of Justice of such intimidation and harassment and, unfortunately, they have not felt in many cases that they have enough evidence to move, that they did not have the statutory authority to take acion.

Mr. RODINO. That may be. They may not have found sufficient evidence, but the law exists.

Mr. FARMER. Mr. Rodino, when a man beats you and sticks you with a cattle prod, or hits you with a billy stick when you are going to register, or after you have taken people to register, he is not going to leave a note and say "I did this because you went to register."

The CHAIRMAN. Mr. Farmer, this bill came out of the Judiciary Committee. It is an amendment to the civil rights fabric, section 241, title 18, entitled "Conspiracy Against Rights of Citizens"—

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or the laws of the United States, or because of his having so exercised the same; or if two or more persons go in disguise on the highway, or on the premises of another with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—They shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

Then section 242 entitled: "Deprivation of Rights Under Color of Law"—

Whoever, under color of any law, statute, ordinance, regulation or custom willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or the laws of the United States, or to different punishments, pains, or penalties on account of such inhabitant being an alien, or by reason of his color, or race than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

So it strikes me that it may be that the executive branch has not been vigilant enough.

Mr. FARMER. I think this indicates the great gap which exists between the law and its enforcement.

The CHAIRMAN. Do you call attention to these sections to the Department of Justice when you make complaints?

Mr. FARMER. I am sure the Department of Justice is aware of those sections. We have called attention to the conditions that exist and the intimidation and harassment of our workers in the course of seeking to register people to vote.

Our people are trained. They will stand the cattle prods, they will stand the billy clubs, but this is asking a great deal of an ordinary citizen who lives in a community: That he should be subjected to this, day in and day out, trying to exercise rights which are guaranteed by the Constitution.

Mr. FOLEY. Mr. Farmer, the problems are twofold. One, in referring to section 241 and 242 of title 18 under the case law, determined by the Supreme Court in the *Screws* case, you have to prove specific intent to deprive a person of a specific constitutional right. That is No. 1.

Secondly, you face the practical problem of a criminal prosecution and trial by jury, and you know as well as I do that it is very difficult to get a jury in certain areas to convict, so that even if you do amend sections 241 and 242, or eliminate the burden on the prosecution of proving specific intent, you still face the burden of getting a conviction from a jury.

Mr. FARMER. Mr. Counsel, I am not a lawyer, but I do know the difficulties that our people run into when they are trying to exercise their rights, and if the judicial system has the loopholes in it which allow a continuation of such oppression, then I think we need to take necessary steps to close up those loopholes.

Mr. FOLEY. Would you repeal the right to trial by jury?

Mr. FARMER. I would not repeal that right, but if the court or the courts in the various localities are being used to intimidate and to enforce segregation——

Mr. FOLEY. Not being used.

The CHAIRMAN. Wouldn't the answer be, Mr. Farmer, that perhaps cases like that could be transferred to other jurisdictions and tried in those other jurisdictions where you wouldn't have that local prejudice?

Mr. FARMER. For example, Matt Charles Parker, who was lynched. It was known who did it, but they could not convict him. Emmett Till—we knew who did it, but we could not convict anybody.

Mr. FOLEY. They were not Federal crimes?

Mr. FARMER. If murder, if lynching is not a Federal crime. then it should be.

Mr. FOLEY. It may be that it should be, but right now it is not.

Mr. FARMER. Well, Mr. Chairman, I think it is the function of the Congressmen to devise the laws that are needed in order to protect the citizens.

The CHAIRMAN. There are certain restrictions in the Constitution which tie our hands as to——

Mr. FARMER. Mr. Chairman, your hands are tied, you tell us, but our hands have been tied for 350 years.

The CHAIRMAN. I know. We can't make a constitution in a thrice. That takes a long time.

Mr. FOLEY. Your rights are derived from the same document that ties our hands.

Mr. FARMER. Are you suggesting, Mr. Counsel and Chairman, that there is no way legislatively that we can protect the rights of our people in Alabama and Mississippi? If that is being suggested——

Mr. RODINO. The legislation is there.

Mr. FARMER. Legislation was there before the freedom rides, Mr. Rodino. There was court action. The Supreme Court decided on two separate occasions that segregation in interstate transportation was wrong. The *Irene Morgan* decision in 1946, the *Bowen* decision in 1960, yet you know the results of the freedom rides, and you know when people tried to exercise the rights which the Court said was theirs, they were either beaten or jailed, or both. So this is wrong.

I am not a lawyer. I don't know how you can correct it. That is for you gentlemen who are specialists in correcting the wrongs legislatively.

I know the wrongs, and I would point them out to you. Am I to tell my people in Alabama and Mississippi that "there is nothing that can be done to protect your rights, because the hands of our legislators are tied"? They say, "Untie them."

Mr. RODINO. Based on the present Constitution, you are just not going to be able to do it unless we amend the Constitution.

Mr. FARMER. If the Constitution needs amending, then I think the Constitution should be amended, because the purpose of the Constitution——

The CHAIRMAN. You see we have to get three-fourths of the States, and two-thirds of both Houses to amend the Constitution.

Mr. FARMER. But what can I tell them?

The CHAIRMAN. That we are in sort of a cul-de-sac, we are up a blind alley in some of these instances.

Mr. FARMER. Are we saying logically then, Mr. Chairman, that legislation that we adopt might not be enforcible in some sections of the country?

The CHAIRMAN. No. I think the Department of Justice ought to strain every effort to get that legislation enforced. I am with you on that.

Mr. FARMER. I am delighted to hear that.

The CHAIRMAN. I would be very glad to have you do this: If you could send to this committee some of those flagrant cases where there has not been the application of these statutes, we will make inquiry of the Department of Justice as to the whys of the situation.

Mr. FARMER. This we certainly will do.

Mr. CHAIRMAN. Can you do that?

Mr. FARMER. Yes.

The CHAIRMAN. I will be very glad to receive that and to find out why there were no convictions or why there was no attempt to bring indictments or information. We want to help. I want you to know that. But we have to work within our authority.

Mr. FARMER. Well, we want help, too, Mr. Chairman, we want help because we are suffering all over the country for lack of jobs, lack of housing, lack of the common decency and dignity of being served in places of public accommodation, for lack of equal education, and so forth.

I think that we must not say to our population that there is nothing we can do. We are ingenious men. We are intelligent men. We have to find things that can be done to correct these evils and redress the grievances, but if I may continue——

Mr. COPENHAVER. I was wondering, to pursue this thought further for just a moment, if the time were to come that we could pass a broad title III which would give the Attorney General the right to bring an action against an individual who was seeking to deny a citizen his constitutional rights.

Mr. FARMER. Yes.

Mr. COPENHAVER. And then an action is brought against a local law-enforcement officer for denial of rights through use of brutality, the court could enjoin those officials from further activities along that line and then if continued activities did occur along the lines of brutality, you could have action for contempt before the court alone, without a jury, and the officials could be punished by criminal action. Wouldn't that be the case?

Mr. FARMER. Yes.

May I ask you, Does the Department of Justice now have that right to file such suits?

Mr. COPENHAVER. No. I say if broad title III were conferred, wouldn't that be a solution?

Mr. FARMER. That is precisely what I meant earlier when I said we need title III, that we need it and do not have it now.

Mr. RODINO. Even title III won't solve the problem you are speaking of. You need assistance.

Mr. COPENHAVER. Wouldn't it get around facing jury trials, because you sued under the contempt procedure?

The CHAIRMAN. It would.

Mr. FARMER. I think it would.

If I may divert for a moment, if I may add a footnote for a moment, in this Gadsden situation, our local people notified the local FBI of the beatings that had taken place in jail. The local FBI agent did not go to the jail. He would have had the evidence because there was blood running out of bodies, but he did not go to see it. Now the scars are healed. They are little scars, but they might be any kind of scars, since they are out of jail, and so the evidence is not quite as pointed as it would have been, had he gone at the time, but the FBI agent in the town did not see fit to go to the jail, though he was requested to do so, to interview the people who had been beaten and whose rights had been violated.

One other weakness, if my reading of the legislation is accurate, is that the section requires that the sixth grade of education be predominantly in English and this, it seems to me, does not take into account a man who may have been educated in Puerto Rico, for example, who immigrates to the United States and has only a Spanish language education. Is he, therefore, disenfranchised?

The CHAIRMAN. You mean languages are not necessarily a condition of illiteracy?

Mr. FARMER. I don't think they are.

The CHAIRMAN. There are only 20 States that have literacy tests. All the other States allow universal suffrage when a man reaches 21 years of age, regardless of any test. Most of our States have that. This, of course, is only a presumption of literacy. I think it should not be merely a presumption.

If you are going to have the sixth grade, let that be absolute, at least.

Mr. FARMER. Now to go on to the section on public accommodations.

Mr. FOLEY. Let's stop there for a moment.

The qualifications to vote under the Constitution, definitely are beyond Federal control.

Mr. FARMER. I believe, Mr. Counsel, that the Civil Rights Commission of the United States recommended at one point that the only qualification for voting should be age and length of residence.

Mr. FOLEY. That is true, and I agree with the Civil Rights Commission, personally, but a recommendation is one thing. The enactment of a law is another thing and we can only exercise the powers that Congress gets from the Constitution and the Constitution says the qualifications to vote shall be determined by the States.

Mr. FARMER. Mr. Counsel, are you saying, therefore, that you have no right in this legislation to prevent the several States from establishing literacy tests?

Mr. FOLEY. We have no rights. If that is a qualification to vote, we have no right to stop them from voting. That is why we took the approach on the poll tax, a qualification, on the constitution amendment basis, rather than a statutory basis.

If you want to change the constitutional requirement of qualifications to vote, then I think you have to amend the Constitution of the United States.

Mr. FARMER. I think the Constitution should be amended on this, because if the States are allowed to determine the qualifications for

voting, then obviously Mississippi and Alabama will determine the qualifications so as to disenfranchise a large segment of the population.

Mr. RODINO. I think there was some legislation that was proposed to that effect—amending the Constitution. Although this is well written in the Constitution, again we come up to the restrictions laid down by the Constitution.

Mr. FARMER. But my point a moment ago was that you are proposing in this legislation here that the education be in English and so you are taking the responsibility for determining what the qualifications should be in that regard. If you eliminate English——

Mr. FOLEY. No. If I eliminate English, Mr. Farmer, am I encroaching on the constitutional prerogatives of the State of New York which requires it to be in English? If New York repealed its statute, there wouldn't be any problem at all, because the New York statute requires English.

Mr. FARMER. Are you writing the legislation for the State of New York?

Mr. FOLEY. We are writing similar legislation which 20 States have on their books today, but we know how far we can go and if the New York statute says "English" and the New York Court of Appeals has upheld this already, because that issue was raised in New York by the Puerto Rican people, and the court of appeals said, "That is valid," this is our problem.

Mr. FARMER. It is your problem, but I think you ought to solve it, and if you need a constitutional amendment, then I think you must, because the Puerto Ricans are citizens, too. The fact that they have not been schooled in English should not be held against them.

The CHAIRMAN. That is one of our difficulties. We cannot override that New York statute which says the qualifications must involve a knowledge of English because of the constitutional provision which will be read.

Mr. FOLEY. Article I, relating to the House of Representatives and the electors in each State shall have the qualifications for requisite of electors for the branch of the State legislature.

That is as far as the House is concerned.

When it comes to article II, presidential electors, the legislature of each State has the sole constitutional authority to decide who, how, where, and why. Congress has no authority; when it comes to the election of the U.S. Senators, it applies the same way. Qualifications for electors for the lowest branch of the State legislature.

Mr. FARMER. Mr. Counsel, I must state my strong view that constitutional amendments are called for. I am not willing to leave the future and destiny of my people in the hands of Mississippi and Alabama.

Mr. FOLEY. Mr. Farmer, I don't quarrel with you. I merely point out that when you refer to the things in this bill that you think are lacking, I merely want to keep the record straight and show you that this is a statute, not a constitutional amendment, and we can only exercise the power we have under the Constitution when we deal with the statute.

Mr. FARMER. I think we have an equal responsibility to press for necessary constitutional amendments.

Mr. FOLEY. But nobody has pressed for them.

Mr. FARMER. Because our objective——

The CHAIRMAN. Mr. Farmer, you have already saddled us with a number of proposals to amend the Constitution a number of times.

Time is of the essence here, too. We want to get something done. We are a judiciary committee. We don't want to pass a bill which would only be a hoax. We want to pass a bill that would stand muster. That is a bill that would be declared constitutional. We have to be careful in that regard. I want you to understand the limitations under which we operate here.

Mr. FARMER. All I am trying to make you understand is the limitations—which I am sure you do—under which 20 million American citizens operate day in and day out, 24 hours a day, 7 days a week.

The CHAIRMAN. But sometimes it is very sad to hear some of your own leaders making these proclamations without a real understanding of the limitations, the constitutional limitations under which we are presently operating. When statements are made sometimes it looks like Congress is or the judiciary committee might be lacking.

I am speaking of some of the statements that have been made and you have fallen into the area, yourself. You are so avid, as I am, too, of having these rights recorded, and these rights protected, that we are likely sometimes to ride roughshod over these constitutional limitations under which we operate.

Mr. FARMER. I must be avid. I think all Americans of good will must be avid. I don't think we have much more time. I think that we have to work fast.

The CHAIRMAN. We have to work fast, as you say, but if we have to first get the Constitution amended in so many places, we will never get a bill out.

Mr. FARMER. An individual—avid interest is an asset, I think, today in the area of civil rights, and not a liability. I think that we must move and move fast.

The CHAIRMAN. We are going to move fast. We are going to move in the direction that you want. We may not give you everything that you want, but we are going to give you everything that we can possibly give you under the limitations under which we operate.

Mr. FARMER. Everything that you can possibly do, this we hope will be done.

On the section on public accommodations, Mr. Chairman——

Mr. COPENHAVER. Mr. Farmer, you don't mean to imply that 20 million Americans have been denied the right to vote?

Mr. FARMER. No.

Mr. COPENHAVER. It is only in certain localities where they are denied such rights.

Mr. FARMER. Yes.

I was speaking of the limitations of full citizenship.

Mr. COPENHAVER. That is right. How many counties in the country do you estimate that this denial occurs?

Mr. FARMER. I wouldn't have numbers at my disposal but I would say that practically every county in the Deep South States, Mississippi, Alabama, a large number of the parishes in Louisiana, we have found it to be true. In several of the counties in South Carolina, and in counties in southern Georgia, we have found outright denials and intimidations.

The CHAIRMAN. There are 200 counties that need attention?

Mr. FARMER. About 200 counties, sir.

Mr. COPENHAVER. Now, with all the great intolerance that occurs in those areas, it still is a limited area and addressing myself to the chairman's statement as to the possible, instead of seeking a constitutional amendment to protect those citizens who have been denied the right to vote, which may take years and may harm other legislation from being enacted, would it not be preferable to enact strong legislation, which we are seeking to do here so as to give the Attorney General all the authority he needs to pursue this matter in those local areas, to get those people on the registration rolls. Wouldn't that be a good solution and a faster solution than trying to go the constitutional route which may take several more years?

Mr. FARMER. My feeling, Mr. Counsel, is that we need to do both. I think we need to do both, because the literacy tests which are still being used in many of the areas are completely impossible when applied to Negroes. Negroes are asked, and very frequently, to read and interpret a certain article of the Constitution and to the satisfaction of the registrar.

Mr. COPENHAVER. By this legislation we are seeking to give the Attorney General sufficient authority to circumvent that type of action, but do you not recognize that if you ask us to try to go the constitutional route that you could kill all effort to give the Attorney General this additional authority?

Mr. FARMER. I would say that what you need to do is to pass first for the passage of strong legislation here, and then as the very next step, seek the necessary constitutional amendments to insure voting rights for all of our citizens.

Incidentally, there is not only intimidation and violence, Mr. Chairman, not only are there tests given which are arbitrary and discriminatory, but in one county, Williamsburg County, S.C., for a number of months we have been trying to register people there. The registration office is open only 1 day a month. On that 1 day we have had from 150 to 275 people, outside of the registration office. How many would you suppose were registered on that day? Six one day, seven the next. We complained and finally two registrars were put on, but on that day they registered only five, because the two worked slower than the one had done.

The CHAIRMAN. We try to give you a remedy here by substituting the State registrars with Federal registrars.

Mr. FARMER. I think that would be fine.

Mr. CORMAN. I just want to comment. It seems to me that if you could point specifically to cases where the English language requirement is used to discriminate because of racial reasons, it would fall. But I suspect that that is not the case. I don't believe that the English language requirement is a tool of racial discrimination, but it seems to me that the big problem with our legislation is not setting up the mechanics for people to be able to register, but insuring that there will be no economic reprisals.

I wonder if you have any facts as to how many schoolteachers, in Mississippi, colored schoolteachers, are registered to vote, because obviously, they are an extremely literate kind of people, the kind who ought to be helping us to decide elections. It was my information

that practically none of them were registered because of the reprisal of losing their jobs if they did.

Can you give us any facts on that?

Mr. FARMER. That is correct. I don't have figures on that, but I know from personal experience that many of the schoolteachers who have tried to register have been turned down on literacy grounds. There is one Ph. D. rfom Tuskeegee in Alabama who was turned down on literacy grounds because he slurred one word in reading a section of the Constitution.

Mr. CORMAN. This bill will correct that evidently, but the thing that worries me, and I am afraid this bill does not get to it, is the economic pressure, threats of losing their employment, whether civil service or private employment.

In NASA 75 people were driven out of the community because the merchants refused to sell to them. That is an example of what is brought to bear on these people when they exercise the simplest right.

How do we get at that?

Mr. FARMER. Also there was Fayette County in Tennessee where people sought to register and then they found themselves thrown off the farms where they had worked many, many years. We had "Tent City." How do you get at it, Mr. Corman?

Mr. CORMAN. I was hoping together we can find an answer to it.

The CHAIRMAN. Go ahead.

Mr. FARMER. The public accommodations section is an extremely important one, it seems to me It is the first and extremely important acknowledgment of the vast areas of segregation and public accommodations, to me.

To me, personally, it is very heartening to see. The humiliation and degradation every Negro faces when trying to just find accommodations is a day by day lifelong horror. Being a native southerner myself, I have experienced it, day in and day out, a man being told he is not equal of other people and that there are things he cannot do by the accident of birth.

The color of his skin thereby becomes a disfigurement, and he is handicapped throughout his life for it. It is hoped that this particular title, if enforced, will begin to mitigate this situation.

I have been chagrined by arguments in many, many places, places of accommodation are private property and that the individual owner has a right to choose whomever he wants to serve. I would like to suggest, Mr. Chairman, my view is that they are not private property in the sense that a man's home is private property.

Instead, they are businesses that are serving the public, and as such I do not think that they should have the right to discriminate because of race or anything else, which, according to the Constitution, is not supposed to be a basis for denying equal rights.

If the man wants to discriminate on the basis of something I can do something about, if I am dirty, and he chooses not to serve dirty people, then I can clean up.

If he chooses not to serve intoxicated people, I can stop drinking or sober up before going there.

In the Pacific Northwest several years ago I was in a town and stopped in the theater and saw an interesting sign in the window which says "No Indians admitted," so out of force of habit, as much as

anything else, I asked to see the manager and asked the manager what the meaning of this sign was.

He said, "That doesn't mean you. You are not an Indian. You may come on in. It just means American Indians."

I asked him why American Indians were not admitted. His reply was, "All the Indians in this locality are from such and such a tribe, and their main food is fish, and they always smell of fish, and that is why they are not admitted."

My comment to him was that it would make a great deal more sense to put up a sign, "People smelling of fish not admitted." Then the Indian could do something about it.

Mr. FOLEY. Right there, it is interesting to notice that the Yuma Indians have filed a suit about desegregating schools and in North Carolina, Indians have filed for desegregation of schools in Hammond and Sampson counties.

Mr. FARMER. I am glad to hear that.

Mr. RODINO. This bill applies to all.

Mr. FARMER. It should apply to all. Our activities apply to all, white, black, blue, green, and purple.

Mr. RODINO. This is the Congress of Racial Equality.

Mr. FARMER. We insist on "of" rather than "on," because we represent a racially mixed group. We do not think it is possible to fight racial discrimination through a segregated weapon.

Mr. FOLEY. Yesterday we asked Mr. Wilkins whether or not your organization was a member of the leadership conference and he said he thought you were.

Mr. FARMER. We are a member of the leadership conference, we are indeed.

The CHAIRMAN. Mr. Rodino.

Mr. RODINO. May I ask one question in relation to the makeup of your organization? I know it is an interracial group. What is the relative proportion of whites to Negroes?

Mr. FARMER. We don't keep separate records. We don't segregate our files so it is hard to tell.

Mr. RODINO. You don't have any counts?

Mr. FARMER. No, we don't count heads or noses. We are fully integrated, however, and my guess would be that in our southern chapters, which are about half of the total number of chapters, they are predominantly Negroes for obvious reasons. Our chapters in Mississippi, South Carolina, Alabama, or Georgia would not find many white persons who would join while in some of the northern chapters we find a majority of white persons, but generally it is 50–50, roughly.

Mr. MEADER. How large is your membership?

Mr. FARMER. Our membership is 61,000 and we have 76 chapters in 76 cities, north and south.

The CHAIRMAN. Mr. Farmer, I take it that your organization is going to participate in the so-called march on Washington?

Mr. FARMER. Our organization will participate fully.

The CHAIRMAN. Beg pardon?

Mr. FARMER. We will participate, Mr. Chairman.

The CHAIRMAN. Will that be definitely and assuredly a peaceful march?

Mr. FARMER. Of course. It will be an orderly, peaceful, dignified march and demonstration.

The plans are to have the people meet at certain check points at 10 o'clock in the morning and to have them parade quietly and peacefully in a memorial march of great dignity through the streets of Washington. This has been cleared with the police, and then to go to the Lincoln Memorial where there will be a mass rally, but the whole thing will be disciplined and orderly and peaceful.

The CHAIRMAN. How can you be sure of that?

Mr. FARMER. Well, we can be as sure of it as it is possible for an organization that stresses discipline and training to be.

We will have persons who are trained, some 1,000 to 2,000 who will be trained so that that discipline is maintained, to patrol the lines, the march lines and if anyone gets out of step, then to try to bring them back in step, nonviolently and peacefully.

The CHAIRMAN. I hope and pray it will be as you indicate, because I would hate to see any incidents that might lead to any kind of violence.

Mr. FARMER. I do not think, Mr. Chairman, that there will be any incidents from our side, and I doubt seriously that there would be incidents from the other side.

I have sufficient confidence in the Police Department in Washington, in its efficiency, to know that they will do their utmost to keep other persons from attacking us.

The CHAIRMAN. How many do you think there will be in the march?

Mr. FARMER. I have no way of knowing, but I am sure there will be over 100,000.

The CHAIRMAN. Will they come on the Capitol Grounds?

Mr. FARMER. They have no plans to be on the Capitol Grounds.

Mr. Chairman, the idea is to go to the monument and as the people meet in the morning at 10 o'clock at their various checkpoints, Congressmen and Senators will be asked to come and see them and talk to them about civil rights legislation and civil rights in general.

The CHAIRMAN. At the Lincoln Memorial?

Mr. FARMER. No, I mean at the various churches in the morning.

The CHAIRMAN. I see. And how long will the marchers remain in Washington?

Mr. FARMER. One day, sir.

The CHAIRMAN. And then return to their homes?

Mr. FARMER. And then return to their homes.

The CHAIRMAN. By whatever conveyance they came, I suppose?

Mr. FARMER. Precisely.

The CHAIRMAN. There is no intention to have them remain overnight?

Mr. FARMER. It would be quite a job to house 100,000 or 200,000 or 300,000 persons. I think we have enough problems.

The CHAIRMAN. It would be a master stroke if you could accomplish this in the way you have indicated.

Mr. FARMER. We expect to fully.

The CHAIRMAN. It will take a mighty Herculean effort to do it, but I hope that you can do it.

Mr. FARMER. Mr. Chairman, we are used to Herculean efforts. We have been having them for years and the whole civil rights struggle is a Herculean effort now and that is the reason that I speak with passion, occasionally.

Please understand, I am not criticizing your committee or the way that you have done your job. I am merely expressing the feeling of my people and a feeling which I am sure that 100 years is far too long to wait.

The CHAIRMAN. Of course, we have had some demonstrations lately in New York which have broken out into violence due to interference on the part of those who were not demonstrating. This has led to recrimination on both sides. That is always a danger.

Mr. FARMER. Yes, that is always a danger, but every effort is being made deliberately to see that the March in Washington will be peaceful.

The CHAIRMAN. You may proceed.

Mr. FARMER. Thank you, Mr. Chairman.

On public accommodations, we are concerned that in the enforcement provision the Attorney General can act only when aggrieved individuals are unable to do so. That was my reading of the proposed legislation and this, sir, seems to me to be a weakness. It means a sort of means test which I, all along, have considered degrading for injured parties.

If I may quote the American Jewish Congress in its analysis of the bill:

> It rests on the assumption that racial segregation is a private wrong rather than an attack on our democratic system.

The Federal Government should be able to act decisively in its own name, rather than be only a last resort for oppressed citizens.

We would urge that it be considered the responsibility of the Federal Government to——

The CHAIRMAN. The Federal Government may not know that there is a violation to your accommodation section unless somebody makes a complaint?

Mr. FARMER. I am not speaking of making a complaint.

According to the wording of the bill if I read it correctly as a layman, the individual, if he can, is supposed to file suit and take legal action.

The Attorney General must move in and state to the best of his knowledge that individual is not able to pursue it.

The CHAIRMAN. That is correct.

Mr. FOLEY. But the individual still has the right under Title II to bring his own action?

Mr. FARMER. If it is right. Well, I welcome the individual having that right, but that is not what I am speaking to at the moment, Mr. Counsel.

The CHAIRMAN. You mean that as a precedent to the Government bringing the suit, he has to make a complaint?

Mr. FARMER. Suppose, sir, I walked into a restaurant in a southern city and was refused because of my race and I would have, let us say, in a checking account $10,000. I should not have to go through the expense of personally litigating that. I think that it ought to be the responsibility of the Federal Government, because it is a wrong against America.

The CHAIRMAN. I don't think we intend to have everybody bringing actions. The intention is that the Attorney General bring the action. We have many statutes which give the right to the individual

as well as to the Government, as in the antitrust field. A man could bring a suit for Federal damages, if he feels the Government should bring the action.

It does not mean just because we give dual remedy that the burden is on the individual solely.

Mr. FARMER. If I may respectfully suggest, Mr. Chairman, I think the present wording indicates that the Attorney General can bring action only when he is convinced that the individual cannot afford it.

The CHAIRMAN. That is correct.

Mr. FARMER. Yes. If America is injured, then I think that it should be the responsibility of the Federal Government, of the Attorney General, to take that action and when I am refused service in the restaurant, I maintain that America is injured.

Mr. FOLEY. The reverse of that, Mr. Farmer, is this: this committee just recently reported out a bill to take care of people who are arrested and indicted by the Federal Government. At the present time they have a right to counsel under their constitutional rights.

At the present time there is no law on the books to reimburse counsel. He is assigned by the judge because he is an officer of the court. His time and out-of-pocket expenses are nonreimbursable.

Now, this committee just a few days ago reported out a bill whereby counsel will be reimbursed to meet that constitutional right.

Mr. FARMER. I think that is fine. I applaud that, sir.

Mr. FOLEY. That is very necessary.

Mr. FARMER. I think so.

Mr. FOLEY. Now, you feel then that the analogy should be drawn between an indigent defendant, and a complainant to have the Federal Government represent him as an individual plaintiff exercising his private constitutional, individual right?

Mr. FARMER. Will you repeat the question, Mr. Counsel?

Mr. FOLEY. You feel that if the Government sees fit to represent a defendant in a criminal case who was unable to finance counsel to defend him, as a constitutional right, that the Government should also finance an individual exercising his individual constitutional right as a plaintiff in a civil action?

Mr. FARMER. I do indeed. I do indeed.

May I, sir, explain why I think it is important for the Federal Government to take this stand, aside from the principle involved that it is a responsibility of the Federal Government, it is a damage to America. It is asking a great deal of a man who lives in a town in the Deep South that he will go to court and file suit and pursue it through the courts if he intends to continue to live there.

It is a simple matter for him to complain. But the filing of the suit and pursuing the litigation ought to be in the hands of the Federal Government.

Mr. FOLEY. It is not a question that he can't find adequate counsel?

Mr. FARMER. No, it is not that at all.

Mr. FOLEY. It is a question, let's say, of the possible consequence of being a plaintifl in such an action.

Mr. FARMER. Reprisal.

Mr. MEADER. May I pursue that one step further, Mr. Farmer?

You would not authorize the Federal Government to institute actions of this kind without consent of the aggrieved person, would you?

Mr. FARMER. If such action has to be instituted in the name of the aggrieved person, then I think the Federal Government would need the consent or should need the consent of the aggrieved person.

Mr. CORMAN. Mr. Farmer, I take it what you want to do is: You are suggesting that we ought to remove subsection (1) and section 204(a)(2), where the Attorney General must find that the person aggrieved is unable to maintain appropriate legal proceedings, is that right?

Mr. FARMER. Yes.

Mr. CORMAN. If someone robs me, there is an obligation that the Attorney General proceed, whether I am going to or not. You would like to put this category of imposition in the same field?

Mr. FARMER. Precisely.

Mr. CORMAN. That this man has created a crime against society as well as against the individual?

Mr. FARMER. Yes.

Mr. CORMAN. I think there is a great deal in what you are saying.

Mr. FARMER. If a man robs a bank, the bank does not have to pursue the litigation against him.

Mr. CORMAN. That is what I am saying. It has a great deterrent effect against bank robberies.

Mr. FARMER. May I proceed?

I am also concerned with the fact that——

Mr. MEADER. Before you proceed, does that suggest that the penalty should be a criminal penalty for the violation of title II rather than injunctive relief or civil damages?

Mr. FARMER. Yes, I was implying that, sir, and I would want to make it more explicit. I think that there should be direct provision for criminal penalties, because now discrimination can be continued until stopped by a court order under the proposed legislation.

There are hundreds of thousands of places that segregate, so that the Attorney General would be able to act only against prominent violators.

The CHAIRMAN. If the Attorney General acts against some, would it not act as a deterrent against many thousands of others?

We have laws against larceny and abduction, for example. The Attorney General does not have to act in all cases.

Mr. FARMER. Sir, we have found through unfortunate experiences that in the area of civil rights, the Attorney General has to act over and over again in the same sort of cases in different localities.

The Department of Justice files voting suits on denials of voting rights in one locality but it does not necessarily affect another locality, it does not influence them.

School desegregation would be another illustration of that. The fact that suits have been filed and have been won in many school districts has not desegregated a single school district in the State of Mississippi or in Alabama.

The CHAIRMAN. In the case of an action brought by an individual under title II, he gets attorney's fees. Since you touch the nerve of these offenders, would not that suffice?

Mr. FARMER. I think hardened prejudices in some parts of the country are so rigid that people would be willing to suffer minor losses like that in order to maintain it.

The hope would be that it would take the Attorney General a long time to get around to them and they can keep the status quo as long as possible.

I think in some communities, certainly in the borderline areas and the upper South and the middle South, a few suits filed against a few individuals would have their effect upon others, but not in the deep areas.

The CHAIRMAN. I will repeat what I said on other occasions. We will try this bill and then if that does not work, there is another remedy under the 14th amendment. We can then proceed to cut down the representation of those States.

Mr. FARMER. Would cut down the representation of the States, this I would certainly approve. I would applaud that most heartily. If I may say in that connection, Mr. Chairman, I also wish that—I hope that there will be legislation which would withhold Federal funds from States which maintain segregation.

The CHAIRMAN. That is partly in this. It is partly in it.

Mr. MEADER. Title VI?

Mr. FARMER. Yes. I have seen that title but I wish it would be expanded.

Mr. MEADER. Mr. Farmer, since you have referred to it, would you make that withholding mandatory, as against beneficiaries practicing discrimination, or would you make it discretionary with the Federal administrator?

Mr. FARMER. I would want to make it mandatory, sir. I think there is a great issue of principle involved there. The Federal Government is on the record as opposed to segregation, but then with the other hand we subsidize segregation by granting Federal funds which are used to maintain it. I think that this is a basic principle, so that it ought to be mandatory rather than discretionary.

Mr. MEADER. I told you that the House Education and Labor Committee reported out the so-called Gill bill which required mandatory withholding on five or six programs in the Department of Health, Education, and Welfare?

Mr. FARMER. Yes; I am aware of that.

Mr. MEADER. And you favor it?

Mr. FARMER. I favor it very much indeed. I had the opportunity to testify before a subcommittee and express my view.

Mr. FOLEY. Mr. Farmer, when you say you want it mandatory, now as you know there are various types of programs which are subsidized by the Federal Government.

Let's assume that we had discrimination practices in State X in apprentice training programs.

Would you cut off all Federal funds, schools, hospitals, every other form of Federal grant or loan or would you merely cut off that particular program?

Mr. FARMER. I would cut off that particular program.

Mr. FOLEY. Not across the board?

Mr. FARMER. If the other programs are integrated, desegregated, they would get money.

Mr. FOLEY. Thank you.

The CHAIRMAN. Let's take that further.

Suppose there is discrimination in a hospital.

Would you cut off the Hill-Burton funds from the hospital which reaches the sick, maimed, and wounded, so that the hospital would have to close?

Mr. FARMER. I would cut off Hill-Burton funds if there is desegregation or discrimination in the hospital.

I remember the case of Bessie Smith, the very great blues singer who died because she was not admitted into a southern hospital. She was involved in an automobile accident and would probably have survived but hospital after hospital refused to accept her.

The CHAIRMAN. Those are extreme cases. I am just getting your view, there may be that there are a lot of colored people in a hospital like that, if the hospital is closed, colored people would be hurt, too.

Mr. FARMER. Well, sir, my answer to that would be that colored people have been hurt for so long that they are willing to accept a little more suffering.

The CHAIRMAN. That is a very hard answer.

Mr. FARMER. No; it is not. If people have been hurt so long, they are willing to accept a little more suffering to enable them to wipe out the hurt. They are interested in their children. It would be dangerous, it is true, but the whole situation is extremely dangerous now.

The CHAIRMAN. You will get an awful howl from your own people, from the colored people who would be deprived of any attention in those institutions.

Mr. FARMER. We are getting a howl now from them because they are being segregated and discriminated against.

The CHAIRMAN. Mr. Farmer, you are revolutionary, aren't you?

Mr. FARMER. Well, I like to think of myself as a Christian, a revolutionary in that sense.

The CHAIRMAN. I suppose you don't get anything done unless you are a revolutionary, but as in the French Revolution, many innocents may suffer.

Mr. FARMER. There are many innocents suffering now, black and white, because of discrimination, Mr. Chairman, and I am badly hurt when I realize that my money, my tax money is going to support the segregation which I abhor so much.

The same is true of the Negroes who live in the Deep South.

Mr. RODINO. Mr. Farmer, on that score, Secretary Celebrezze who testified in favor of this bill said that in administering some of these programs—and I think I correctly recall his testimony—that where perhaps a hospital was involved the administrator exercising his good judgment and his wisdom would employ some discretion, because of the great injury that might be done, if one single case of segregation were permitted to withhold help from numerous people who might possibly even die as a result.

It is a hard question, but here is a Secretary who administers about 128 programs. They are in relation to the welfare of the people of the United States and I think he has a pretty good record.

Mr. FARMER. He does.

Mr. RODINO. This man is talking from experience. We recognize, of course, not only your enthusiasm but also that your theory is well founded. But we would like to correct it in areas like this. Don't you think that it is important that we consider the relative injuries that we do and the benefits that are derived from extreme action in some cases?

Mr. FARMER. Relative injury. Let me take the second point first, Mr. Rodino. I don't consider it an extreme action to withhold funds from what I consider to be evil. If segregation is bad, it is bad, in itself it is wrong.

Mr. RODINO. Then I agree with you.

Mr. FARMER. Then I ought to withdraw myself from it as much as possible. The Federal Government should not be in the unfortunate position of talking out of two sides of its mouth.

Mr. RODINO. That is a general premise, but now you have a certain set of circumstances and we have to consider when we take the legislation under deliberation, whether or not we are then setting in motion some other evil.

Shouldn't we consider that?

Let us say a hospital is involved, as the chairman said, and funds are withheld because there is one single isolated instance of discrimination. May that not cause injury to a vast number of people?

What is your answer?

Mr. FARMER. It is not a case of one single isolated case of discrimination. It is a case of a pattern of discrimination.

Mr. RODINO. This is discrimination, itself. It may be that when it is reviewed, it is a pattern?

Mr. FARMER. The point I want to make, when you speak of relative evils I do not believe any evil can be any greater than the evils heaped on humanity through racial segregation. I don't think any evil has caused as much misery, pain, and suffering throughout history as the evil of racism.

Millions of people have been killed.

Mr. RODINO. I am in accord with that.

Now we are coming down to cases and we are trying to exercise our best judgment in order that we do good.

Mr. FARMER. Let me say, Mr. Rodino—and when I testified before the Subcommittee on Education, I made it very clear that I was not opposed to giving an order to cease and desist to places which practiced segregation with a brief period of grace, and if they do not comply with that order, then I think withdrawing the funds should be mandatory.

Mr. RODINO. That is what we mean.

The CHAIRMAN. That is what we have been trying to get, but you are apparently educated to the contrary. We said that there ought to be some variable by which they would be given the right to comply with the orders. Then after a certain period—you remember I put that to you—then if they don't, then we have to let the ax fall.

Mr. FARMER. Let me stress, sir, that I think that period should be brief. It should not be long and drawn out.

The CHAIRMAN. I am glad you have modified your point of view.

Mr. FARMER. If it is a modification, that is my point of view.

The CHAIRMAN. That is right.

Mr. RODINO. I think it is very reasonable. I think it is one that is exercised in good judgment.

The CHAIRMAN. Thank you very much.

Mr. MEADER. Mr. Chairman, I have been trying to get a question asked here.

The CHAIRMAN. I am sorry.

Mr. MEADER. I would like to go back to title VI. That is a very brief title and contains enormous power, particularly if we pass it the way it is worded, and make it discretionary rather than mandatory to withhold funds from beneficiaries to Federal grants where the beneficiary practices discrimination—just to be sure, I think you can help us put this in a practical light rather than just dealing in abstracts—let's take the case of the hospital.

Mr. FARMER. Yes.

Mr. MEADER. I want to get at a definition of a word—"discrimination."

Let's assume that the hospital accepts both white and colored patients, but will not permit Negro nurses or Negro doctors to function on the staff of the hospital, and the question comes up of expanding the hospital and they apply for Hill-Burton funds, and you have a mandatory requirement that funds be withheld where discrimination is practiced.

There is no discrimination with respect to the patients, but there is with respect to the staff. Now, would that be such a discrimination in this hypothetical case as would require the Secretary to withhold Hill-Burton funds, if we had a mandatory situation.

Mr. FARMER. I should think it would be, because as I indicated earlier I think employment is a key, a major issue.

Mr. MEADER. Let's take another example. I come from Ann Arbor, Mich., where a large hospital is operated by the regents of the University of Michigan. There has never been any question with respect to the admission of Negroes to study. But let's assume instead of the University of Michigan, it was Mississippi, and they operated a hospital. They have no discrimination with respect to the patients in the hospital, accept both Negro and white patients. They have no discrimination with respect to the staff of the hospital; both Negro and white doctors and nurses and others who work there, but they do have discrimination with respect to the admission of a student for educational purposes to the university, which, in turn, owns the hospital.

Now they want to expand their hospital, and they apply for Hill-Burton funds. In your definition of discrimination, would they be eligible or ineligible under a mandatory provision of withholding funds?

Mr. FARMER. I think they should be eligible. I do not hold to the view that a little desegregation, or a little discrimination, would be acceptable. It is like the young lady who was just slightly pregnant.

Segregation is bad, no matter how little or how great.

Mr. MEADER. But there we get back to this other proposition that you and Secretary Celebrezze took the same position on, that it had to occur within the program where the funds were involved.

Mr. FARMER. Precisely.

Mr. MEADER. There was no discrimination in the operation of the hospital where the Hill-Burton funds would be applicable, but there would be discrimination with respect to national defense and education or some other program on the educational side, a different program, so that the discrimination occurred in a different program, but by the same institution.

Mr. FARMER. A different program. Then in that case I would say the funds should be withheld from the program in which the discrimination occurred.

Mr. MEADER. Not because the same governmental entity happened to be the recipient in both programs? Here we have the University of Mississippi. It discriminates on its educational side, but not on its hospital side.

Mr. FARMER. The funds are given for the education there in the hospital, sir. I think that those funds should be withheld if discrimination is in education.

Mr. MEADER. But if it were simply Hill-Burton funds for hospital construction and there was no discrimination in the operation of the hospital either with respect to the staff or patients, then the Hill-Burton funds should not be withheld, simply because there was discrimination in admission to education?

Mr. FARMER. I would agree with that, but any funds that go to education in that hospital should be withheld.

The CHAIRMAN. In other words, you give some discretionary power to the official in the disposal of those funds under those conditions?

Mr. FARMER. If you call that discretionary. I do not. I think it should be mandatory that the program, through which the funds are given, must not discriminate.

The CHAIRMAN. It would be very difficult to put in a law. You would have to leave some discretionary power. You would have to trust the officials. You could probably put that in a report which would be a guide for the administrator.

Mr. FARMER. Mr. Chairman, the problem I have with granting discretionary powers is that we might have a good administrator one time and a bad administrator the next.

The CHAIRMAN. We understand.

Mr. FARMER. And I don't think this is a matter of good man or bad man philosophy, it is a matter of a principle being involved and so I think it ought to be written into the law and in that sense I think it should be mandatory.

Mr. MEADER. I think our colloquy has perhaps established—and I ask you if you don't agree with me—that sometimes these questions of fact are not altogether too clear. I mean an allegation of discrimination may be made, but, in fact, the person against whom the charge of discrimination is made, may have a perfectly valid reason other than race or color for the action taken, so that sometimes this is a factual controversial matter in which you have to determine not only, perhaps, outward acts, but, also, the intent of the person alleged to have discriminated.

In view of that fact, and in view of the possibility, as the chairman suggests, and as title VI as presently written provides, that the withholding should be discretionary rather than mandatory, what would be your view about any review of such a decision where a finding by the administrator could be appealed perhaps through court review, to determine whether it is a valid finding or not?

Mr. FARMER. Sir, when I say that I do not believe that it should be discretionary, I mean that after discrimination has been proved, I don't think that.

I don't think that funds should be withheld merely on the basis of an allegation of discrimination, but once discrimination is proved, then I think it should be mandatory that it be withheld. How is it to be proved? Through some sort of hearing machinery which would be set up in the legislation.

Mr. MEADER. The legislation doesn't doesn't set up any hearing machinery. In fact, title VI is probably notable for the words that are not in it and under the Secretary of Health, Education, and Welfare's interpretations, and I think I am quoting him correctly, it could mean his unreviewable power to decide and withhold or not withhold in his discretion and that would be final.

He testified that he had some 128 programs in the Department of Health, Education, and Welfare and $3.7 billion annually. This is a pretty big stake to give one man and it is a lot of power in withholding funds from these hungry municipalities and States who have gotten used to these grant programs. I mean, there may be more sanction in this withholding provision than there would be in criminal penalties or injunction suits or other sections of the bill.

Mr. FARMER. I think there would be.

Mr. MEADER. I think a lot of people who favor many of these grant-in-aid programs to localities, and are sympathetic with the starvation of localities for revenue want to be sure that this is not going to disrupt programs and that we on this committee, particularly on this subcommittee, have an obligation to think about this language and not put more power in here than is necessary for the purpose and not harm grant-in-aid programs by the phraseology that we approve and recommend to the House for adoption.

That is why I am a little concerned about this title and that is why I have asked you whether or not you believe there should be judicial review or whether some machinery should be set up in title VI or whether it should contain some standards and criteria for a determination to be made by an administrator. What should we do about this, so we don't just throw all grant-in-aid programs in chaos?

Mr. FARMER. I think there should be machinery to determine whether or not there is violation. Sometimes that can be a ticklish problem. Sometimes it is very often true that an individual feels he has been discriminated against and further scrutiny shows it was not a case of racial discrimination.

I think that can be subject to review, but once discrimination has been firmly established, then I think there should be no argument on whether funds should be withheld. That is my point. There can be argument on whether discrimination exists and not whether we withhold funds.

Mr. MEADER. And if we are wise enough to find the proper words, you would have no objection to having a court or somebody be able to review a finding——

Mr. FARMER. Of discrimination. I would have no objection at all to that.

Mr. MEADER. Now, there is a related problem that has bothered some of use and this involves a combination of two of the titles, title II having to do with education, and the use of a phrase which does not seem to have a judicial history and is not a word of art, we lawyers would say. That phrase is "racial imbalance," which is used rather extensively in title III.

It refers to racial imbalance in schools.

Are you familiar with title III?

Mr. FARMER. I have it before me now. Where does it refer to racial imbalance, sir?

Mr. MEADER. Well, now, let's see.

I find a reference in section 303 on page 19 which provides technical assistance for desegregation of public schools or having to do with problems arising from racial imbalance in public schools. Then I think in line 17 on page 20, in the next paragraph, "Problems occasioned by desegregation or measures to adjust racial imbalance in public school systems."

Then on line 6, on page 21, a school board carrying out desegregation or dealing with problems of racial imbalance.

I think there are a couple of others in the next paragraph.

Now, Congressman McCulloch was discussing this with, I believe, Secretary Celebrezze and he said that he thought racial imbalance in schools might be tantamount to discrimination, which is a basis for withholding funds in title VI and, therefore, it seems to us important to find out what racial imbalance is.

Do you have any definition or can you shed any light on what is meant by racial imbalance?

Mr. FARMER. Generally we consider racial imbalance to exist if a school is predominantly Negro or predominantly white, in an area in which it could be fully integrated.

If, for example, you have a school in a northern city that is 90 percent or more Negro or 90 percent or more white, then that would clearly be a case of racial imbalance.

Usually the term "racial imbalance" is used to refer to de facto segregation rather than de jure segregation in the North rather than the South.

Mr. MEADER. That raises a very interesting point.

I offered a definition. I don't know whether I got anybody to accept it, that racial imbalance in the school is where the proportion of Negro students to white students is not the same as the proportion of Negro citizens to white citizens in a given area.

Mr. FARMER. I would modify that a bit and say substantially greater or less. It could be slightly greater or less without their being racial imbalance, but substantially greater.

Mr. MEADER. Counsel apparently wrestled with this phrase a little bit and advises me that this is a term used by sociologists and some other erudite people and they regard racial imbalance as being something other than 50–50.

Mr. FOLEY. The articles we have been able to obtain wherein this phrase has been used by educators and sociologists, indicate that anything that is not under 50–50 is racial imbalance.

Now, that is what they held in Plainfield, N.J., in the New Rochelle case and in the Englewood case.

Mr. FARMER. That, of course is impossible, because unless you have 50–50 division of the population in any given city, then some of the schools are bound to have less or more than 50 percent.

Mr. FOLEY. This is the basic problem we are now faced with. You have to take into consideration the school district and the nature of the neighborhood. Now, I am not talking about jerrymandering of school lines. I am sure that Mr. Meader has taken that into consideration.

If you can show that, as in the New Rochelle case, in the Lincoln School that lends a little different aspect.

Mr. FARMER. I would like to refer to your definition——

Mr. FOLEY. It is not my definition because it has never been defined. I am only describing the way sociologists and educators have used it in publications.

Mr. FARMER. This may be some sociologists and educators. I refer to Dr. Kenneth Clark, a noted educator and psychiatrist, who has become something of a specialist in this field and he does not refer to a 50–50 division, but instead he gives the definition which Mr. Meader gives.

This is the position which our chapters have taken where they have the de facto—where they have fought de facto segregation in northern schools.

They have said that the proportion of pupils, Negro pupils in a school should be roughly equivalent to the proportion of Negroes in the community.

Mr. FOLEY. But not in New York City, they are not talking that way.

Mr. FARMER. We are not talking that way, sir?

Mr. FOLEY. I don't think so.

Mr. FARMER. I think we are.

Mr. FOLEY. Well, now, what about the question of transporting the pupils beyond the school district area to another school to obtain racial imbalance?

Mr. FARMER. When I say school community, I do not mean the school district, I mean the city.

Mr. FOLEY. Well, isn't it a fact that they are today transporting pupils outside of the normal school area at P.S. 92 in Brooklyn so they go to P.S. 94 which is in another school area?

Mr. FARMER. Precisely to wipe out racial imbalance in the schools.

Mr. FOLEY. So you are going beyond the school district lines?

Mr. FARMER. Of course. In some cities we say, "Rather than transporting pupils, what is needed is a redistributing of the school zones."

I was looking at the map of one particular northern city where the school zone, the school district in the Negro community complied exactly with the Negro ghetto. And it was a weird-shaped thing than ran a long distance down the center of the city. A Negro child might live at the very end of that long school district and have to travel to the top to go to school, while there was another school next door to him in his backyard that he could not attend. Here there has been obvious gerrymandering.

Mr. FOLEY. I don't think you will get any equivocation from this committee if it is deliberate gerrymandering. But, I don't think we have such a case there at all.

I think the issue comes in when you don't have that and yet you still have an imbalance as to proportion.

Mr. FARMER. Even when gerrymandering has not taken place, some cities have taken the position, with which I agree, that integration is, in itself, an important educational value. In other words, de facto segregation is undesirable and it is necessary to take some strong steps to eliminate it and that may mean transporting or it may mean losing the sister school or twin school concept, which I believe was developed in Princeton, the so-called Princeton plan, where white and Negro children for three grades would attend one integrated school and for the next three grades another integrated school, but there are various possible solutions to the problem.

The reason that I think it is so important is that I feel that the education which we are giving our children in segregated schools is wholly inadequate to meet the requirements of our world today. They are not being prepared to live in a world in which there are dark people; black, brown people, yellow people. They are being equipped to work and live among people of the same color, the same general culture and national background, and this limits them, Negro and white.

Mr. RODINO (presiding). You may proceed.

Mr. CORMAN. I want to ask Mr. Meader this: "Racial imbalance" is used in section 304(a) where a local school district can make application for some Federal assistance under certain circumstances. It seems to me that it was for that reason they are using a term different from discrimination.

I don't think section 304 is predicated on there being racial discrimination to get this help, but rather than that there is an imbalance and that they want to take some steps to undo this for the very thing that the witness put his finger on, and that is the social desirability of school integration.

This is solely a matter within the desire of local school boards. They are asking for something from the Federal Government and to be in a position to ask for it, they have to show that this racial imbalance exists, but obviously it has to be the desire of a local school board to undo this kind of de facto segregation and I think that is quite different from the term "racial discrimination" which, of course, is the controlling term in title VI.

Mr. MEADER. I guess we will have a little discussion on that when we get in executive session.

Mr. FARMER. May I proceed, sir?

Mr. RODINO. Yes.

Mr. FARMER. Title IV, "Community Recreation Services." We are very pleased, indeed, to see this acknowledgement of a necessity of having some Federal body to review the daily indignities that are suffered on a human and social level by the Nation's minorities, but we would like to point out that in our view such a community relation service could function as a fine adjunct but only as an adjunct to strict and ironclad enforcement measures against discrimination.

We are also pleased that the excellent work of the Civil Rights Commission has been applauded and it is being suggested that the Civil Rights Commission be extended. We feel strongly, however, that it ought to be made a permanent thing, rather than a temporary thing and I personally am not impressed with the argument, which I have heard, that says, "It should not be given a permanent status because that implies that the problem will never be solved."

The same thing could be said for the community relations service that is being set up. My understanding in reading the bill was that this would be made permanent. I think that there will be problems for the Civil Rights Commission for many, many years, and probably permanently. This is not meaning that we won't get rid of most abusive and brutal aspects of racial segregation and discrimination.

I expect those to be gotten rid of within the next few years and certainly I expect to live to see that, but there will be problems of individual prejudices handicapping some persons in various com-

munities and this should be a function and an important function for a permanent Civil Rights Commission.

Mr. KASTENMEIER. I would agree with you on permanency. There is, however, a more sophisticated argument on the other side; namely, that if the Commission had to come back in 4 years and seek a new life and new authority this would provide Congress with an opportunity to enact new authority consistent with the needs of that particular time.

How do you react to that particular argument?

Mr. FARMER. I can see the point. I can see the argument, and I think it has some validity, but in my view, the validity is outweighed by the disadvantages, the disadvantages of impermanence, the disadvantages of the precarious nature of the Commission's existence. Near the termination period of its existence, then it has to concentrate its effort not in wiping out inequities but on preparing to perpetuate its life, because that might be in some jeopardy.

Also I think many activities of the Civil Rights Commission might be injured by the fact that its existence might be cut off at the end of a certain period of time, so I would feel very strongly that permanence of the Commission would be important in order for it to function effectively.

Mr. MEADER. Mr. Chairman, on that point I know Congress would have the power, of course, to abolish the Commission when it had finished its job and it was no longer needed. We have rather a poor history of abolishing any agency once it has been created in the Federal Government, but in the case the Commission were made permanent, I would like your views on whether or not this community facility service could not be put in under the Commission?

I say that for this reason: I happen to be a member of the House Government Operations Committee, and we are concerned about the structure of the Government and the proliferation of independent agencies that are not responsible directly to some—not within the department or are not responsible to some superior. The lines of authority get confused when you have a multitude of independent agencies. This phraseology doesn't even put the Community Relations Service in the Executive Office of the President. It is just out there all by itself. It occurred to me that if we are going to make a Civil Rights Commission permanent that this type of function of community relations services, which presumably would work with local communities, local commissions of one kind or another, human rights commissions or whatever they are called, could very well be under the Commission. Do you have any thoughts about that?

Mr. FARMER. I am inclined to agree with you, Mr. Meader. I think if the Civil Rights Commission were made permanent that it would be quite logical for the community relations services to be a part of it, under its jurisdiction.

Mr. MATHIAS. Mr. Chairman, I wonder if Mr. Farmer would continue this point just a little further. I am in complete agreement that this ought to be a permanent Commission and I introduced a bill to that effect, but I am also wondering if the duties of the Commission, in the future particularly, might not have other than racial connotations as they relate to voting rights. It may have nothing to do with racial discrimination. The right to vote free of fraud

should also be of continual concern to the American people and will continue for an infinite time, so long as the public is operating as a representative sort of government?

Is that a fair statement and further reason for our needing a permanent Civil Rights Commission?

Mr. FARMER. That is a very fair statement. Not only Negroes have civil rights, but white people as well and civil liberties frequently verge on civil rights and I think the Civil Rights Commission should handle civil rights matters, no matter who is involved.

Mr. RODINO. Continue.

Mr. FARMER. On the question of title VII, Mr. Chairman, "Equal Employment," I have—very frankly, I find this title to be rather unimpressive in the legislation in the bill. It seems to be vague and general. What is needed is some hard-hitting, effective, fair employment practice type legislation, FEPC. There is none here. I applaud this as far as it goes, but it does not go nearly far enough. FEPC is absolutely essential now unless we establish the right of individuals to gain full employment in keeping with their ability and their qualifications. I think that the other victories which we are winning in places of public accommodations and housing will be hollow victories.

It is all right to fight for and win the right to spend money, but it is more vital to win the right to earn it.

Mr. RODINO. Mr. Farmer, right along on that point: some organizations have been advancing a quota basis.

Mr. FARMER. In employment?

Mr. RODINO. In employment opportunities.

Mr. FARMER. We are not one of the organizations that believe in a quota. We do believe, however, in aggressive action to secure the employment of minorities, but not in terms of a quota. We want to see them working. We feel that the discriminations and deprivations of the past have been so great that we need some aggressive steps to overcome it.

Mr. RODINO. That is fine, but do you still believe that it should be based on education and opportunity?

Mr. FARMER. Yes, but if two people apply for a job and are equally qualified and generally or roughly have the same qualifications, one is Negro and one is white, and this is in a company which historically has not employed Negroes, I think then that company should give the nod to a Negro to overcome the disadvantages of the past.

Mr. RODINO. Well, isn't this then preferential?

Mr. FARMER. Well, you could call it preferential, you could call it compensatory, but, sir, we have been seeking——

Mr. RODINO. Isn't that discriminating against a white who may have been innocent of any discrimination against anyone else in that time?

Mr. FARMER. You see none of us are really innocent because we are caught in a society, the social system which has tolerated segregation. Negroes have received special treatment all of their lives. They have received special treatment for 350 years. All we are asking for, all I am asking for now is some special treatment now to overcome the effects of the long special treatment of a negative sort that we have had in the past.

I am not asking that any white person be fired. We do not want Negroes to displace whites.

Mr. RODINO. This may not be firing a white person but would it not result in a deprivation of a right of another individual who is equally entitled?

Mr. FARMER. We will look for a moment at civil service, where, in many cases, it is possible to have three, the three top applicants apply for the job and the person can choose the one he wants. What frequently happens is that the Negro does not get chosen for a long time. He misses out on this one and he misses out on the next opportunity and the next, though he is still one of the three that is sent out, so the preferential treatment is being given to whites there, you see.

We are not asking that unqualified people be hired in any case. We are saying that the rear wheels of a car can never catch the front wheels as long as we are going at the same speed so somehow we have to speed up the rear wheels for the sake of the Nation's economy. We are not catching up, though, sir.

Mr. RODINO. But on this particular point—I don't want to belabor it but I think it is important. I think it would bother many people if this were then construed that people such as you and I who support civil rights and equality in every phase, are then going to do so to the point where the rights of others are being denied. I heard your statement, I could only interpret this. You said as between two people, white and a Negro, you should give preference to the Negro.

Mr. FARMER. Not in every case. I said if that particular company, that particular employer has not employed Negroes in the past, thus he has had a history of excluding Negroes from his work force and now comes an opportunity for him to repair the "imbalance," to use that term again, and two persons, one white and one Negro of the same qualifications. He has to choose among them somehow and wouldn't it be fairer and wiser, indeed, for him to choose among them in a way that will overcome the balance which past discrimination has created?

Mr. FOLEY. Then let's take a case in New York, that has been in the newspapers concerning the State construction in my own former home, Brooklyn.

As I see it, it has been demanded that 25 percent of the employees working on that project should be Negroes; is that correct? You know more about that than I do.

Mr. FARMER. CORE does not make that demand, that 25 percent of the people working there should be Negroes.

Mr. FOLEY. This raises the next question, since we are talking of equality of opportunities, should it be 25 percent Negroes, 25 percent Puerto Ricans, 25 percent Italians and 25 percent Indians?

Mr. FARMER. As I say, we do not ask for a percentage or a quota. The quota system is hard to defend and actually in the building trades, in the construction industry, setting a quota of 25 percent of the employees might actually get some Negroes fired.

We might find in the total work force we have more than 25 percent but most are hodcarriers. We are not in favor of a quota system.

Mr. FOLEY. Then we have another aspect that no one seems to want to talk about but I think we should face it: that anybody who advances this quota system and we talk about race, national origin, color, religion, what do you do with a Puerto Rican who is a Negro?

Mr. FARMER. What do you do with him?

Mr. FOLEY. Yes.

Mr. FARMER. Then he is another Negro. There are white Puerto Ricans and Negro Puerto Ricans.

Mr. FOLEY. What does he get?

Mr. FARMER. We are opposed to a quota system. We say we want to see Negroes working there. We don't think it is enough to say to an employer, it is all right if you don't have any minorities working there if no qualified minorities have applied.

We say that he has a responsibility to seek out qualified members of minority groups and to help to train them if they are not qualified.

Mr. RODINO. I think again that that is a well-founded suggestion.

Mr. MATHIAS. Mr. Chairman, right in that area, under the existing practice of the Commission, established by Executive order, there apparently is provision for exemptions and according to the testimony which was given by Secretary Wirtz, I think in at least one case an exemption has been granted for some technical reasons.

Do you have any view on when and how exemptions should be granted by the Commission on unemployment?

Mr. FARMER. Exemptions allowing them to continue a practice of exclusion.

Mr. MATHIAS. Notwithstanding discriminatory practice?

Mr. FARMER. Well, I suppose an argument could be made for the view that if the company under contract to the Federal Government is outside of this country, where it has—in a country that has other policies, let us say in South Africa or in the Middle East, I suppose an argument could be made from it, exempting them.

In principle I am opposed to such exemptions because I think there is a principle involved here.

Mr. MATHIAS. One case discussed by the committee was where the existing committee had made an exemption on the advice of bond counsel.

Mr. FARMER. Bond counsel?

Mr. MATHIAS. Yes; for some technical reason.

The further question came up that the exemption had been granted by one member of the Commission who had been delegated the authority to make such exemption.

Mr. FARMER. No. On principle I would be opposed to making exemptions in this matter.

Mr. MATHIAS. If there were to be some machinery for exemptions do you think it should be by majority vote of the Commission?

Mr. FARMER. I think that that would be the only fair way to do it and certainly one person should not be allowed to make such an exemption.

Mr. MATHIAS. Thank you.

Mr. FARMER. Mr. Chairman, this is the conclusion of my statement to the subcommittee. We have covered a lot of territory and once again I want to thank you for the opportunity to express my views and the views of my organization.

Mr. RODINO. Thank you very much for having appeared here, Mr. Farmer and for having presented a very forthright view of your organization.

I think counsel has one question.

Mr. FOLEY. If I may return to the so-called question of racial imbalance, it is my understanding that the commissioner of education of New York called for drastic action and he has proposed to define a racially imbalanced school as one having 50 percent or more of Negro pupils. It is proposed that by September of this year in any school where there are more than 50 percent Negroes, that school will have to change its admissions plan.

According to their report the problem exists in 116 schools in New York City and 60 or more scattered throughout the remainder of the State.

Mr. FARMER. Yes.

Mr. FOLEY. So we do have some idea of what some people are saying as to racial imbalancing in the schools?

Mr. FARMER. Well, counsel, that is a bit different from saying that it must be 50–50 in order for it not to be imbalance.

Mr. FOLEY. You misunderstood me.

It has to be 50–50.

Mr. FARMER. But no more than 50 percent Negroes.

Mr. FOLEY. If you have more than 50 percent, you see, of Negroes in the school, that school would be racially imbalanced?

Mr. FARMER. Yes, and I would agree with that. There are considerably less than 50 percent Negroes in the population, so he is giving considerable leeway over and above the proper proportion of Negroes in the population. I was saying that it should be neither substantially more nor substantially less than the total.

Mr. FOLEY. That brings us into the issue of de facto segregation because of neighborhood school boundaries.

Mr. FARMER. Of course it does.

Mr. FOLEY. This is the problem. I point out the article says:

New York City anticipates it will require 81 buses costing $648,000 a year to take care of that problem.

Mr. FARMER. Yes. The final solution—I hate to say final solution—the ultimate solution——

Mr. FOLEY. A solution, we hope.

Mr. FARMER. Yes, will be to wipe out segregated housing but that is going to be a long struggle and I don't think we should try to wait that long because of the damage we are doing to the kids, white and Negro, by having them in such segregated schools.

Mr. RODINO. Mr. Farmer, to clear up one point, in answer to Mr. Meader's question relating to title 6, on the question of withholding of funds.

Mr. FARMER. Yes.

Mr. RODINO. I believe you said that you would not object to judicial review with respect to the question of discrimination.

Mr. FARMER. That is right.

Mr. RODINO. I don't mean to draw you out here, but I wonder if you have thought this out:

Judicial review may mean protracted delays, and if that does occur isn't it going to defeat the very purpose of the legislation?

Mr. FARMER. I assumed the funds would be withheld while the review was going on and would not be given depending on the review.

Mr. RODINO. In other words, you would not object to the provision of judicial review providing funds were first withheld?

Mr. FARMER. Precisely.

Mr. CORMAN. My trip to Mississippi left me with tremendous respect for the segregationists of the South and I would be fearful of taking the approach of a mandatory withholding of funds for a specific program.

That leaves it to the sole discretion of the Governor of the State of Mississippi to decide which social welfare programs he will cut off. He decides where he will continue segregation. I would suspect that he would do it in such things as aid to needy children, surplus food programs, and so forth.

It seems to me it is much wiser to leave it in the discretion of the administrator to use it as a tool when he can use it effectively to end segregation. If you make it mandatory on the Federal administrator—if you made it mandatory as to all of the funds that go to a State, that would in truth be some pressure on State government to end all discrimination, but when you let the State government make the decision as to which programs they are not going to discriminate on a public highway program, obviously. That is not the place. But if you say that a Federal agency has to cut off a person's social security—and I visited a social security office where the Negro applicant could not drink at the water fountain—that is pretty severe discrimination. I don't think that we would want to let the Governor of that State cut off all social security programs to the recipients. I am afraid that your approach would give him a rather inhuman tool to use in his fight and that is the reason I am worried about it.

I just offer it to you for your consideration.

Aren't we in real danger of giving him more power than we want to?

We would be better off to leave it in the hands of some one who is dedicated to removing discrimination rather than perpetuating it?

Mr. FARMER. But how do we know that the Administrator that we now have will be with us 5 years hence or how do we know that his successor——

Mr. CORMAN. The only thing that we do know is that the Congress will be here in 5 years and we could change the law. I thought some study could be given to putting guidelines in to either paying or withholding the funds.

But if you make it mandatory, then you give power to the Governor of the State, it seems to me.

Mr. FARMER. Well, if the Governor of Mississippi would start cutting off social security—I mean welfare and aid to needy children, then I think the Federal Government would have to step in and take action.

It works the other way in Leflore County, Miss., Sunflower County, Miss., and one other county.

Large numbers of Negroes were removed from the surplus commodity lists. We felt that it was because of their attempt to register and vote. I sent a wire of protest to the Department of Justice and also the Agricultural Department. The Agricultural Department then began to exert great pressure on the authorities in Mississippi. They returned them to the rolls, so I think we have ways to pressure them and to——

Mr. KASTENMEIER. If the gentlemen will yield, I would like to pursue that. I think there is another side to the coin, for just the reasons

the gentleman from California suggests; namely, that some of our southern people, such as the Governor of Mississippi, have great ingenuity.

Assume this, if you don't make it mandatory, they will come up here and pressure the Secretary of Health, Education, and Welfare not to harm a lot of innocent people. Whereas, if it is mandatory he has no authority to seek exemptions from the implementation of this program, and where all will know where they stand, I think you will have the compliance that you want.

Mr. FARMER. Then the Government would not be able to exert political pressure on whoever is administering.

Mr. RODINO. Wherever you have lawyers you have two sides to the question.

Mr. FARMER. I think that is a good thing.

I believe in two sides.

I think it is only through the clash of different points of view that we can arrive at the truth.

Mr. CORMAN. Off the record.

(Discussion off the record.)

Mr. RODINO. Mr. Farmer, we have been very happy to have had you here and we appreciate your testimony and the forthright nature in which you gave it.

Mr. FARMER. Thank you and the members of the subcommittee, sir.

(The following material was submitted by Mr. Farmer:)

AUGUST 2, 1963.

Hon. EMANUEL CELLER,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN CELLER: As you requested at the time of my testimony before the House Judiciary Committee on July 26, I am sending herewith copies of statements from two CORE field persons in Gadsden, Ala., concerning the beatings administered to them by Alabama State troopers, under the direction of Alabama State Public Safety Director, Colonel Lingo. I am also enclosing, for you information, a copy of the letter of transmittal which I sent to Mr. Burke Marshall, of the Department of Justice, along with the enclosed reports.

In further compliance with your request, I shall send you copies of the additional affidavits from citizens of Gadsden, as indicated in the letter to Mr. Marshall, when they arrive in this office next week.

Sincerely yours,

JAMES FARMER, *National Director.*

CONGRESS OF RACIAL EQUALITY,
August 2, 1963.

Mr. BURKE MARSHALL,
Assistant Attorney General, Department of Justice, Washington, D.C.

DEAR MR. MARSHALL: Your letter to Mr. Richard Haley, under date of July 26, 1963, in response to his telegram of July 22 regarding beatings administered by Alabama State troopers on CORE field secretary, Marvin Robinson and CORE fieldworker, William Douthard, has come to my attention.

Enclosed are statements from both Mr. Robinson and Mr. Douthard, giving details of the brutality about which we complained. Please be assured that these reports are restrained understatements, rather than overstatements.

On Tuesday, July 23, I was in Gadsden, Ala., at the time of Messrs. Robinson's and Douthard's release from jail, and received from them an oral report and viewed the physical evidence of the beatings. Not only were the electric cattle prods stuck into their bodies repeatedly, but they were twisted in such a fashion as to tear the skin.

Immediately after the beatings, while the men were in jail, another CORE field secretary, Miss Mary Hamilton, reported the matter to an FBI agent in the local-

ity, a Mr. Moran. At that time the physical evidence was crystal clear, with open wounds on the bodies. Mr. Moran, I am told, however, for reasons better known to himself, declined to go to the jail to view the physical evidence and to interview the victims or the perpetrators of the violence. Upon his release from jail, Mr. Robinson went by Mr. Moran's office. Although the wounds had healed by this time, the scars were still visible. Mr. Moran's response as he examined the scars, according to reports I have received, was an apparently incredulous "no stuff?"

There are a number of additional affidavits and statements from other persons in Gadsden who were physically assaulted by State Troopers and whose homes were broken into by the troopers and ransacked after the occupants had been thrown out. These affidavits will be in my office by the first of next week. In case you have not already received copies of them, I shall send copies to you forthwith.

Such a reign of terror as has been visited upon men, women, and children in the Negro community of Gadsden by Alabama State troopers has seldom been matched in the annals of the contemporary civil rights struggle. Even Negro attorneys attempting to visit their clients have been denied entrance to the courthouse by Colonel Lingo, because they were unable to show their licenses. Such licenses, I believe, are usually framed and hung on walls, rather than carried in pockets or briefcases.

Incidentally, the person referred to as "Meatball" in the enclosed statements is the above-mentioned CORE fieldworker, William Douthard.

I sincerely hope that the Department of Justice will be able to launch an immediate investigation into the occurrences in Gadsden, Ala., and take appropriate legal action.

Sincerely yours,

JAMES FARMER, *National Director.*

STATEMENT OF MARVIN ROBINSON, CORE FIELDWORKER, GADSDEN, ALA.

I was walking on the western portion of the widewalk of 6th Street and as I approached the corner of 6th and Locust I saw several State troopers stop William Douthard and place him in a State troop automobile. I was passing the Sears Roebuck warehouse when the above event occurred. At this moment I decided to proceed to the office of the local FBI agent to protest the illegal arrest of Mr. Douthard. As I crossed the railroad tracks that run down the center of Locust Street, one of the State troopers walked across the street and commanded that I, "Come on Robinson." I came on. I followed him back to the car in which Bill Douthard was seated. He instructed me to get in. I waited until the officer had completed his call on the two-way radio and then got into the back seat of the car. At this point approximately four carloads of State troopers and one carload of county sheriffs deputies dispersed a crowd of Negro spectators gathering on the corner of 6th and Locust to observe the arrest.

The two-way radio blared forth "Car with Meatball and Robinson—bring them in." Officer replied, "Arrest them on what charge?" "Disturbance of peace, or anything—bring them in."

We were then transported to the Etawak County jail where Col. Al Lingo, director of the Alabama Department of Public Safety awaited our arrival. He stood at the entrance to the stairs. I approached Colonel Lingo and spoke. "Good morning Colonel Lingo. How are you." He replied "I'd be fine if you niggers stopped all this mess."

Then Bill Douthard walked up. Colonel Lingo made reference to the beating he and other State troopers had administered to Bill the previous day and stated we had learned our lesson.

At this point Bill was prodded and pushed down the flight of stairs into the basement. As I turned to walk down the stairs I received the same treatment. Getting up we started toward the back entrance into the sheriff's office. I walked around the corner and started up the stairs toward the sheriff's office (a mistake I must say). Approximately halfway up the stairs I was instructed to come back down the steps and head for the elevator. (Nigger, get your black ass back down here.) As I turned and cautiously moved down the steps—I was grabbed, punched, and prodded into the recess where another trooper was physically assaulting William Douthard. We created enough havoc at this point

for one of them to caution the other. "Let's wait until we are on the elevator." He, the one with the prodder, continued to use it despite this warning of caution.

The elevator arrived and we were shoved in and then the troopers had their field day. They hit, slapped, and prodded Bill and me until we were on the floor of the elevator. Then they prodded some more. During this encounter I reinjured an old athletic injury suffered in college, to my left foot.

Arriving upstairs on the fourth floor the prodding, pushing, and brutality continued, as we were being searched. We were prodded, cursed, slammed against the wall, thus aggravating the injuries caused by the electric prodders. The brutality on the fourth floor was witnessed by the female jailer, Mrs. Freeman, male jailer, Mr. Hale, and several trustees among which I know one by the name Larry Kyle.

After the troopers took our possessions we were taken to our cells by the troopers and prodded until we were inside the cells.

Around 3 o'clock I was awakened by the deputy and taken to court on another charge, driving without Alabama license, convicted, fined $100, appealed $300 property bond, placed back in solitary confinement.

The lawyer, observed some of the marks still visible, as a result of the prodding. When the prodder touched my exposed skin, it left an abrasion. It touched the exposed skin twice.

Later, Mr. Snyder was let into the cell, a private citizen, to talk to me about the demonstrators using his name in a song entitled "Ain't Gonna Let Nobody Turn Me Round."

I was sick, sore, and for a while had no control over portions of my body as a result of the physical abuse administered by the State troopers.

(Signed) MARVIN E. ROBINSON.

I, William J. Douthard, am a fieldworker (task force) for the Congress of Racial Equality. My permanent residence is 3320 33d Place North, Birmingham, Ala.

On Friday, July 19, at approximately 11 a.m., while walking south on Sixth Street, I was approached at the corner of Sixth and Locust by State Patrol Officer Brown. He stated, "Come here boy." I then asked him, "For what?" While pointing an electric prodding rod at me, he replied, "Get in this car over here and the hell with what for." As I seated myself in the rear of his car, I watched him bring Marvin Robinson, CORE field secretary, over and placed Marvin in the back seat with me. Brown then called over the car radio to Col. Al Lingo, director of the Public Safety Commission of Alabama, and stated: "I got Marvin Robinson and Meatball in custody." Lingo replied, "Well take them on in." To this statement Brown answered, "Charge with what?" Lingo said, "Disturbing the peace or anything."

We were then driven by Brown and an accompanying State trooper to the rear of the Etowah County courthouse. Colonel Lingo and his driver, Major Lieutenant Colonel Allen, met us at the top of the stairs leading to the basement of the courthouse. Marvin got out of the car first and was talking to Lingo when I got out and walked around to them. Lingo stated, "Git down here," pertaining to the basement of the courthouse.

I was then prodded, with the electric prodding rod, by Officer Brown, causing me to stumble down the steps. Marvin also stumbled down the steps after being prodded by Brown. Upon entering the basement, I was given a backhand slap by Lingo after I had apparently walked past the door that they wanted us to enter. Upon entering the door, Brown began prodding me down the hall toward the elevator. Instead of going toward the elevator, Marvin proceeded up the stairs. Allen told Marvin to come down the stairs, and as Marvin reached the bottom of the stairs, Allen began punching Marvin in the stomach. After Allen had punched Marvin approximately four to five times, Brown began prodding Marvin down the hall toward me with an electric prodding rod. Marvin and I were then herded into the corner opposite the entrance to the elevator. Brown began then to consistently alternate in prodding Marvin and I. While leaning against the wall under pressure of the prodding, Marvin's leg gave up, causing him to slip to the floor. Immediately Brown and Allen pounced on Marvin—Brown holding the electric prodder to Marvin and Allen punching and kicking Marvin. When Marvin started to yelling in pain, Allen instructed Brown to wait until they were in the elevator so no one could hear. After we entered the elevator, Marvin and I were constantly punched and prodded by Allen and Brown until we reached the fourth floor.

On the fourth floor, which is the jail for the men, Marvin and I were searched and then told to empty everything from our pockets and place them on the desk. After being shoved around by Allen and Brown, in the presence of Lingo, who had by this time come up on the elevator behind us, we were escorted to our cells by Mr. Hale, the jailer, and Brown along with another State trooper. After being placed in my solitary cell, Marvin was taken to his cell. Although I couldn't see, I heard Marvin enter the cells and then the electric prodders were turned on. Marvin then began to scream from the effects of the prodders and afterwards I heard the door closed.

WILLIAM J. DOUTHARD.

I, William J. Douthard, am a field (task force) worker for the Congress of Racial Equality. My permanent residence is 3320 33d Place North, Birmingham, Ala.

On Thursday, July 18, 1963, at approximately 10:30 to 11 a.m., while walking south on Sixth Street I was stopped by State Patrol Officer Brown, who had just suddenly driven up and stopped his car directly in front of me. Brown got out of the car and told me, "Get in this car nigger." While getting in the car, Brown kicked me. He then got in the car and called in on the radio for Colonel Lingo, head of the Alabama Public Safety Commission. I then heard a voice, which I knew to have been that of Lingo, come on over the radio. Brown stated: "We got Meatball in the car with us." After Lingo told him to hold me, Brown gave him our location. He then drove the car to the back of the Sears, Roebuck warehouse parking lot. There I was searched by Brown and another officer, who was in the car with Brown, and constantly prodded with a night stick by Brown.

About the time of my being searched, Lingo and several other cars of county and State officers drove up.

After being called several names by the surrounding officers, I was placed in the back of Lingo's car. While sitting in the back of the car, I was constantly being jabbed and prodded by Brown, who had gotten in the back seat to the right of me, and Lingo's driver, Allen (who's either a major or colonel), with night sticks Allen would consistently jab me in my groin.

Lingo then spoke up and stated to his driver, "drive on out of here." As we left, we were followed by approximately four other cars consisting of county, city, and State patrolmen officers. During the drive, I was constantly being jabbed with the night stick, and with a CORE button (which reads "Freedom Now—Core") by Officer Brown. I could not tell our distination until Lingo started talking to the sheriff of Etowah County, Dewey Colvard, Lingo stated, "Meet us in the Agricola Shopping Center." This is located off Meighan Boulevard and 13th Street.

After arriving in the Agricola parking lot, a circle consisting of about 8 to 10 cars, was made. I was then taken out of the car and placed in the circle. There, while Colonel Lingo was giving me a lecture on what I should and should not do, I was constantly whacked, jabbed, and struck by several of the officers with night sticks. After about 5 or 6 minutes of this, Lingo told me that I could leave, if, with the warning that, tonight I would have to leave town. As I proceeded to leave the circle (one of the cars, outer; and one of the various officers, inner) making three attempts, I was punched, jabbed with a night stick, and prodded with an electric prodding rod by three different officers. Upon realizing that this was becoming a pattern, I returned to the middle of the circle and asked Lingo if he would:

(1) Give me my briefcase and umbrella that were taken away from me.
(He refused.)
(2) To instruct the officers to open up so that I might pass through them.
He answered this one by instructing the officers to, "let him through."

While passing by, one of the officers gave me a fierce, sharp jab, with the fat end of the night stick, in my ribs, until I reached the end of the parking lot (approximately 150 feet). I was constantly being prodded with the electric prodding rods by several of officers who walked behind me.

WILLIAM J. DOUTHARD.

CONGRESS OF RACIAL EQUALITY,
August 6, 1963.

Hon. EMANUEL CELLER,
House of Representatives,
Washington, D.C.

DEAR MR. CELLER: Referring to my letter of August 2, I am sending herewith copies of affidavits received from the citizens of Gadsden, Ala., testifying to brutality received on the part of Alabama State troopers.

Copies have been also sent to Assistant Attorney General Burke Marshall.

Sincerely yours,

JAMES FARMER, *National Director.*

AUGUST 2, 1963.

Mr. JAMES FARMER,
38 Park Row,
New York, N.Y.

DEAR MR. FARMER: As per your telephone request, I am sending you photostatic copies of the affidavits concerning brutality in Gadsden. The originals were filed as evidence in a Federal case for removal of the injunction case in Gadsden, Ala.

Yours very truly,

OSCAR W. ADAMS, Jr.,
Attorney at Law.

STATE OF ALABAMA,
Etowah County:

My name is Rev. R. C. Suttles. I live at 1534 Cansler Avenue, Gadsden, Ala. On the 15th of June 1963, I was among seven arrested on the corner of 6th and Broad Streets. They arrested me and threw me into the car and beat me up. After being arrested and put in the car, a city policeman beat me also. The city policeman had his badge covered with aluminum. City Policeman Payne stopped the beating. I was stuck with the electric prodder by city policeman and deputy named Joe Sullivan and C. H. Dobbs. Joe Perkins stopped this beating.

REV. R. C. SUTTLES.

Sworn to and subscribed before me this 24th day of July 1963.

F. P. JOHNSON, *Notary Public.*

My commission expires October 6, 1965.

STATE OF ALABAMA
Etowah County:

My name is Bettye Pierce. I live at 2911 Hickory Street, Gadsden, Ala. While I was confined to city jail, I had a nose hemorrhage and when I asked for the doctor, he was not called and I was sick and at that time threatened by the warden. I was told that if I didn't make the others stop singing, they would put me in the cold room. After bleeding for 3 days I was escorted to the hospital by two policemen. When in the hospital I was not allowed to talk to the doctor; the policemen answered all the questions falsely and wouldn't allow me to call a doctor of my choice.

BETTYE PIERCE.

Sworn to and subscribed before me this 24th day of July 1963.

F. P. JOHNSON, *Notary Public.*

My commission expires October 6, 1965.

STATE OF ALABAMA
Etowah County:

My name is Melvin Turner. I live at 893 Spring Street, Gadsden, Ala. I left a package in the warden's office for Mrs. Turner, but she never received it. When asked about the package, they said they couldn't find it, and it was never

returned to me. The package contained sanitary napkins, candy, starch, toothpaste, toothbrushes, four boxes of matches.

MELVIN TURNER.

Sworn to and subscribed before me this 24th day of July 1963.

F. P. JOHNSON, *Notary Public.*

My commission expires October 6, 1965.

STATE OF ALABAMA
Etowah County

My name is Joe Louis Arron. I live at 416 C North Sixth Street, Gadsden, Ala. I am 25 years of age. On June 18, I was arrested at the Trailway bus terminal. At the time of arrest Ned Simmons used the electric prodder on me several times and after leaving the bus terminal I was stuck again and then thrown into the car. After being arrested, and taken to the county jail, I was hit with a billy club in the back and on the wrist. We were removed from county jail that night and taken to the Camp Gadsden while following orders given by the State troopers giving orders to shake blankets. I was shocked several times at Camp Gadsden. One of the guards at Camp Gadsden threw water on me while I was sleep. Some of the guards from city police used the electric prodders on me the same evening of my release. This was just for their fun.

JOE LOUIS ARRON.

Sworn to and subscribed before me this 24th day of July 1963.

F. P. JOHNSON, *Notary Public.*

My commission expires October 6, 1965.

STATE OF ALABAMA,
Etowah County:

My name is John R. Smith. I live at 1706 E. Broad Street, East Gadsden, Ala. I am 21 years of age. On June 18, 1963, I was sitting on the courthouse lawn when two State troopers walked up to me and started hitting me with a club and yelling at me "move, nigger, move."

JOHN R. SMITH.

Sworn to and subscribed before me this the 24th day of July 1963.

F. P. JOHNSON,
Notary Public.

My commission expires October 6, 1965.

STATE OF ALABAMA
Etowah County:

My name is Richard Robinson. I live at 307E North Sixth Street, Gadsden, Ala. I am 16 years of age. On June 26, I was walking between Grants and Belk J. Hudson when a policeman drove up and asked us to stop. He called in about three more cars. They asked us to go different ways. They got out of the cars and started pushing us different ways. He pushed me down on Broad Street. I got up and was chased down the street by the six city officers.

RICHARD ROBINSON.

Sworn to and subscribed before me this day of 1963.

F. P. JOHNSON,
Notary Public.

My commission expires October 6, 1965.

STATE OF ALABAMA,
Etowah County:

My name is Booker T. Strong. I live at 3034 Hickory Street, West Gadsden, Ala. I am 26 years of age. On June 18, 1963, I was walking into the county

courthouse when I was stuck with the electric stick by a city policeman. He stuck me seven or eight times all over my body.

BOOKER T. STRONG, Jr.

Sworn to and subscribed before me this the day of 1963.

F. P. JOHNSON,
Notary Public.

My commission expires October 6, 1965.

STATE OF ALABAMA,
Etowah County:

My name is James Foster Smith. I live at 520 Allen Street, Gadsden, Ala. I am 16 years of age. On June 17, 1963, I was participating in a stand-in in the basement of the Etowah County Court House Restaurant. I left the line to use the restroom and entered the one for "whites." Deputy Sheriff Tony Reynolds entered and began kicking and slapping me. Before this, he had told another officer to stand on the outside so no one else could get in. There were two whites inside and they told Reynolds that they would be a witness for him. Reynolds threatened to kill me the next time he saw me.

JAMES FOSTER SMITH.

Sworn to and subscribed before me this the day of 1963.

F. P. JOHNSON,
Notary Public.

My commission expires October 6, 1965.

STATE OF ALABAMA,
Etowah County:

My name is Robert Louis Hunter. I live at Crenshaw Avenue, West Gadsden, Ala. I am 18 years of age. On Tuesday, June 18, I was marching down Forrest Avenue with a group of people to protest the arrest of 400 demonstrators earlier in the day. I was struck on the shoulder with an electric prodder by Acting Police Chief Ned Simmons. I was then told to run by two officers and when I refused, I was struck twice again. The officers had their badge numbers covered so I was unable to identify them.

ROBERT L. HUNTER.

Sworn to and subscribed before me this the day of 1963.

F. P. JOHNSON,
Notary Public.

My commission expires October 6, 1965.

STATE OF ALABAMA,
Etowah County:

My name is Rev. Edward Rudolph. I live at 904 South 18th Street, Birmingham, Ala. I am 21 years of age. The State Troopers stuck me with prodders. There are also marks on my back which the prodder put there. I was in Camp Gadsden at the time. The beating was mostly because I was not a resident of Gadsden and also because I was one of the leaders.

Rev. EDWARD RUDOLPH.

Sworn to and subscribed before me this the day of 1963.

F. P. JOHNSON,
Notary Public.

My commission expires October 6, 1965.

STATE OF ALABAMA,
Etowah County:

My name is Curtis A. Fielder, I live at 804 North Ninth Street, Gadsden, Ala. On or about the 20th of June 1963, at 2:30 a.m., I was ordered from my cell at Camp Gadsden Prison and removed to the outside away from the other prisoners under the pretense of a search. Once alone I was told to

remove all clothing that might conceal matches, razor blades, or knives. While I was being searched, three of the seven policemen standing around began to jab me in my sides and groin with their electric shockers. The badge numbers were covered but the policemen in charge were named Dehart and Longinisce.

CURTIS A. FIELDER.

Sworn to and subscribed before me this 24th day of July 1963.

F. P. JOHNSON, *Notary Public.*

My commission expires October 6, 1965.

STATE OF ALABAMA,
Etowah County:

My name is Wavelyn Yvonne Holmes. I live at 4 11th Court West, Birmingham, Ala. I am 19 years of age. On Friday, June 21, 1963, I was arrested on the corner of Fifth and Broad. The officer was wearing a badge reading "special agent." I was knocked to the ground by this officer and drug to a car by him and another "special officer." Upon reaching the Etowah County Courthouse, Al Lingo and three officers hit me in the stomach, across the breast and across the back with billy clubs. They also struck me with prodders on the elevator. This was done by three Etowah County deputy sheriffs.

WAVELYN YVONNE HOLMES.

Sworn to and subscribed before me this the 24th day of July 1963.

F. P. JOHNSON, *Notary Public.*

My commission expires October 6, 1965.

STATE OF ALABAMA,
Etowah County:

My name is Alice Vaughn. I live at 530 Valley Street North, Gadsden, Ala. On June 18th while in jail the crowd was asked to move back. In the process, I was stuck in the leg. I fell to the floor and was not able to get up without help.

ALICE J. VAUGHN.

Sworn to and subscribed before me this the 24th day of July 1963.

F. P. JOHNSON, *Notary Public.*

My commission expires October 6, 1965.

My name is Mrs. Josephine Wills. I live at 1323 Fourth Avenue, Gadsden, Ala. I was with about 400 persons who had left the Mount Pilgrim Baptist Church on a protest march to the Etowah County Courthouse on Tuesday, June 18. We got there about 9 p.m. and began to sing and pray. Our intention was to stay there all night in order to protest the arrest of demonstrators on Tuesday afternoon. At about 3:30 a.m., the State troopers arrived and began harassing the people. They used the shockers on us and clubs and blackjacks. We thought we were being arrested, because they were pushing us toward the doors of the courthouse. We were all willing to face arrest, however, when it was discovered that the courthouse doors were locked, the people began to panic and run. I saw the State troopers beating women and children down to the ground. They were all cursing us. I was hit on my arms and hips with a club.

Mrs. JOSEPHINE WILLS.

Sworn to and subscribed before me the 24th day of July 1963.

F. P. JOHNSON, *Notary Public.*

My commission expires October 6, 1965.

STATE OF ALABAMA,
Etowah County:

My name is Eddie Harris. I live at 1511 Seventh Avenue, Birmingham, Ala. On June 19, 1963, after the leader was taken, I took over. I was pulled on the arm by a State trooper and was pushed against a wall. At that time they put a so-called "hot stick" to my stomach. After refusing to answer the questions they asked, they put those sticks to my leg and took the skin off of it. They also

refused to let me make a telephone call. When putting me in the paddy wagon, they pushed me in and put that stick to me again.

EDDIE HARRIS.

Sworn to and subscribed before me this the 24th day of July 1963.

————————, *Notary Public.*

Mr. RODINO (presiding). Our next witness is Mr. Oscar H. Brinkman, with the National Apartment Owners Association, Inc.

Mr. Brinkman, you may proceed.

STATEMENT OF OSCAR H. BRINKMAN ON BEHALF OF THE NATIONAL APARTMENT OWNERS ASSOCIATION, INC.

Mr. BRINKMAN. Mr. Chairman and members of the committee, my name is Oscar H. Brinkman, an attorney of Washington, D.C., and I appear before you on behalf of the National Apartment Owners Association, Inc., a nonprofit organization whose members throughout the United States own, control, and manage apartment houses, motels, and other rental housing. We have affiliated local associations in many cities.

I am cochairman of the legislative committee of the association, of which Mr. Henry DuLaurence of Cleveland, Ohio, is also cochairman. We present views that are in accord with policy resolutions adopted unanimously at national conventions of our organization.

The opportunity to appear before you today is appreciated.

I think it may be of some interest to you to know at the outset that there are no racial or religious restrictions on membership in our organization. Furthermore, any member of the association who owns rental property may, so far as our organization is concerned, serve any and all persons regardless of race or religion.

We are particularly concerned with sections 201, 202, 203, 204, and 205 of the pending bill, H.R. 7152, relating, in the main to so-called public accommodations. These are so broadly drawn that we believe they constitute a menace to the basic civil and constitutional rights of every citizen to own and control private property.

They would, if enacted and enforced, and added to by bureaucratic interpretations, subvert and violate the intent of article V of the amendments to the U.S. Constitution as well as article XIV.

One of the fundamental purposes of a just government—but not a Communist state—is to protect the right of citizens to acquire, own, use, possess, and control their own property. It is a great human right, and the impairment or deprivation of that right would cause great and irreparable harm to the Nation's economy and the general welfare of all our people. It is an integral part of what we term the "free enterprise" system under which this Nation has prospered, and from which we derive our strength and well-being.

Surely no one would take away from one class of citizens the right to exercise judgment as to which business establishment to patronize and which not to deal with. At this very moment, organized boycotts are being conducted by racial groups, and no legal action against them on that account is even being considered by the Government.

This is not discrimination—it is the exercise of free choice. The same right, in principle, is possessed by the owner of private property or a business, to exercise a choice as to whom he will serve.

The fact is that there is no racial group in the United States that does not possess the fundamental rights to acquire property, to establish businesses, banks, places of amusement, hotels, and enterprises of other kinds—and to manage them as they see fit, serving whom they will.

But the moment the Government attempts to force the owner of private property—enjoying no special public franchise—to serve those whom he does not care to deal with, discord, dissension, and even hatred are bred.

The history of the prohibition amendment to the Constitution gives all the evidence that is needed to prove, conclusively, that it is impossible to successfully enforce laws that are opposed to the social views and habits of a substantial proportion of a Nation's population. Lawlessness and violence are increasingly bred, despite the activities of prosecutors and courts.

The legislation now proposed is even more drastic than that of the prohibition era, in that it would deprive the owners of private property of inherent rights without even provision for jury trials. This is a long step in the direction of despotism.

The experience of some of the members of our association with voluntary attempts to racially integrate their apartment properties has furnished proof of the impossibility of forcing people to accept neighbors whom they do not like. When one of the so-called minority group moves in, the majority group moves out, and the end result may be financially calamitous to an owner who has had no racial prejudices of his own. And again, the new tenants are segregated.

We believe that racial prejudice and discrimination cannot be successfully dealt with by stringent laws, but that the cure can be accomplished only through the process of appealing to the hearts, minds, and conscience of men and women and children.

But we take the liberty of reminding members of this committee that other large groups of people who in past decades were the objects of prejudice and discrimination, by dint of their own efforts succeeded in acquiring property, establishing businesses, organizing social clubs—and eventually won their way to social acceptance by being hard-working, law-abiding citizens imbued with a desire for self-improvement and self-help.

Summed up, we believe the public accommodations and some other sections of the bill now being considered would do more harm than good to those whom it is intended to benefit. And certainly it would be destructive of the great civil right of all of us to own, possess, and control private property.

I thank you again for this opportunity to be heard.

Mr. KASTENMEIER. I have just one question. How would you propose then to deal with the so-called Negro ghettoes?

Mr. BRINKMAN. With Negro tenants?

Mr. KASTENMEIER. With Negro ghettoes, where Negro populations, particularly in our cities, but even in small towns, live in one given area.

Mr. BRINKMAN. I don't quite get the question. How would you deal with Negroes in small towns, in what way?

Mr. KASTENMEIER. Yes.

Mr. BRINKMAN. My hearing is a little impaired right now.

Mr. KASTENMEIER. The point is, how will we ever get rid of segregation in housing except by a law of this type?

Mr. BRINKMAN. I think there is a very ready answer to that, by the colored people saving their money and building houses of their own, just as the other parts of the population have done. I think that that has been one of the great drawbacks to the colored people, and I have the utmost sympathy for them.

In fact, I wrote a book a few years ago on that, in which there is a chapter on this subject. The book was called "America's Choice, Freedom or Slavery."

There is a chapter in there on the colored situation. In that chapter I predicted just what has happened in America as a result of the Supreme Court decision.

Incidentally, this book was very widely circulated in the South and I think had quite an impact in thinking on the South and perhaps in other parts of the country.

The point about the colored people of the country—and I am thoroughly sympathetic with them——

Mr. MEADER. Are you referring to the Supreme Court decision which said that the courts could not enforce covenants relating to the land?

Mr. BRINKMAN. There were two Supreme Court decisions. One was by Chief Justice Vinson which practically held invalid the racial restrictions.

Mr. FOLEY. That is *Shelley* v. *Kraemer*.

Mr. BRINKMAN. He said that the restrictions were valid but could not be enforced by the courts. It was one of the weirdest decisions I ever heard in my life. And the other one was the Supreme Court decision on schools. In this book I expressed the greatest sympathy with the colored people—I have known them, and had colored clients whom I have represented in court. The point is that to achieve equality and liberty and economic security in this country, they must learn to save, they must learn to go in business, they must learn to buy land and construct houses.

Mr. FOLEY. They must learn that from education, correct?

Mr. BRINKMAN. And they must have education. I think there is no State or locality in the country where they now don't have the opportunity to become educated. Some of their schools are not as good as other schools, but probably some of the white schools also are not up to the standard of other schools.

But I believe that the problem of the colored people is to have the opportunity to work. I think they should have the opportunity—I am now expressing my own opinions rather than that of the association—I think they should have the opportunity to become apprentices in the unions. I think that building trades have unduly restricted their entry into the unions.

I think that the Government could do nothing better or more practical and that would be more helpful to the colored people of this country than to establish large centers for the training of the colored people in the building trades so that they would be able to build their own houses and to enter the building trades in great number and to not only earn higher wages, have larger income, but to build their own houses and develop their own projects, and in that way they can have the kind of housing they should have.

There isn't any doubt in the world that much of their housing is deficient and disgraceful, but I don't think that it can be helped by this bill.

Mr. RODINO. Mr. Brinkman, on that point, although you point out the opposition of——

Mr. BRINKMAN. Will you speak louder?

Mr. RODINO. Although you point out the opposition of your association to the various sections, the so-called public accommodations sections, as I read the bill, it doesn't relate to apartment houses, normally speaking, unless it comes within the purview of section 201(a)(1) where it might be furnishing lodging to transient guests.

Mr. BRINKMAN. The bill is drawn in a rather loose way. It refers to accommodations.

Mr. RODINO (reading):

> Any hotel, motel, or other public place engaged in furnishing lodging to transient guests including guests from other States or traveling in interstate commerce.

Mr. BRINKMAN. I am glad you brought up that point. Some of our members do own motels and in these motels they have transient guests, and others have furnished apartments which they rent to transient people. In California that is quite common. We have a very large membership in California. Others operate restaurants in their apartment houses which are patronized by people who may cross State lines.

Mr. RODINO. Then they are not the generally accepted apartment houses such as we know them?

Mr. BRINKMAN. Yes. Our opinion is that if you restrict one man's right to control his property, it is just a step further to control another man, and gradually take over the control of private property, and we consider freedom indivisible, that is the right of one man to freedom in use or control of his apartment and also the right of other men.

People should realize when you take one man's right away, you are laying the foundation for taking your own rights away eventually.

I might say on that subject that great pressure has been brought on the President, which he has resisted so far, to make practically all housing in America integrated through pressure or through the issuance of an Executive order requiring banks, which are members of the Federal Reserve System, and building and loan associations, which are insured by the Federal Home Loan Bank Board, to include an integration clause in all of their mortgage loans.

The President so far has not done that, but there is increasing pressure on him and we feel that this—if this law is passed, the pressure will be so great on the President that he will finally issue an Executive order or make a recommendation to Congress that will make all housing in America integrated.

Mr. FOLEY. Mr. Brinkman, on that point, do you feel that your constitutional right to private property is absolute and more important than the right of every American to the equal protection of the laws under the Constitution?

Mr. BRINKMAN. I think that question is a little unfair.

Mr. FOLEY. I don't believe it is unfair because I am talking about the Constitution that applies to each and every American the same way.

Mr. BRINKMAN. But I find nothing in the Constitution that requires the owner of a restaurant to serve everybody who comes in.

Mr. FOLEY. Equal protection of the law is required.

Mr. BRINKMAN. There is no question of protection. A man doesn't need protection. He can eat anywhere that they will serve him.

Mr. FOLEY. Do you believe that an ordinance in a State that says a restaurant owner must segregate constitutes equal protection of the law for any American who goes into that restaurant?

Mr. BRINKMAN. Well, I am expressing my own view now.

Mr. FOLEY. That is what I am asking for.

Mr. BRINKMAN. I personally don't think that the State should. I think that the State is wrong in doing a thing of that kind.

Mr. FOLEY. Do you believe in segregated waiting rooms in terminals and airports?

Mr. BRINKMAN. Those are public facilities.

Mr. FOLEY. Yes, they are owned by people; that is right.

Mr. BRINKMAN. What I mean is; a railroad terminal operates on land, right-of-way that was usually deeded to it by the public, very often deeded to it by the public.

It is operated under the Interstate Commerce Law and the business itself is regulated by the Government. Therefore there might be an argument in that case for some regulation of the kind that you have in mind. I am talking about purely personal private property, not anything that is publicly franchised.

Mr. FOLEY. Let me ask you: Do you think the right to private property is an absolute right?

Mr. BRINKMAN. I think it is.

Mr. FOLEY. You think it is?

Mr. BRINKMAN. I know it is. I know it is the very basis of our civilization as compared with the Communist form of government. If you do not have the right to private property, you have no protection at all.

Mr. FOLEY. Can you operate an apartment house today in any place in the United States without a certificate of occupancy?

Mr. BRINKMAN. A certificate of what?

Mr. FOLEY. A certificate of occupancy.

Mr. BRINKMAN. No.

Mr. FOLEY. Are you subject to zoning regulations?

Mr. BRINKMAN. I am if they have been approved by the people.

Mr. FOLEY. That is right. That is what I am talking about and so is the Constitution of the United States approved by the people, so that private property is not an absolute right. It is subject to the local laws and ordinances that the people have enacted and to the constitutional right to equal protection of the laws.

Mr BRINKMAN. You and I differ on that question.

Mr. FOLEY. I am not questioning what is my position. I treat all rights under the Constitution equal. None preferred over another. This is where you and I disagree.

Mr. BRINKMAN. My contention is that every man in this country, every man and woman in this country has the right to buy property. They may not be able to buy property in just the location they want. I can't buy property just where I want it, but I can buy property, I can have a home.

That home should be in my possession and control, regardless of my race whether white, black, red, or yellow.

Mr. FOLEY. But you have the right to acquire that property and once you acquire it you must use it under the laws and orders of the community, including the Constitution of the United States.

Mr. BRINKMAN. Well, from a practical standpoint, I have seen what happens when you try to enforce the decision that was made in the zoning or restriction case. Washington is a good example of that. The restrictions in Washington—and there were many of them—were practically wiped out by the decision of Justice Vinson in the Supreme Court, and the result was that to a very large extent the white people in Washington moved out and the colored people moved in. As a result the colored people are probably more segregated now than they were when I first came here many years ago.

They are living now in 100-percent colored neighborhoods. The practical result of your attempts to enforce an unenforceable law are not good for the colored people, and I have at heart the interests of the colored people.

If you would read this book, the chapter in this book which you can get from the library, you will see that my sympathy is entirely with the colored people, and that I think something practical should be done for their benefit.

They have crowded into the cities where they have no property of their own, where they are not employed, and they would be much better off if they had a piece of land and were able to cultivate the land have their own home and house.

Mr. RODINO. Would you be in favor, Mr. Brinkman, then of isolating colored people?

Mr. BRINKMAN. No, indeed.

Mr. RODINO. You are saying that they would be much better off if they bought a piece of land and cultivated it. Apparently you are now advancing the cause of complete isolation and segregation. That is what you said.

Mr. BRINKMAN. They would have the right themselves to invite white people to live with them or they could segregate it as they wish. That would be their choice. I wouldn't segregate them by law.

Mr. CORMAN. Mr. Brinkman, you have many members out in California——

Mr. BRINKMAN. I can't hear you.

Mr. CORMAN. You have many members out in California, I believe. Do their businesses seem to be thriving and the property values going up, and so forth?

Mr. BRINKMAN. In California?

Mr. CORMAN. Yes, sir.

Mr. BRINKMAN. In some sections of California where there is a good deal of defense industry property owners are doing well. There are other sections where there is a very large vacancy rate and people are to some extent losing through foreclosures.

Mr. CORMAN. I would like to point out to you that this law will have no effect in the State of California even if it is passed because we have much more stringent provisions against segregation in California. I think the fact that property values are very high there and that there is a substantial residential building boom is an indication of the fact that laws such as this do not have an ill effect on property owners.

Mr. BRINKMAN. I happen to know that that is a very burning question in California now as a result of a recent enactment strengthening your antidiscrimination laws there. There may be a referendum on that law in the State of California because there are a great many people who are opposed to those laws and it may become a very burning and vital issue in the election next year.

Mr. CORMAN. We have had a public accommodations law for 75 years however, that no one has ever contested. It goes beyond the proposal in this legislation and it has been rather successful too.

Mr. BRINKMAN. I am rather familiar with the situation in California and the example that I mentioned in my statement about the effect of integrating an apartment was told to me by a man in California who lives in the neighborhood of San Francisco and owned an apartment house there.

He happened to be a Jewish gentleman and he owned an apartment house and he was what might be called a liberal, and he decided that he ought to admit Negroes to his apartment house and he did take some into his apartment house. He found in about 30 or 60 days, or whenever the tenants could give notice, that his white tenants had all moved out. He was obliged to fill the apartment house with Negroes, so that they were still segregated, in that apartment house.

He told me he was very much disappointed with his attempt, that it had not worked out the way he had hoped.

Mr. RODINO. Mr. Meader?

Mr. MEADER. Mr. Brinkman, you have presented the opposite side of this issue. Most of our witnesses have been strongly in favor of this bill. I think we need to have a balanced record and I think your point of view is very well expressed.

I would like to ask one or two questions. Could you give me the number of members of your organization?

Mr. BRINKMAN. In our own association and affiliated associations, there are approximately 12,000 to 15,000 members scattered throughout the United States, with the largest representation being, I believe, in the State of California, and we have local associations in Cleveland, San Francisco, Los Angeles, and a number of other cities.

Mr. MEADER. Of those, how many would be motel owners? Do you have any idea?

Mr. BRINKMAN. I can't tell you. Not a very large proportion.

Mr. MEADER. Do the motel owners have an association of their own?

Mr. BRINKMAN. I think in some sections of the country they do, yes; I believe there is a National Motel Owners Association, but I don't know where it is located or the officers of it.

Mr. MEADER. Now, I would like to pose this question of political philosophy. Every time we pass a law, if it does anything at all, if it has any impact at all, we create power in, or we give power to some agency of the Government.

Mr. BRINKMAN. Yes.

Mr. MEADER. We don't raise that power. We just get it from the reservoir of personal liberties of our citizens or from powers of the States.

Mr. BRINKMAN. Yes, sir.

Mr. MEADER. It is the only place we can get it. We don't manufacture it.

Mr. BRINKMAN. You delegate power.

Mr. MEADER. Every time we have set up another Federal bureau, another agency, or authorized the Attorney General to take action, we are giving that manpower which must be taken, it seems to me, from the reservoir of the personal liberties of the citizens or the powers reserved to the States and the people.

Do you agree with that?

Mr. BRINKMAN. I agree that you do that, but I don't agree that you should do that.

Mr. MEADER. I think our problem here is to grant only that power which is necessary to accomplish the objective insofar as it can be accomplished by any legislative actions and not take undue power away from the reservoir of personal liberty or the power in the States in the name of a laudable objective.

Mr. BRINKMAN. I agree thoroughly to that.

I would like to remind you of the old saying—I think perhaps Jefferson said it, but I am not certain: "That government is best which governs least."

We have created a great mammoth government which is growing and growing and taking more and more money from the people and depriving them more and more of their liberty and freedom and that is the subject of my book.

Mr. MEADER. And with respect to title II, which you discussed, we are, in a sense, restricting the area of discretion of those people who happen to own properties that come within the purview of this act.

We are compelling them in a sense to enter into a contractual relationship of one kind or another or something similar to a contractual relationship against their will.

Mr. BRINKMAN. You are creating enemies of the colored race by forcing people to do what they don't want to do, just as you created lawbreakers and what they call "scoff" laws in the prohibition era by forbidding a man to buy a bottle of beer or a drink of wine.

Mr. RODINO. We thank you very much for your testimony, Mr. Brinkman, and the hearing for this afternoon is now adjourned.

We will reconvene on Wednesday at 10 a.m., and we will hear from other Members of the Congress and Mr. Dwight Walker, executive director of the Southern Leadership Council.

(Whereupon, at 4:40 p.m., the committee was adjourned, to reconvene at 10 a.m., Wednesday, July 31, 1963.)

CIVIL RIGHTS

WEDNESDAY, JULY 31, 1963

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 5 OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to adjournment, at 10 a.m., in room 346, the Cannon Building, Hon. Byron G. Rogers presiding.

Present: Representatives Rogers (presiding), Rodino, Donohue, Toll, Kastenmeier, McCulloch, and Meader.

Also present: Representatives Corman and Lindsay.

Staff members present: William R. Foley, general counsel; William H. Copenhaver, associate counsel; and Benjamin L. Zelenko, counsel.

Acting Chairman ROGERS. The committee will come to order.

We have as the first witness this morning the Honorable Clark MacGregor, Representative from the State of Minnesota, and also a distinguished member of this committee. He will be our first witness.

Welcome to the subcommittee, Mr. MacGregor.

STATEMENT OF HON. CLARK MacGREGOR, REPRESENTATIVE TO CONGRESS FROM THE STATE OF MINNESOTA

Mr. MACGREGOR. Thank you very much, Mr. Chairman.

I appreciate the consideration of the chairman in permitting me to go first, so I may go to Subcommittee No. 2, which is meeting this morning.

I should like today to discuss the constitutionality of the first section of the proposed Equal Rights Act of 1963 introduced initially by some 30 Congressmen on June 3, 1963. Section 101, subdivision (a) of that Equal Rights Act reads as follows:

I will confine my remarks today to the public accommodations provisions of the pending legislation.

Mr. FOLEY. You are talking about 6720?

Mr. MACGREGOR. Introduced by Mr. Cahill, Mr. Lindsay, Mr. MacGregor, and others.

Mr. FOLEY. Thank you.

Mr. MACGREGOR (reading):

> Whoever, in the conduct of a business authorized by a State or political subdivision of a State or the District of Columbia, providing accommodations, amusement, food, or services to the public, segregates or otherwise discriminates against customers on account of their race or color shall be subject to suit by the injured party in an action at law, or suit in equity.

The key words here, insofar as the constitutional issue is concerned, are "a business authorized by a State or political subdivision of a State."

The sponsors of this legislation, of which I am one, have elected to reach their intended goal of nondiscrimination down what is popularly called the 14th amendment route. In short, we have based the constitutionality of our proposal on the language of the 14th amendment to the U.S. Constitution rather than on the interstate commerce clause.

There is a most important reason for desiring to use the 14th amendment route. We seek to work within our existing Federal structure of divided governmental responsibilities to require State and local governments to comply with the law of the land. It is not our intention to inject the Federal Government into every crossroads community. The reverse, however, is true of the commerce clause route, for in employing this constitutional vehicle the Congress invariably enlarges the scope and range of national governmental power at the expense of State and local governmental responsibility.

What precisely does the 14th amendment provide? In its provisions here applicable the 14th amendment reads as follows:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; * * * nor deny to any person within its jurisdiction the equal protection of the laws.
>
> The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Recent articles in the press, as well as statements by some Members of Congress and the administration, have expressed the view that the 14th amendment is an improper constitutional base upon which to predicate civil rights legislation.

In his testimony before our House Judiciary Committee on June 26, Attorney General Kennedy referred repeatedly to five cases decided together by the U.S. Supreme Court on October 15, 1883. The first among this group of cases is United States against Stanley, reported in 109 United States Reports at page 3.

Mr. Chairman, I call your attention to the fact that this year these decisions will be 80 years old, and further that the Court was divided in its opinion; a most learned dissenting opinion was written by Mr. Justice John M. Harlan. Quite aside from those relevant factors, however, it is true that in this case a majority of the Court held sections 1 and 2 of the Civil Rights Act of 1875 to be unconstitutional. A portion of that act had previously been declared by the Court to be constitutionally valid. The pertinent provisions under consideration in the case of United States against Stanley and others were sections 1 and 2 of the Civil Rights Act of 1875; they read in part as follows:

> SECTION 1. That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters, and other places of public amusement.
>
> SEC. 2. Any person who shall violate the foregoing section by denying to any citizen the full enjoyment of any of the accommodations, advantages, facilities, or privileges in said section enumerated shall for every such offense forfeit and pay the sum of $500.00 to the person aggrieved thereby to be recovered in an action in debt with full costs.

It will readily be seen that there are substantial differences between the Civil Rights Act of 1875 in the sections cited above and the somewhat similar provisions of the proposal which we introduced on June 3

of this year. In the Supreme Court decisions of 1883 the Court stated as follows:

> The 14th amendment is prohibitory upon the States only and the legislation to be adopted by Congress for enforcing it is not direct legislation on the matters respecting which the States are prohibited from making or enforcing certain laws or doing certain acts, but is corrective legislation such as may be necessary or proper for counteracting and redressing the effect of such laws or act.

It is clear that the Supreme Court in its 1883 decision (which is feared now by the Justice Department) made an obvious distinction between direct legislation and corrective legislation. This is developed more fully by the Court on pages 13 and 14 of its opinion, where the Court holds:

> The legislation which Congress is authorized to adopt (pursuant to the 14th amendment) is not general legislation on the rights of the citizens, but corrective legislation; that is, such as may be necessary and proper for counteracting such laws as the States may adopt or enforce, and which by the amendment they are prohibited from making, or enforcing, or such acts or proceedings as the States may commit and take and which by the amendment they are prohibited from committing or taking.

An inspection of the 1875 law shows that it makes no reference whatever to any supposed or apprehended violation of the 14th amendment on the part of the States. Contrary to the 1875 legislation, the bill which we introduced early this month is specfiically tied to the language of the 14th amendment.

The heart of the 1885 Supreme Court decision is simply this: The 1875 legislation in the sections referred to is unconstitutional because it is not corrective legislation tied to the 14th amendment and because its operative effect does not depend on any wrong committed by a State or State authority.

Our 1963 bill attacking discrimination in public accommodations is clearly corrective in nature; its operative effect would depend on State or local government abuses in the exercise of licensing or franchising powers.

Mr. FOLEY. May I interrupt right there for a clarifying question? In your bill, or the similar bills, you use the word "authorized."

Mr. MACGREGOR. Yes.

Mr. FOLEY. Down here, you use "licensing or franchising powers." I think this is a question of draftsmanship. I just wondered if you were wedded to "authorize," or would it be better to say "licensed or franchised"?

Mr. MACGREGOR. I am not wedded to any specific language, counsel. In the original draftsmanship teamwork I was responsible for the insertion of the word "authorize."

You are quite correct in addressing your question to me, for that reason. The reason for the insertion of the word "authorize" in the original draftsmanship in lieu of "license" was to indicate a desire on the part of the draftsman to include those businesses licensed, franchised, or in any way authorized to do business by a State or local authority.

Mr. FOLEY. The reason I raise that is, that, for instance in New York of course, if you are incorporated, it is no problem or if you are a partnership, you are under the partnership law, if it is a membership outfit that would be covered, you would be covered by that. But now

you have an unincorporated nonpartnership business, and all you have to do is to get a certificate of doing business, and that is all you need.

Textually, it bothers me whether that would be covered by "authorized."

Mr. MACGREGOR. I think your points are very well taken. It would be, and has been, and is, my desire that that particular language in the legislation which we offer would be scrutinized by this committee, and improved. And more clearly defined.

Mr. FOLEY. I think Congressman Lindsay is of the opinion that you are.

Mr. MACGREGOR. We would want to cover in every sense the businesses, whether incorporated or unincorporated, which operate pursuant to licenses, franchises or other similar——

Mr. FOLEY. Some form of State permission to be engaged in a certain type of business.

Mr. MACGREGOR. Precisely.

Acting Chairman ROGERS. A public business?

Mr. MACGREGOR. Yes.

Mr. CORMAN. I would like to inquire about the effect of a zoning law on a public business. In most cities you can conduct business only if there is a zoning permit to do so.

Would that constitute authorization by the State? For instance, you cannot conduct a movie theater unless you are in a certain geographic zone that permits building a movie theater.

Mr. MACGREGOR. In my belief, Mr. Corman, it would.

Mr. CORMAN. If so, that eliminates part of my apprehensions. But I fear most States might repeal all their licensing laws as to a given business, if we had to rely on a specific license.

If you could refuse State action through zoning laws, then I would say it would be next to impossible to get around your provision.

Mr. MACGREGOR. I would be most receptive to any suggestions you might have from the sphere of experience you have had as a municipal official in this field. I would agree with your comments, Mr. Corman, with respect to the intended purpose and the desirability of legislation which would reach those businesses which are covered and controlled to some extent by zoning laws.

Mr. FOLEY. That comes around to a point where I am going to be a devil's advocate for the minute.

We talk about a business, and zoning laws. I don't think in any State in the Union you can erect a building without first getting a building permit and second, having completed the construction, getting a certificate of occupancy.

Mr. CORMAN. You wouldn't fall within the description of the prohibition under Mr. MacGregor's proposal, of public use.

Mr. MACGREGOR. You would be providing a public business.

Mr. FOLEY. I wanted a distinction, for the purpose of legislative history. Talking generally we accomplish a lot of things we don't mean to accomplish. I don't believe anyone advocates that mere issuance of a certificate of occupancy is sufficient to cover public accommodations.

Mr. MACGREGOR. It is my intention to reach the businesses which historically are considered to hold themselves out to the public as conferring service, accommodations, food, or amusement.

Mr. FOLEY. It is my feeling that we have to be very careful about that point.

Mr. MACGREGOR. I agree. And touching upon another point, I don't believe it is possible for this committee, the House of Representatives, or this Congress, to draft legislation which won't be subject to some attempts at evasion by certain State or local authorities.

I do not think that that needs to militate against action on our part, though. I see our function here, particularly in public accommodations, our best function as one which accelerates the already commendable movement on the part of States and localities toward the adoption of statutes and ordinances that do outlaw discrimination in public accommodations.

Acting Chairman ROGERS. May I inquire whether you would go along with the concept that we adopt first the interstate commerce theory and then add to it this section that you and 30 others have introduced which, if it is not covered in interstate commerce, it may be taken under the 14th amendment?

Do you see any objection to having both of those included in our bill?

Mr. MACGREGOR. It depends on how they are included, to an extent. I would like to develop that.

Acting Chairman ROGERS. Go right ahead.

Mr. MEADER. Before we leave this, I would like to ask a few questions, Mr. Chairman.

Your bill and companion bills are based upon the authority of Congress to pass laws to carry out the provisions of sections 1 and 2 of the 14th amendment to the Constitution, is that correct?

Mr. MACGREGOR. Yes.

Mr. MEADER. As you pointed out, in the civil rights cases, the Supreme Court held that prohibition of the 14th amendment ran against action by the States, but not by individuals?

Mr. MACGREGOR. That is correct.

Mr. MEADER. So your connection between the 14th amendment and your prohibition in section 1, and section 1 on one of your bills—Mr. Lindsay has his here——

Mr. MACGREGOR. I am sure mine is identical. Mine is 7621.

Mr. MEADER. There is a connection between the State action in licensing, authorizing, franchising, and we have not mentioned the word "regulating."

Mr. MACGREGOR. I did, in one instance in earlier testimony here.

Mr. MEADER. Businesses which offer accommodations, amusement, or services to the public. Your word is "providing." I just question in passing whether the word "offering" is not perhaps a little better term.

Mr. MACGREGOR. I will say again, I hold no pride of authorship.

Mr. MEADER. The theory behind this, I presume, is this—I am going to suggest a theory and see if this is your theory, and if not, see what it is: That the State, by failing to prohibit discrimination or segregation in the act of authorizing the conduct of these businesses which offer services to the public generally is in effect violating the 14th amendment, that it ought to include, since it is prohibited by State action from denying any person equal protection of the laws, it ought to write that into any authorization offering services to the public,

and when it fails to do so, in a sense it is guilty of allowing discrimination. Is that your theory?

Mr. MACGREGOR. I would not quite agree. Let me explain my thinking in that area, at some length.

Mr. MEADER. There has to be a connection, a nexus between State action and the particular acts which you seek to make illegal, for it to be sustained on the basis of the 14th amendment, isn't that right?

Mr. MACGREGOR. I think so, largely as a result of the *1883* decision, which I think gave impetus to the development both by affirmative State and local actions, and also by the growth of custom resulting from the *1883* decision, which we know as Jim Crowism.

I think, had the *1883* decision not been handed down, or had the 1875 Civil Rights Act, sections 1 and 2, not been passed, we wouldn't have seen in the course of the last 100 years the development of the principle of segregation in public accommodations. Thus, since there is a hurdle to overcome, or, if you will, to knockdown, which results in part from actions in this case by the Congress and subsequently by the Supreme Court, I think it is incumbent upon Congress to pass legislation in the public accommodations field seeking to eliminate the vestiges of Jim Crowism and I feel the 14th amendment does provide a proper vehicle, and requires us to take such legislation as we pass to some action by State or local authority.

Mr. MEADER. The State action, I assume you would agree, must, I think, have a substantial, rather than a tenuous connection with the act prohibited. Would you agree? Well, the Attorney General defines "substantial" as something more than minimal. If the responsibility of the State with respect to the act sought to be prohibited by section 101 of your bill is, I will say "tenuous" or "minimal," that wouldn't form sufficient State action to come within the prohibition of the 14th amendment?

Mr. MACGREGOR. If by tenuous you mean separate and apart from the act of issuing a license, franchise, or other authority to do business by the State or locality, I would agree with you, but I would hate to get into a discussion here, because I don't think it is helpful at all, of what one or another person may mean by "substantial," "tenuous," "minimal," because I don't really feel that that confronts us. If we had done our job of draftmanship properly, of course——

Mr. MEADER. Most States have general incorporation laws, and you have to file your certificate, comply with certain formats, and most States require an annual franchise fee, to permit you to do business as a corporation. Is that the kind of licensing you have in mind, or is it something beyond the corporate law where for example, you have a business system that requires regulation or which is subject to regulation by a public service commission or something of that nature, or a restaurant which requires something more than just the corporate franchise fee, something in the way of inspection for health standards, and other regulation, or motels, which may require in addition to their corporate license they have, licensing as a motel, subject to a certain amount of regulation?

Mr. MACGREGOR. It is the latter types of franchises, licenses or other evidence of authority issued to do business which the State or locality that I have in mind, separate and apart from the mere ratification of articles of incorporation or acceptance of such articles.

Mr. MEADER. It is clear that where a particular business has not only a corporation franchise, but has also a franchise to do some of the businesses that offer accommodations to the public, is the State responsibility and authority in connection with the latter—is it far greater than it is merely with corporations generally?

Mr. MACGREGOR. That is correct.

Mr. MEADER. Is it your conclusion that that connection is sufficiently substantial that when the State neglects, fails, or omits to require treatment by such businesses of all alike under the "equal protection of the laws" clause that thereby the State in that action is in violation of section 1 of the 14th amendment?

Mr. MACGREGOR. If the statute is one for providing accommodations, food, or services to the public, the answer is yes.

Mr. MEADER. Is that the theory on which your bill rests its constitutionality?

Mr. MACGREGOR. Yes.

Let me quote from the Solicitor General of the United States.

A good deal of historical material exists to show that the history of public discrimination against Negroes is a result of the Jim Crow laws enacted in the late 19th and early 20th centuries. Moreover, larger commercial establishments in a community tend to follow common racial policy, so the decision is not really a matter of individual preference, and the common front appears greatly to be influenced by the attitude of public officials.

We also know—

quoting again from a memo on this point, prepared by Mr. Archibald Cox—

We also know from the cases litigated in the Supreme Court that much of the support for public segregation and resistance to desegregation come from State laws, municipal ordinances, and the conduct of public officials.

Mr. MEADER. I wanted to make that point, and understand the philosophy on which your bill is founded.

Mr. DONOHUE. What effect would this have on certain insurance companies? There are companies that restrict their policyholders to members of particular religious beliefs. For instance, there are insurance companies that will only insure Masons. There are insurance companies that will only insure Catholics. There are insurance laws that will only insure Mormons. What effect would this have on those companies?

Mr. MACGREGOR. And there are insurance companies that will only insure those who do not imbibe alcoholic beverages.

I would not consider that the companies that you have mentioned fall within the classification of a business providing accommodations, amusement, food, or services to the public, Mr. Congressman.

Quoting from sections of the legislation introduced by a number of members of this committee, I would not regard the issuance of an insurance policy to be the type of services which are considered—which I have considered, at least, in the draftmanship of the legislation I have introduced.

Mr. DONOHUE. Leaving out the latter group you have mentioned, aren't you discriminating against people because of their religious beliefs?

For instance, when you say, "We will only insure Masons," or "We only will insure Catholics" or "Mormons"——

Mr. MACGREGOR. That is an interesting question, but I do not see its relevance to the present discussion. As I understand the problem that I feel needs attention here, it is the question of accommodations, food, amusement, hotels, restaurants, theaters, bowling alleys, and so forth. I do not feel the operation of an insurance business——

Mr. DONOHUE. Let's forget the insurance business. They are engaged in interstate commerce, and are required to be licensed by whatever State they see fit to do business in.

Mr. MACGREGOR. Understand. I don't favor the interstate commerce vehicle as the proper basis on which to predicate civil rights legislation.

Mr. DONOHUE. Taking the 14th amendment: Say a person set up a department store in Salt Lake City, and they said that "We will not permit any individual to patronize our department store unless they are of the Mormon faith." Would your bill prohibit that sort of thing?

Mr. MACGREGOR. I am not an expert on comparative religion to the extent of acquaintance with the Mormon Church tenets. Our bill refers to race or color.

Mr. DONOHUE. Forget religion. Say someone set up a department store in a certain section of New York and said, "We will not—we do not want anyone to patronize this business but the Irish, or the Italians," or say the Swedes. What effect would you say your bill would have on that sort of policy?

Mr. MACGREGOR. It would be prohibited. A department store—again, we have not in our legislation sought to reach department stores because it is my understanding of the findings of the Civil Rights Commission that the problem of discrimination in the sale of goods is of no particular consequence. But if this department store had a lunch-counter and that lunchcounter practiced pursuant to some licensing or franchising authority of the city or county or State of New York, and denied services to customers on account of their race, they being not of one of the chosen races that you enumerated, it would be prohibited by the proposed legislation.

Mr. MEADER. Mr. Chairman, I point out that the gentleman's bill refers only to race and color. The administration bill refers to discrimination based on race, color, religion, or national origin. The hypothetical question posed by the gentleman from Massachusetts was not a matter of race; he was going to have Irish, Italians, someone, patronize an establishment. That is not a matter of race, that is a matter of national origin. But Catholics or Mormons is a matter of religion. The gentleman's bill is much more limited in scope, it seems to me, in its effect on the discrimination that might be practiced, than is the administration bill, because it omits religion or national origin. I think you would have to answer the question that neither in the case of national origin or in the case of religion would your bill reach any discrimination founded on those two grounds.

Mr. MACGREGOR. You are absolutely correct. I thought perhaps we were arguing about how many angels could dance on the head of a pin. But if Mr. Donohue was being specific in his questions and, if there is no discrimination on the basis of color or race, the bill we have offered would not reach such discrimination.

Mr. DONOHUE. In our Constitution it provides for not only situations involving race and color, but national origin and religion.

Mr. MACGREGOR. However, it is my idea that Congress here ought to reach a particular abuse. I am not aware of a particular abuse that is at least widespread to any degree along the lines you have pointed out in your hypothetical question, whereas there are widespread abuses in the areas we are trying to reach.

Mr. DONOHUE. Well, I think we shouldn't attempt to pass special legislation. We should make it general.

If certain practices are carried on in the nature of discriminating against any group because of their color or racial background, or their national origin or religious beliefs, we should try to eliminate it, shouldn't we?

Mr. MACGREGOR. No, Mr. Donohue, I do find a difference between discrimination based upon race or color and a discrimination, if you will, based upon religion.

Mr. DONOHUE. Coming from the great State of Massachusetts, and listening to my grandparents, I can recall when certain practices were carried on in that great Commonwealth against people because of their racial background and because of their religion.

Mr. MACGREGOR. Are they still perpetrated in the great Commonwealth of Massachusetts?

Mr. DONOHUE. Not to the great degree they were probably practiced 50 years ago.

Mr. MACGREGOR. May I state that in the great State of Minnesota it was thought no one could be elected to public office who was not of Scandinavian background, and that may have been true once, but obviously we have moved beyond that stage in Minnesota, or I would not be here.

Mr. COPENHAVER. Last week we had testimony which indicated there still may be evidence of discrimination of people of Jewish origin in certain locales. You would not object, would you if your proposal were to be amended, to include religion or national origin. Do you believe it would be desirable to have a more broad base against discrimination of any type?

Mr. MACGREGOR. I would be most interested to read that testimony.

Mr. ROGERS. That was the testimony of Rabbi Black.

Mr. MEADER. Mr. Chairman, I would like, so the thinking is clear on this question, relating your bill to the 14th amendment—section 1 of the 14th amendment makes no reference to race or color, and certainly makes no reference to national origin or religion. It says:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

It is significant to me that the final phrase, on which you found your bill, doesn't refer to citizens, at all. It says: "nor deny to any person * * * ," whether or not a citizen, and there is a different category of people protected than the "abridgement of the privileges and immunities of citizens."

Mr. MACGREGOR. I would agree, Mr. Meader.

Mr. ROGERS. Do you want to proceed with your statement?

Mr. MACGREGOR. Yes; it will quickly reach the point you have raised.

It is important to note that not all of the Civil Rights Act of 1875 was declared by the U.S. Supreme Court to be unconstitutional. Rather, section 4 of that act was specifically declared to be valid. Section 4 reads in part as follows:

> That no citizen, possessing all other qualifications which are or may be prescribed by law, shall be disqualified for service as grand or petit juror in any court of the United States, or of any State, on account of race, color, or previous condition of servitude.

There was no direct reference by Congress in 1875 to any specific law passed by a State. There was a reference to the fact any officer of any court in the formulation of a jury list should not discriminate on account of race, color, or previous condition of servitude.

May I say the phraseology of this section was considered by me in connection with the draftmanship of the bill we have introduced with reference to the race and color feature.

In commenting on this particular portion of section 4, and in reaffirming its constitutionality, the Supreme Court, in 1883, stated as follows:

> Whether the statute book of the State actually laid down any such rule of disqualification or not, the State, through its officer, enforced such a rule; and it is against such State action, through its officers and agents, that the last clause of the section is directed. This aspect of the law is deemed sufficient to divest it of any unconstitutional character, and makes it differ widely from the first and second sections of the same act which we are now considering.

So, too, the language of the legislation introduced on June 3, 1963, ties its operative provisions to the authorizing acts of a State or a political subdivision thereof; thus it divests itself of any unconstitutional character.

Arguments may properly lie as to the necessity and propriety of Federal civil rights legislation dealing with privately owned public accommodations. Many believe that the need is urgent and that the legislation is well reasoned and entirely proper and constitutional. In truth, there can be no serious question but what legislation in the civil rights field, predicated on the 14th amendment, is entirely constitutional.

In his presentation before our House Judiciary Committee this week, Attorney General Kennedy urged us to rely on the interstate commerce clause as a basis for proper Federal legislation outlawing discrimination in public accommodations. He admitted that somewhat arbitrary criteria would have to be established, either by Congress or the Federal courts, defining which establishments were to be covered. Indeed, the tentative draft legislation prepared by the Justice Department provided that a 5-unit motel, a 20-stool lunch counter, a business located on a secondary highway, or one doing less than $150,000 gross business annually would be excluded. These limits seem to many of us to be inconsistent with the gravity of the moral issue confronting us, and I am delighted that the Justice Department has abandoned them.

Mr. FOLEY. I understand he said in the Senate Judiciary Committee he was amenable to the dual approach, not only interstate commerce, but also equal protection.

Mr. MACGREGOR. I would like to know how he would draft the duality. That interests me. I think it makes a lot of difference whether you give to Archibald Cox the secondary crutch on which to stand before the Supreme Court and try to convince them of the constitutional validity of our work, or whether you are putting in an interstate commerce clause on the duality principle which will result in the same effects I have outlined.

Mr. FOLEY. In the draft of your bill, you omit religion. Now you know as well as all of us here, on many occasions the Court has said the 14th amendment covers several of the rights guaranteed in the first 10 amendments. There is no doubt about freedom of religion as one of those rights.

Then if we talk about privilege of immunity and equal protection of the law, freedom of religion is subject to equal protection of the law. Why leave it out, then, if we are going to use the 14th amendment approach? Almost every one of your State statutes——

Mr. MACGREGOR. I have no objection to its inclusion. My thought in the draftsmanship of this particular proposal was we were reaching this particular evil with respect primarily to the Negroes in the United States.

Mr. FOLEY. Most of the State statutes as to this type of discrimination include religion.

Mr. MACGREGOR. I would have no objection to its inclusion.

Mr. FOLEY. If your language is used, and you had a discrimination, it wouldn't come within the coverage, yet it is a right encompassed by the 14th amendment.

Mr. RODINO. Going a bit further, not to include the question of national origin, we have to contend with that, as well. You say you recognize the gravity of the problem of reaching it. Wouldn't the best means—and you say you have no objection—wouldn't it be better to work on the duality approach?

Mr. MACGREGOR. I think your interstate commerce approach is restrictive. If we pass legislation that must meet the requirements of the 14th amendment, and is also tied on the basis of and/or to the interstate commerce clause, you reach the same evils as if you rely on the interstate commerce clause alone.

I don't find the constitutional basis of the power of the National Legislature to regulate commerce between the States to be related, in my mind, to the question of equality of opportunity to be served in public places.

Mr. MEADER. Would you develop a little more your reasons for not wishing to base this legislation on the interstate commerce clause?

Mr. MACGREGOR. I find that distinction is between establishments as to size, volume of business done, physical location, which all must be necessary, or which all have a bearing on the power of the National Legislature to enact legislation, to be wholly inconsistent with the principles of equality, everyone's right in America to be served in a public place.

Mr. MEADER. Are you concerned about the stretching of the interstate commerce clause to reach this kind of problem, as a precedent for further stretching Federal control over our economy?

Mr. MACGREGOR. I am. In my opinion the resistance that would be encountered by national legislation in this field predicated on the in-

terstate commerce clause would be much greater than the resistance encountered by legislation using the 14th amendment as a constitutional base. I think there is a fundamental difference in the minds of many people toward these two grants of constitutional power to the Congress.

Basically, the 14th amendment is prohibitory, as the Court has said, whereas the commerce clause has been used, and the Court has properly held, to increase the power of the Federal Government at the expense of State and local authority.

There is a practical reason in my mind for preferring the 14th amendment approach. I think in this difficult area we are striving to get legislation that will have the maximum acceptability and if we can pass legislation which will accelerate the process of States passing proper statutes, adopting proper ordinances in this field, we will have served our purpose.

I think this will be done by the 14th amendment approach, but I think the resistance you will get if you pass legislation predicated on the commerce clause will be much greater and will in fact inhibit or stop the process that has been going on, that I think is extremely healthy, of localities and States adopting legislation in this field.

Mr. MEADER. Are you also concerned about stretching the equal protection of the law clause of the 14th amendment? One example, the case of *Baker* v. *Carr*, where the equal protection of the law has been used as foundation for Federal court scrutiny of legislative reapportionments, legislative districting, having previously been considered solely a matter for the legislature.

But the equal protection of the law clause was used as a foundation for Federal judicial intervention into this very important process in determining the composition of a legislative body. By using the equal-protection-of-the-law clause in this instance to reach the evil of discrimination in public accommodations, doesn't that in your judgment also constitute an extension of the equal-protection-of-the-law clause beyond what it has been thought it covered prior to the introduction of your bill?

Mr. MACGREGOR. I would agree, but I think the evils of using the interstate commerce clause are such in this area that we should take the preferred route of the 14th amendment.

Mr. MEADER. The regulation of interstate commerce and providing equal protection of the law can be so interpreted and stretched as to obliterate any meaningful State and local government; isn't that true?

Mr. MACGREGOR. Yes.

Mr. RODINO. One further question. I conclude from your testimony and recent statement in answer to questions of Mr. Meader, that your preference for going the 14th amendment route is based primarily on practical considerations, considerations that come up when you consider what might be real resistance when we apply the interstate commerce clause and not really a question of whether or not you extend one or the other.

Mr. MACGREGOR. My first considerations are constitutional, secondly, practical. The practical considerations include also what I believe can be enacted into law in this 88th Congress. I don't believe we

can enact into law a public accommodations law predicated on the interstate commerce clause.

Mr. RODINO. There have been grave questions raised as to its constitutionality and whether we can make it stick.

Mr. MACGREGOR. I have spent considerable time with Mr. Archibald Cox arguing this very point.

Mr. RODINO. We want here to reach a result or a goal that is practical, and to get to it as expeditiously as possible.

Mr. MACGREGOR. Right. May I quote again from the memorandum of Mr. Archibald Cox? "Speaking realistically, it is also plain that the Court would bend every effort not to invalidate an act of Congress outlawing so great an evil as racial discrimination in places of public accommodation." I cannot believe that the Committee on the Judiciary of the House of Representatives cannot draft a public accommodations section predicated on the 14th amendment in such a way that the Supreme Court would not uphold its constitutionality.

Mr. ROGERS. If that is true, you think we can sit down and draft one without any problems whatsoever, based upon the constitutionality as it comes from the 14th amendment alone?

Mr. MACGREGOR. I believe there are problems, but none that this committee cannot surmount.

Mr. ROGERS. What would be your reaction to the fact that the Supreme Court on the 24th day of May of this year in six separate cases has said that the States cannot enforce their trespass laws where an individual goes into a public accommodations place, as in Greenville, S.C., and as in the case involving customs, and that any person who violated a trespass law has a perfect defense to that prosecution, because he can plead he is denied his rights under the Constitution?

Now, if the Supreme Court will not enforce State laws in that instance, why should we pass any legislation? Because everybody then has a right to go into any public place and sit there until they are served. They can't throw them out, can't prosecute them. So why should we pass any legislation?

Mr. MACGREGOR. Not the least of the reasons we should pass any legislation is that in my opinion this legislation would accelerate the adoption of the statutes and ordinances in those States and communities which don't now have ordinances outlawing discrimination in public accommodation.

Mr. FOLEY. That was the problem in the Louisiana case.

Mr. ROGERS. They don't have a city ordinance.

Mr. FOLEY. But the mayor made statements, the chief of police made statements, and they used the police to eject them, even though there was not a law requiring segregation at lunch counters. But the Court in that case ruled the announcement of the mayor and the chief of police was the equivalent of law, and they brought it under the customs principle.

Mr. ROGERS. I assume your provision here would bring it under the customs as well as the authorization to do business under the State statute?

Mr. MACGREGOR. I wouldn't expect the Supreme Court, going back to Mr. Meader's question and comments earlier, would draw any nice distinctions between action or inaction, an actual ordinance or lack of

an ordinance, if in fact the influence of the State officials encouraged discrimination in places of public accommodation.

Mr. FOLEY. The Court has said that inaction is the equivalent of action.

Mr. MACGREGOR. I am aware of those cases.

Mr. FOLEY. This brings us back to the problem Mr. Rogers just raised. A case that has been reargued in the Supreme Court, involves the Glen Echo Amusement Park, where they had their own private police. The catch is that two of those private policemen are deputized as deputy sheriffs. That may be the pivotal point.

Mr. MACGREGOR. I have been interested in reading about it, to see whether the Supreme Court will meet that issue head on or dodge it.

Mr. MEADER. I have glanced through H.R. 6780, and I ask you as one of the authors of this legislation, whether it is your intention that if your bill becomes law the Federal Government preempts the field of discrimination in public accommodations and therefore the laws of the 32 States that have laws prohibiting discrimination in public accommodations would be invalidated thereby and anyone prosecuted under those State laws could plead the defense that the Federal Government preempted the field?

Mr. MACGREGOR. That is not our intention.

Mr. MEADER. Do you think there should be language that would say any State laws are not affected by this legislation unless they are so inconsistent that the two cannot stand together?

Mr. MACGREGOR. Yes. I would think so.

Mr. ROGERS. Thank you very much for coming.

Our next witness is the Honorable Basil Whitener, member of this Judiciary Committee, who has served in Congress long and well.

Mr. Whitener, you are welcome.

STATEMENT OF HON. BASIL L. WHITENER, MEMBER OF CONGRESS FROM THE 10TH DISTRICT OF NORTH CAROLINA

Mr. WHITENER. Mr. Chairman and members of the subcommittee, I have asked for this opportunity to discuss the so-called civil rights legislation because of my deep feeling that the proposals pending before this subcommittee are not to the best interests of the people of the United States.

Mr. DONOHUE. Mr. Whitener, do you have copies of your remarks?

Mr. WHITENER. Unfortunately I have been presiding over another subcommittee, Mr. Donohue, which has been meeting morning and evening, and I only dictated this late last evening. It is a rough draft. We will have copies later.

Mr. DONOHUE. Thank you very much.

Mr. WHITENER. In previous years when similar legislation was before the Congress many of our colleagues from the South were accused of being emotional over the issue involved. This allegation was true in many cases. The reverse seems to be true today. Emotionalism is readily apparent when one witnesses the conduct of proponents of the present legislation in Government and outside of Government and observes the contrasting calmness of the opponents.

This emotionalism about which I speak has been manifested in overt acts on the part of individuals who join with others in making up

a marching mob, as well as by the conduct of others who sit on the sidelines and urge further extremism on the part of these marching masses.

No one who believes in our system of democracy would deny to others the right to assemble peaceably or to petition their Government at all levels where the people feel that they should proceed in that manner. It is an entirely different thing, however, to encourage lawlessness and to promote conditions from which lawlessness is likely to result. I believe that many mistakes have been made in this country in recent months in this direction. Furthermore, I think that pressing for the type of legislation now pending in the Congress of the United States is contributing heavily to the creation of the multiplicity of lawless acts which we have witnessed in recent months in the name of civil rights.

As I appear before this subcommittee today, I believe that I am, in fact, speaking for the so-called minority groups of the Nation. I say this because of my firm conviction that most of the proponents of the various repressive bills pending in this committee are strong advocates of our system of representative democracy. If we believe in a representative democracy, we must also believe that the majority will always prevail. If this be true, it seems to me that the very law which many today contend will serve as the protection of the minorities may well become a curse to the minorities.

Recently we saw a good example of what may happen at some future date if the present trend is continued. I am told that the anti-parade ordinances of the city of Birmingham, Ala., were promulgated by the city council of that city in the 1920's for the purpose of preventing parades by the Ku Klux Klan against the Negro race. I am sure that those who today propose so-called civil rights legislation would have commended the governing board of Birmingham for their zeal in protecting some of the citizens of that city from the excesses of the Ku Klux Klan at the time the ordinances were adopted.

Yet, in recent months, the Federal courts have stricken down those ordinances on the ground that they unconstitutionally denied to the Negro race the right to parade and assemble in the promotion of their lawful rights. Although the original purpose of these ordinances was to protect against mob rule, it is interesting to note that the very persons whom they sought to protect have been parties to turning the clock backward and opening the door for a revival of marching of disorderly mobs of any political or sociological persuasion.

Let me at this point assure you that I do not for one moment condone the deprivation of any person's rights. I do not believe that the people of my home State of North Carolina would want me to support legislative proposals which would have that effect. We have a splendid record of race relations in our State, and I can assure you that our people are proud of that record.

The thinking people of North Carolina, however, regardless of their race or color, do not, in my opinion, countenance the further encroachment of the Federal Government upon areas which have been historically reserved to the people and to the States. They believe, as do I, that the Constitution of the United States must be considered contextually, and not piecemeal. They would join with me, I am sure, in saying that article I, section 8, which gives to the Congress the

"power to regulate commerce * * * among the several States," is of no greater force than amendments IX, X and XIV. Each of these provisions of the Constitution should be given equal weight by all Americans, particularly by those of us who have on several occasions taken a solemn oath to uphold and support the Constitution of the United States.

This Union is composed of 50 sovereign States. It has only those powers specifically granted to it by the sovereign States which ratified the Constitution. It is well known that several States, including the State of North Carolina, refused to ratify the Constitution until there had been written into it the first 10 amendments. This delay was occasioned by the conviction of the people of these sovereign States that the Constitution should make it abundantly clear that those powers and rights given to the Federal Government were spelled out in the Constitution and that all other rights and powers not delegated to the United States were reserved to the States and to the people.

The language of amendment IX is very clear. It says:

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

If amendment IX left any doubt as to the intent of the ratifying States on this subject, it should have been resolved by amendment X, which says:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States are reserved to the States respectively, or to the people.

I am familiar with the argument that has often been made by many that the 14th amendment has unlimited application to almost any factual situation that one can conjure up. I think it is sufficient to say in connection with the instant legislative proposals that in some measure the Supreme Court of the United States struck down some of these contentions in the famous civil rights cases (109 U.S. 3 (1883)).

Mr. Chairman, I do not want to unduly burden the committee with testimony, but I would like to take a sufficient amount of time to briefly discuss certain phases of H.R. 7152, which was introduced by the chairman of the committee, Mr. Celler of New York.

Mr. MEADER. Mr. Chairman, before our colleague proceeds to that: The gentleman is, of course, a member of the Judiciary Committee, and referred to the several provisions of the Constitution and the oath of office taken by this body.

Is it the gentleman's view that in considering the constitutionality of the proposed legislation we should only be concerned with our prediction as to what the Supreme Court may determine or decide in a case presented to it challenging the constitutionality of the legislation? Or is he of the opinion that we, because of our oath of office, must independently arrive at our own judgment as to the constitutionality of legislation that we adopt, not guided solely by what we think the Supreme Court may decide, but applying constitutional principles in our own, independent, separate judgment?

Mr. WHITENER. When I took the oath on several occasions, upon becoming a member of the bar, upon entering upon other public offices, and on four occasions when entering upon a new Congress, I heard nothing in that oath which directed me to urge the Supreme Court

of the United States to support and defend the Constitution. I took the oath to do it myself. I don't think it would be quite accurate to say that in considering legislation I would consider only the constitutional questions. But I think I have a sworn duty to consider the constitutional questions which legislation might give rise to.

Mr. MEADER. Do you conceive that duty to have been discharged if you confine your thinking merely to what you believe the Supreme Court may hold to be constitutional?

Mr. WHITENER. I think any lawyer worthy of his license should have ceased trying to predict the Supreme Court of the United States at least 12 years ago. I do not engage in trying to predict what this Court will do.

I just have to try to apply the limited knowledge that I have acquired as I came along with my education in law school, and experience in law practice, and do the best I can, and pray to heaven one of these days they will start doing the best they can.

Mr. MEADER. If in your judgment this legislation is unconstitutional, wholly without reference to what you think the Supreme Court may do, but you believe, as many have testified here, that the Supreme Court has been far ahead of Congress in the civil rights field and would uphold almost any legislation we would pass, which of the two courses would you utilize in determining your decision on this legislation?

Mr. WHITENER. I don't know that I agree with you that they are far ahead. It depends on whether one thinks what they are doing is to the best interest of the country.

Mr. MEADER. I merely say, some people have said they are.

Mr. WHITENER. All of us who run for office know what some people say is not always true. I don't think the Supreme Court is ahead of us particularly. I will touch upon some of these things as I go along further.

This bill, I am told, represents the thinking of the President and the Justice Department and is generally deemed to be the administration bill relating to civil rights.

I note that in section 2(a) it is stated that many citizens—

solely because of their race, color, or national origin, are denied rights and privileges accorded to other citizens and thereby subjected to inconveniences, humiliations, and hardships.

You will note that at no point is there a legislative finding that citizens because of their religion have experienced inconveniences and hardships.

Yet, when we get to section 2(b) and succeeding portions of the bill, we find that the law would be made to apply to "race, color, religion, or national origin." I wonder what the purpose of inserting "religion" into the legislation can be. Could this be a desire to strike down the principle of separation of church and state?

In the absence of a finding that discrimination has existed because of the religion of citizens, is there any useful purpose to be served by bringing religion into this legislation? It seems to me that it would be equally proper to include many other areas of alleged discrimination between human beings if religion is to be so specifically mentioned. We might with equal fervor undertake to outlaw by statute discrimination based upon ability, age, sex, physical condition, and any number of other factors which have been alleged to have caused discrimination among people.

I have had complaints in connection with civil service laws and regulations that there is discrimination in favor of war veterans and against nonveterans. Would this committee recommend that we strike down the veterans preference provisions of existing law because they are discriminatory?

There is no more vicious discrimination experienced in this country in the field of employment of individuals than that faced by our aging. Industry and Government agencies alike have policies which discriminate in favor of the younger citizen and against the aging citizen. Would this committee, in the interest of protecting the civil rights of this large segment of our population, be willing to include them in the categories of individuals against whom discrimination will not be tolerated in the future?

When we look at title I of the legislation, we see a repetition of the effort to bring about the establishment of Federal regulation of local elections under the guise of protecting the civil rights of certain individuals. This is done notwithstanding the provisions of amendment XVII to the Constitution, which became effective on May 13, 1913, approximately 43 years after the proclaimed effective date of the 15th amendment.

In the 17th amendment it was specifically provided that members of the U.S. Senate should be elected by electors in each State who have "the qualifications requisite for electors of the most numerous branch of the State legislatures."

In this connection I refer you also to article I, section 2 of the Constitution, where the same language is engrafted in the Constitution by the men who wrote it originally. It seems this more recent constitutional provision, the 17th amendment, clearly provides that the States shall determine the qualification of voters so long as they do not violate the provisions of the 15th amendment in its guarantee that persons shall not be deprived of their voting right "on account of race, color, or previous condition of servitude."

If there should be any misconduct on the part of the States in the area of voting rights, it would seem to me that legislation heretofore enacted by the Congress gives to the alleged victims of discrimination every legal weapon needed.

Title II of the bill would seek to give injunctive relief against discrimination in public accommodations. This legislative effort seems to take a two-pronged approach by extending the 14th amendment and the commerce clause (art. I, sec. 8) to alleged discrimination in places catering to the general public. The approach suggested by this legislation in net effect would destroy the civil right of the owner of private property to exercise his own judgment and discretion as to those whom he would entertain or serve on his private property.

I have undertaken to do research upon this subject, including reading the Federalist Papers of Alexander Hamilton, John Jay, and James Madison, and other treatises upon the commerce clause. In none of my research did I find any indication that the authors of the Constitution contemplated that the commerce clause would be stretched to include those matters set forth in H.R. 7152.

The commerce clause seemed to mean to them what its clear language means to any reasonable person reading the language. It was

intended purely and simply to prevent individual sovereign States from creating and erecting trade barriers which would interfere with the free flow of commerce between the several States.

It was not, in my opinion, within the contemplation of the authors of the Constitution that once an article traveling in interstate commerce had come to a stop that the fact that it had theretofore traveled in interstate commerce would give rise to Federal jurisdiction over its use and over every building or plot of realty in or upon which it came to rest.

The provisions of title II constitute an unwarranted invasion of private property and personal rights and a thwarting of the intent of those who gave to us the Constitution. It is my considered opinion that valid reasoning, does not support the position taken by the proponents of this title of the pending bill.

Title III of the bill would further extend the role of the Federal Government in the field of public education in an unconstitutional manner. There are ample guidelines established by judicial decision with reference to the question of segregation in the public schools. While many of us disagree with some of the decisions of our Federal courts on this subject, we cannot erase them by our disagreement.

At the same time we cannot countenance the language of title III which would seek to bribe with money or punish by withholding money from the communities faced with the problems brought about by previous court decisions and acts of Congress. I suggest that title II should not be enacted.

Mr. McCULLOCH. Mr. Chairman, at this point I should like to ask of our colleague a question.

In view of what our colleague has said in connection with title III, and jumping now to title VI——

Mr. WHITENER. I am going to come to that in a minute.

Mr. McCULLOCH. Is the witness going to discuss the authority which I believe this bill gives to a single individual to determine whether or not a state of facts exists and, if that single individual determines that a state of facts does exist, to have the authority without recourse, hindrance or review, judicial or otherwise, to withhold grants of public funds to States or politicial subdivisions thereof? Is the witness going to discuss that?

Mr. WHITENER. I am going to touch very briefly on it, as I have other things. I did not want to take the time of this committee to go through this bill line by line, because it would have taken 2 or 3 days to really thoroughly discuss the subjects and the apprehension that I have about them.

Mr. McCULLOCH. Of course we are pleased that our colleague does not wish to take any more time of the committee than is necessary. But title III and title VI touch upon such important principles that any reasonable time taken to discuss them will in my opinion serve a useful purpose.

I again must refer to the penalty that has been inflicted upon the State of Ohio by the decision of a single public administrator, without review, either administrative or judicial. And I think that the people of this country ought to know the proposed authority that is lodged in a single person, in my opinion without judicial or administrative review.

I take this time to mention that, for that reason. And I hope our very able colleague will go into this aspect of this proposal.

Mr. WHITENER. Thank you, sir.

Title IV would create a new bureaucracy known as Community Relations Service. It seems that this agency would serve no useful purpose in view of the plenary evidence already before this committee of the commendable efforts on the part of communities throughout the Nation to voluntarily meet the problems brought about by race relations issues.

This is particularly true in view of the fact that title V of the bill would perpetuate the Civil Rights Commission and give its powers to do many of the same things that title IV would confer upon the new bureaucracy.

The other titles of the bill are equally unwarranted. Title VI would penalize citizens of an area by denying to them the benefits of Federal assistance available to citizens of another geographical area notwithstanding that there is not a concurrent relief extended to them in their financial support of their Government through tax payments.

It may well be that an individual living within one of the areas deprived of the federally assisted program would suffer a deprivation by reason of conduct of others with which he is not in sympathy. Instead of eliminating discrimination it seems to me that title VI and title VII of the bill can very well be instruments of discrimination rather than the destroyers of discrimination.

Mr. MCCULLOCH. There, Mr. Chairman, I would like to ask the witness a question. I would like to ask the witness whether or not he believes that any single individual in our representative Government should have the unbridled authority to determine questions of fact and act thereon to penalize a State or political subdivision, that authority being unreviewable either by court or by another administrative agency?

Mr. WHITENER. Mr. McCulloch, let me say before answering your question that I have every confidence that the State which the gentlemen from Ohio, and the one which I am privileged to represent, will probably have as little cause for alarm about the practical application of this title VI as any two States that we could select in the Nation.

But I don't think that that should be the basis for legislative determination by any of us who are privileged to help make these bills law.

Mr. MCCULLOCH. I certainly agree with the statement just made by our colleague. I think it is a good rule, and the rule was given me, I think the first week that I was a Member of Congress by one of my distinguished colleagues of that time, Mr. Mitchener, who was at one time chairman of this committee. His advice to me was not to consider only that which was likely to happen, but that which could happen under the legislation enacted. Particularly in this field I agree that Ohio may be one of the last States in the Nation to feel the sting of the lash of the single administrator because of racially discriminating practices.

But in other fields we have already felt the sting of the lash, which is fully documented in the early part of this record, and in a field which is as much touched with humanitarian conceptions as is education, because Ohio was denied Federal funds to which they con-

tributed more than they were to get back, for needy aged, at the decision of one administrator, unreviewable either in court or by another administrative body.

Mr. WHITENER. Getting specifically to your question, Mr. McCulloch, it seems to me the President of the United States answered this question which you propound some months ago in the way that I would have hoped the administration and others would have continued to answer.

You will remember there was some contention on the part of some Members of the other body—and maybe of this one—that there be a cutoff of Federal assistance in certain States which were alleged to have been engaging in discriminatory practices. As I recall the press stories on that, the President of the United States said he had neither the constitutional nor legal authority to issue an Executive order and cut off these funds. And, as I remember the newspaper stories, he was further quoted as saying, "And I am not sure that any man ought to have that authority."

Now I am not purporting to be entirely accurate in my quotation of the President. But this was the substance of what I remember to be the newspaper reports on that subject.

I would certainly agree with you that the one big problem that those of us who want to preserve civil liberties and individual freedom are confronted with is this business of so many Government administrators having, or assuming, rather large personal powers against which action the average citizen has no redress.

I think you and I could discuss title VI all day today and all day tomorrow without wasting a lot of time. But it seems to me here we have folks saying, on the one hand, that there must be equality of treatment of people. Yet they say, in legislative proposal, that if a majority of the people in an area have a different sociological concept from a minority in that area, that this minority, and this is not talking of color of skin, religion, or anything else, but that this minority then will have only the privilege of paying taxes and not an equal right with citizens in another area to participate in the programs of this Government.

To me this just doesn't seem to tie in very well with this great zeal some of them profess to have for civil liberties or civil rights.

Now, Mr. Chairman, if it were not for the limitation of time I would like to go over the entire bill, line by line, with the members of the subcommittee. Since I am privileged to be a member of the full Committee on the Judiciary, I will reserve that privilege until we come to consider the bill in full committee. At that time I hope that I will be able in a more extended manner to set forth my objections to H.R. 7152, if it is reported out by this subcommittee.

In conclusion, let me again make it abundantly clear that I do not undertake here today to speak emotionally, or to speak in favor of depriving anyone of their constitutional rights, whether they be civil rights or some other kind of rights.

Each of you is a trained and experienced attorney of law. You can recognize the constitutional issues involved in this legislation. I can only express the hope that as you come to consider the course of action that you will take, that you will give to our Constitution the respect which it has earned as the greatest political document in the history of mankind.

Thank you, Mr. Chairman, for permitting me to spend these few minutes with you.

Mr. ROGERS. Any questions?

Thank you, Mr. Whitener. We look forward to further discussion of this matter, if and when the subcommittee may report it to the full committee.

We appreciate your expression of your views this morning.

Mr. WHITENER. Thank you. I appreciate your patience with me.

Mr. ROGERS. Thank you.

The next witness is Representative James Roosevelt, of California.

Mr. Roosevelt, you are welcome to this subcommittee. We understand you have a prepared statement which has been circulated around.

Mr. ROOSEVELT. Yes, Mr. Chairman.

May I first express my appreciation for the privilege of coming before you. I would like, Mr. Chairman, to have my full statement inserted in the record, because time is rather late.

Mr. ROGERS. We will insert the entire statement in the record, and you proceed in your own manner.

Also, you have another document entitled, "Equal Employment Opportunity Act of 1963."

Mr. ROOSEVELT. I will refer to that in my testimony, and I would like to have it inserted in the record, if I may, sir.

Mr. ROGERS. Permission granted. You may proceed.

STATEMENT OF HON. JAMES ROOSEVELT, MEMBER OF CONGRESS FROM THE STATE OF CALIFORNIA

Mr. ROOSEVELT. As a cosponsor of the Civil Rights Act of 1963, I am grateful to the committee for this opportunity to add a few words of support for this most urgent and important legislation.

To me, as a nonlawyer, the actual essence of the bill and the basic reasons why it should be speedily passed, are all contained in the opening sentence of the act, which reads:

> Discrimination by reason of race, color, religion, or national origin is incompatible with the concepts of liberty and equality to which the Government of the United States is dedicated.

This, I submit, is the heart of the matter; complete, concise, and well-nigh unarguable.

Certainly no one could—or would wish to—deny that our Government is indeed dedicated to liberty and equality. Neither can I see how it could be logically argued that arbitrary discrimination by reason of race or religion does not constitute the complete negation—the subversion, if you will—of that high purpose; for he who has no franchise is not free and he who may not eat in a public restaurant is not equal.

Full U.S. citizenship is a two-way street: it confers privileges and it entails obligations. He who accepts the one and eschews the other, is a cheat. He who is denied the one and deliberately burdened with the other is the victim of a cheat. Neither is a full citizen.

In the first case, the individual is remiss; in the second case, the Government is remiss—and most grievously so. For how can we possibly justify the ordering into military service of a citizen who is not allowed to vote, or the collection of his full share of taxes from a

citizen whose children are not allowed to go to a public school or swim in a public pool? These are truly things to shame us and the shame must be dispelled without delay.

Nor can we be equivocal, or leave ourselves open to charges of half-heartedness, in coming to grips with these grave injustices. We are already far too late and we must not also be too little.

We must restore meaning to our words and phrases. A "public facility" must be open to the public, not just to white Protestants, preferably of Anglo-Saxon stock. "Equality of opportunity" must mean that each man is judged upon his merits and given the job for which he is qualified or the promotion which he has earned.

Much has been made of the right of the individual to run a public place on his or her own terms. This ignores the fact that when you choose—for you are never forced—to run a public place, you assume certain obligations. This has long been recognized for all kinds of businesses in many and varying areas of public responsibility. This is an area where that public responsibility must be recognized and enforced, even at this late date.

Only in this way, in this free confession of previous error, can we make some amends for the great wrongs which we have all abetted in the past. Only in this way can we stand with clean hands before the world, before our fellow citizens, and—perhaps, most importantly—before ourselves.

I urge, without reservation, the speedy passage of the civil rights proposals which the President has put before us.

Mr. Chairman, my remarks thus far have been confined to demonstrating my firm belief in the necessity for immediate enactment of effective civil rights legislation in general. May I now direct your attention to a more specific proposal in this area which is of particular concern to me.

On June 19, the President delivered an address to the Congress encompassing the administration's civil rights proposals for 1963. In part III of that message the President turned to the problem of "Fair and Full Employment." The President described how employment falls with special cruelty on minority groups and how it tends to create an atmosphere of frustration, resentment, and unrest which does not bode well for the future. He further related the direct relationship of this problem to delinquency, vandalism, gang warfare, disease, slums, and the high cost of public welfare and crime. Also cited were last month's labor difficulties in Philadelphia which the President perceptively indicated could be only the beginning if more jobs were not found in the larger Northern cities in particular. Further events have proven the President's forecast to be accurate as a cursory examination of daily news reports will demonstrate. One more persuasive point which the President made with respect to the importance of fair employment was its major role in determining whether the other civil rights measures which he was recommending would be meaningful. There is little practical value in securing the right to frequent public accommodations for the individual who has no cash in his pocket and no job.

Having described the problem of unemployment and its impact upon minority groups, the President stated emphatically, "Finally racial discrimination in employment must be eliminated."

Nine-position statements follow this explicit declaration. It is to two of these I wish to turn the committee's attention.

Paragraph (A) requests a permanent statutory basis for the Committee on Equal Employment Opportunity, under the chairmanship of the Vice President.

Paragraph (I) reiterates the President's support of Federal fair employment practices legislation, applicable to both employers and unions. "Federal legislation is desirable," the President stated, "for it would help set a standard for all the Nation and close existing gaps." The first point relating to the President's Committee is encompassed in title VII of H.R. 7152, the proposed Civil Rights Act of 1963. The second point, however, is not covered in those titles, but is covered by a bill which I introduced, H.R. 405, to prohibit discrimination in employment because of race, religion, color, national origin, or ancestry. This bill has been reported from the Committee on Education and Labor with substantial bipartisan support. Five of the twelve Republican members of the Committee urge passage of H.R. 405 without delay, describing it as a fair and effective bill.

Two additional Republican members support this legislation in principle, but advocate a modified enforcement procedure.

This is a truly bipartisan effort, with substantial bipartisan sponsorship.

Though some important suggestions were rejected by the Democrats, we feel that the bill in its present form would be fair and equitable, 7 out of the minority of 12 specifically supported the proposed measure, with the disagreement that I have noted on one particular aspect of it.

H.R. 405 is now before the Committee on Rules, where, to be frank, I am not optimistic over the further progress along the route to the floor.

Acting Chairman ROGERS. Do you think this will help the civil rights bill, if we put that section in our civil rights bill?

Mr. ROOSEVELT. I do, strongly. I think it keeps us from fragmenting the considerations of civil rights. I think this has bipartisan support. I think instead of it being spread all over the lot, being spread all over the lot on civil rights, we can meet the full issue in one action, and that it would be proper for this committee to consider this.

Mr. MCCULLOCH. Does the witness know why a title covering this bill was not included in the original administration bill?

Mr. ROOSEVELT. I do not, except that possibly because the hearings had already been held. It was felt that it was already before Congress, and that it wasn't necessary to repeat it in the same bill.

It may be because of lack of understanding of the legislative process that it wasn't realized it could be encompassed under those circumstances.

Mr. MCCULLOCH. Does the witness know whether or not the administration is now recommending that this title be made a part of the so-called administration bill?

Mr. ROOSEVELT. I am not authorized to speak for the administration.

Mr. MCCULLOCH. You notice, I said, "Does the witness know,".

Mr. ROOSEVELT. Let me say that inclusion in the bill by the Judiciary Committee would have the full support, is my understanding, of the administration.

Mr. McCULLOCH. I was in the civil rights battle of 1957, and still remember the failure of this committee and the House to receive support from the other body to enact a key provision.

I am trying to get at the very basis of this proposal now, from all of those who are interested in any manner.

Mr. ROOSEVELT. May I say, the gentleman's distinguished record in this matter has a great deal of bearing in our consideration of the bill.

You will find in my proposed amendment the principles you discussed with the previous witness were brought up by the minority members, in particular, and if we will look at it, I would hope we will find the specific things he was objecting to have been taken care of in our version, whereas in title VI, I agree, that it is not taken care of in the present instance.

Mr. MEADER. Mr. Chairman, the gentleman mentioned he was not optimistic over further progress in the route to the floor from the Rules Committee.

Mr. ROOSEVELT. That is correct.

Mr. MEADER. I believe I read an article this morning that the leadership was more or less pleading with the Rules Committee not to let this bill out on the floor.

Does the gentleman have any information as to whether that is the case?

Mr. ROOSEVELT. I have not discussed this with the leadership. It is my understanding that the leadership has done so only in the hope that we could legislate more effectively by having one go-around, not two, on the question of civil rights.

Mr. MEADER. I also understood the chairman of the gentleman's committee gave some indication that he did propose to bring this legislation up.

Mr. ROOSEVELT. I am authorized to say that if this committee; that is, the full Judiciary Committee, will put into this bill essentially what has been passed by our committee after long hearings and a great effort to reach a bipartisan consensus, we would be delighted, we would support it, and would take no further action of any kind on our bill.

Mr. ROGERS. You don't want any judicial fight, in other words.

Mr. ROOSEVELT. We do not. There would be none. I would be happy to assure the gentleman of that in writing.

Mr. McCULLOCH. Mr. Chairman, this committe has been proceeding with the widest possible hearings. It has been the intention of the chairman, and I am commending him for it, to give every person and organization his day in court. And it is my opinion that it will be 2 or 3 weeks before there would be a decision reached on this title.

Is rapid progress the most important idea in the opinion of the witness, on this title that he proposes, in his bill, H.R. 405?

Mr. ROOSEVELT. I would say to my good friend, knowing the necessities of legislative action, that the 3 or 4 weeks, if it is going to take that long for final decison by the Judiciary Committee for its feelings on this matter, is something we on the Committee of Education and Labor—something we would sit by and take, as a means of making it less time consuming in the longrun effort, and to arrive at a better conclusion.

Mr. FOLEY. Among the article VII bills that this committee now has before it there are a few of the bills of the omnibus type which do contain FEPC provisions.

Mr. ROOSEVELT. Yes. I think Mr. Kastenmeier has it in his bill.

Mr. FOLEY Mr. Dingell has it in his bill, HR. 24, and there are a few others

You say, "Beginning with line 15, page 35, H.R. 7152, strike out all of the title VII and insert the following:".

Looking at the bill your committee, the Education and Labor Committee, reported on, I notice in the bill as amended and reported, quoting from section 3 of that bill, H.R. 405, it says:

> The term "employer" means a person engaged in an industry affecting commerce who has 25 or more employees, and any agency of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, or a State or political subdivision thereof.

Now, when you strike out all of title VII of H.R. 7152 and insert this, then you are also destroying the proposal that gives the President's Commission on Equal Employment Opportunity the statutory basis which was asked for.

Mr. ROOSEVELT. If the gentleman will read the rest of the amendment, which I presume he hasn't yet had time to study, I think he will find we have created and given statutory provision for the President's Committee, but limiting it only to discrimination in Government.

We did not feel that there should be two commissions with dual jurisdiction in this area.

Mr. FOLEY. How about the contracts, primary and secondary?

Mr. ROOSEVELT. We have given that to the Commission established under 405, but we have specifically said that there is nothing that still prevents the executive branch from denying to any contractor who doesn't do what is in there a contract. That is still the right of the Executive, but none of us can touch it, in my humble opinon, and backed, I think, by some study and legal advice.

We have not hamstrung the Executive. Actually we have simply made sure there will not be two overlapping jurisdictions on contracts. And we have given it to the Commission established under 405.

Mr. MCCULLOCH. Mr. Chairman, I am very happy to know that our colleague has in substance incorporated in 405, title II of 3139, which several of us introduced on June 31, 1963. It was our intention then and it is still our intention, to make this Commission a legislative commission with the necessary stature and importance it deserves and, of course, we limited its effective action to Government contracts.

Mr. ROOSEVELT. We have broadened it, I will have to say, so it covers the entire field. I would very strongly say it is not practical to have a Presidential commission with statutory authority, or not with statutory authority, operating in one area and having another, legislatively set up committee, operating in a private sector, where it might well conflict, and there might be a poor contractor who would have two commissions subsequently down his neck.

Mr. MEADER. I have glanced through this document, which I understand is your suggested minimum. I wasn't able to find, and wondered if the gentleman would point out, where the supervision of

Government contracts is provided for that is now conducted by the Presidential Commission on Equal Employment.

Mr. ROOSEVELT. In essence, by establishing jurisdiction over all people in interstate commerce, as any contractor doing business with the Government is in interstate commerce, we have automatically given it to the Commission as it is set up.

The principle is applicable to anybody with more than 25 employees after the 2 years have elapsed. "Employer" fully covers it, and automatically would give them jurisdiction.

Mr. FOLEY. Regardless of whether he is working on a Government contract or private contract?

Mr. ROOSEVELT. That is right. I don't think it is necessary to spell it out. You could point it out in the report.

Mr. MEADER. I notice on page 18, creation of a Federal Equal Employment Opportunity Agency, which I assume relates to employees of the U.S. Government.

Mr. ROOSEVELT. That is correct.

Mr. MEADER. That is one of the functions of the present Presidential Commission on Equal Employment.

Mr. ROOSEVELT. That is right. We felt the Executive should have the right to eliminate discrimination within the executive branch by his own special machinery, that would be set up to do it. It limits it to that area, and doesn't go out of that area. The minute he goes into the area of employees not employees of the Federal Government, then there would be a clear-cut place where everyone knows the Federal jurisdiction ends.

Mr. MEADER. But I want to get clear, if I can, where is the sanction now exercised by the President's Commission; namely the right to cancel a contract, or the requirement that there be written into a Government contract an antidiscrimination clause?

Mr. ROOSEVELT. We have said specifically in our proposed amendment, as you have it, I think in 7152, now, on page 35. I think you will find the words, in title VI, "All contracts made in connection with any such program or activity shall contain," and so forth, and you will find in our suggested amendment we have simply said, in essence, the same thing.

Mr. MEADER. Would this Commission created by 405 have the authority to cancel a contract?

Mr. ROOSEVELT. No, we leave that to the executive branch. The Commission itself cannot take away a contract.

The Commission itself only goes through the regular court procedure that is in 405, which requires a cease-and-desist order, and if such order is not obeyed, of course, he is in contempt. But the cancellation of the contracts we have left to the Executive specifically.

Mr. MEADER. It is not referred to in any way?

Mr. ROOSEVELT. It is being left to the Executive, it is referred to as being left to the Executive and being the right of the Executive.

Mr. MCCULLOCH. Does your bill provide for review of that finding and decision if a violation of law is found?

Mr. ROOSEVELT. It does. A review in the court, by either side, either the Government or the defendant.

Mr. ROGERS. That comes about by the issuance of a cease-and-desist order, then they go into the court, on review?

Mr. ROOSEVELT. That is correct.

Upon reflection, I now strongly urge that this committee give favorable consideration to the proposal that the substance of H.R. 405 be included in the omnibus civil rights bill by committee amendment. Fair employment practices are an inextricable part of civil rights. The goal of full civil rights for all of our people will be only partially attained should we obtain universally uniform voting rights, free and equally accessible education, and integration of all public facilities—only to discover that qualified persons are being retricted in opportunities for employment due to irrational and obstinate policies of discrimination.

This is a most fundamental problem. If not solved, it will result in economically perpetuated segregation even should all other vestiges of prejudicial discrimination disappear. Educated, trained, and skilled members of minorities are rejected from their rightful place in the labor force, and are justifiably bitter and understandably frustrated. Unskilled members of these same groups are placed below similarly untrained white workers, and suffer first and most extensively from unemployment. Passage of legislation to prohibit such discrimination is a necessary and vital part of a realistic civil rights program.

I have sought to establish the integral relationship of H.R. 405 to other civil rights legislation. I have pointed to the fact that the subject matter of discrimination in employment is presently contained in title VII of H.R. 7152.

You have approached the subject, but I don't think you have really gone over it.

I now wish to point to an area of overlapping between H.R. 7152 and H.R. 405 with respect to employment discrimination. Title VII of H.R. 7152 would apply to certain discrimination in employment by employers who are Government contractors or subcontractors or who participate in activities receiving Federal financial assistance.

H.R. 405 would also apply to such employers if they have over 25 employees and engaged in interstate commerce. Thus both Commissions would have jurisdiction over many of the same employers, though with different remedial procedures.

Further, H.R. 405, section 15, prescribes a policy for employment practices of Government agencies, an area also covered by title VII of H.R. 7152.

Moreover, to add to the possible confusion, the agency created by Mr. Celler's bill would be called the Commission on Equal Employment Opportunity, whereas the agency created by my bill would be known as the Equal Employment Opportunity Commission.

Your committee could easily make the two bills both effective and compatible, eliminate confusion, and avoid unwarranted duplication and cost, and report out a truly meaningful and effective bill, by incorporating into the omnibus civil rights bill the provisions of H.R. 405.

I propose an amendment, accompanied by an offer of assistance and cooperation by the staff of the Committee on Education and Labor who could work with your committee staff on this proposal and present our committee's position with regard to the enforcement provisions of H.R. 405, as developed through the bipartisan efforts of our members.

I also believe that I can assure you the support and cooperation of the members of the Committee on Education and Labor in this effort.

Due to the length of the amendment I shall not read it, but, rather, submit it for the hearing record and consideration by this committee. I shall also submit a copy of House Report 570 from the Committee on Education and Labor. This report details the background of H.R. 405 and provides an analysis of its provisions.

I would like to offer all of the testimony from the hearings we have held on this bill. It has been printed, it is available, and we would be happy to submit it for your consideration.

Very briefly, H.R. 405 establishes an Equal Employment Opportunity Commission with defined authority to prevent discrimination in employment by certain employers, labor organizations, and employment agencies.

The bill prescribes both informal and formal remedial procedures with emphasis upon education and informal methods of conference, conciliation, and persuasion.

The Commission may ultimately issue cease and desist orders following a hearing in conformity with the provisions of the Administrative Procedure Act. Such orders are without force or effect unless enforced by a court of law following judicial review.

Specific directives require the cooperation of the Commission with State agencies and require that the Commission withdraw from activities in a State which has effective power to eliminate such discrimination and is effectively exercising such power.

The amendment which I am today proposing to H.R. 7152 would authorize the President to establish an Equal Federal Employment Opportunity Agency with such power as the President may confer upon it to prevent discrimination in Government employment.

Nothing in this amendment, however, is intended to infringe upon or affect in any manner the Government's inherent right to regulate or control the granting, terms, or supervision of public contracts.

The integral relationship of the subject matter of H.R. 7152 and H.R. 405 supports my contention that they should be considered together as one bill. The overlapping, duplication, waste, cost, and inefficiency which would emanate if both bills became law betokens their simultaneous consideration by this committee to eliminate such consequences.

The opportunity and benefits to be gained through focusing attention upon civil rights legislation at one time rather than in a fragmented fashion points to a joining of two bills.

The bipartisan support that H.R. 405 has received should substantially aid in the passage of H.R. 7152 which, also, indicates the advisability of combining the two bills into a single package. For these reasons, I earnestly suggest that such action be taken.

As my final word before you today, I would like to state as sincerely and forcefully as I am able, my firm conviction that equal employment opportunity legislation cannot be conscientiously rejected at this time. Whether the wisest tactical approach is by amendment to the bill before you, at this stage of the legislative process or at a later stage, of course, I have to leave to your judgment.

However, I do strongly urge that, should you reject the tactic of amendment, you use your offices to attempt to bring these issues to

the floor at about the same time. I would offer 100-percent cooperation in such an effort. I believe this would contribute enormously to the prospect of passage of both proposals.

Further, it should be known that support of one bill or the other will not be recognized as a satisfactory contribution to a solution of the civil rights problem. Half of a remedy is insufficient. Both proposals must be supported and passed to progress toward an acceptable resolution of the problems we, as a nation, face.

Thank you, Mr. Chairman.

Mr. ROGERS. Thank you, Mr. Roosevelt.

Are there any questions?

If not, we appreciate the benefit of your testimony, and certainly we will consider it when we get down to writing this bill.

(Amended title VII of H.R. 7152 is as follows:)

Beginning with line 15, page 35, H.R. 7152, strike out all of title VII and insert the following:

"TITLE VII—EQUAL EMPLOYMENT OPPORTUNITY

"FINDINGS AND DECLARATION OF POLICY

"SEC. 701. (a) The Congress hereby finds that, despite the continuing progress of our Nation, the pratice of discriminating in employment against properly qualified persons because of their race, religion, color, national origin, or ancestry is contrary to the American principles of liberty and of equality of opportunity, is incompatible with the Constitution, forces segments of our population into substandard conditions of living, foments industrial strife and domestic unrest, deprives the United States of the fullest utilization of its capacities for production, endangers the national security and the general welfare, and adversely affects the domestic and foreign commerce of the United States.

"(b) The Congress, thererefore, declares that the opportunity for employment without discrimination of the types described in sections 704 and 705 is a right of all persons within the jurisdiction of the United States, and that it is the national policy to protect the right of the individual to be free from such discrimination.

"(c) The Congress further declares that the succeeding provisions of this Title are necessary for the following purposes:

"(1) To remove obstructions to the free flow of commerce among the States and with foreign nations.

"(2) To insure the complete and full employment by all persons of the rights, privileges, and immunities secured and protected by the Constitution of the United States.

"DEFINITIONS

"SEC. 702. For the purposes of this Title—

"(a) The term "person" includes one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

"(b) The term "employer" means a person engaged in an industry affecting commerce who has twenty-five or more employees, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, or a State or political subdivision thereof, (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954: *Provided*, That during the first year after the effective date prescribed in subsection (a) of section 720, persons having fewer than one hundred employees (and their agents) shall not be considered employers, and, during the second year after such date, persons having fewer than fifty employees (and their agents) shall not be considered employers.

"(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person; but shall not include an agency of the United States, or

an agency of a State or political subdivision of a State, except that such term shall include the United States Employment Service and the system of State and local employment services receiving Federal assistance.

"(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international organization.

"(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) one hundred or more during the first year after the effective date prescribed in subsection (a) of Section 720, (B) fifty or more during the second year after such date, or (C) twenty-five or more thereafter, and such labor organization—

"(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended; or

"(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

"(3) has charted a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

"(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

"(5) is a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

"(f) The term "employee" means an individual employed by an employer.

"(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

"(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959.

"(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rica, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

"EXEMPTION

"SEC. 703. This Title shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, or society.

"DISCRIMINATION BECAUSE OF RACE, RELIGION, COLOR, NATIONAL ORIGIN, OR ANCESTRY

"SEC. 704. (a) It shall be an unlawful employment practice for an employer—

"(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, religion, color, national origin, or ancestry; or

"(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, religion, color, national origin, or ancestry.

"(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, national origin, or ancestry, or to classify or refer for employment any individual on the basis of his race, color, religion, national origin, or ancestry.

"(c) It shall be an unlawful employment practice for a labor organization—

"(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, religion, color, national origin, or ancestry;

"(2) to limit, segregate, or classify its membership in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, religion, color, national origin, or ancestry; or

"(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

"(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management commmittee controlling apprenticeship or other training programs to discriminate against any individual because of his race, religion, color, national origin, or ancestry in admission to, or employment in, any program established to provide apprenticeship or other training.

"(e) Notwithstanding any other provision of this Title, it shall not be an unlawful employment practice for an employer to hire and employ employees of a particular religion or national origin in those certain instances where religion or national origin is a bona fide occupational qualification reasonably neecssary to the normal operation of that particular business or enterprise.

"OTHER UNLAWFUL EMPLOYMENT PRACTICES

"SEC. 705. (a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this Title, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Title.

"(b) It shall be an unlawful employment practice for an employer, labor organization, or employment agency to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on race, religion, color, national origin, or ancestry, except that such a notice or advertisement may indicate a prefernce, limitation, specification, or discrimination based on religion when religion is a bona fide occupational qualification for employment.

"EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SEC. 706. There is hereby created an independent agency to be known as the Equal Employment Opportunity Commission, which shall consist of an Equal Employment Opportunity Board (hereinafter referred to as the "Board"), and an Office of the Administrator of the Equal Employment Opportunity Commission (hereinafter referred to as the "Office") which shall be headed by an Administrator of the Equal Employment Opportunity Commission (hereinafter referred to as the "Administrator").

"EQUAL EMPLOYMENT OPPORTUNITY BOARD

"SEC. 707. (a) It shall be the function of the Board to hear and determine complaints involving unlawful employment practices brought before it under this Title by the Administrator, and to issue appropriate orders in connection therewith to enforce this Title.

"(b) The Board shall be composed of five members, not more than three of whom are members of the same political party, who shall be appointed by the

President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of two years, one for a term of three years, one for a term of five years, one for a term of six years, and one for a term of seven years, beginning from the date of enactment of this Title, but their successors shall be appointed for terms of seven years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board, and one member to serve as vice chairman. The vice chairman shall act as chairman in the absence of disability of the chairman or in the event of a vacancy in that office.

"(c) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and three members thereof shall constitute a quorum. The Board shall have a seal which shall be judicially noticed.

"(d) Each member of the Board shall receive a salary of $20,000 per year, except that the chairman shall receive a salary of $20,500. The Board shall employ a Secretary of the Board and such other officers and employees as it deems necessary.

"(e) The Board shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken; and shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

"(f) The principal office of the Board shall be in the District of Columbia, but it may meet or exercise any or all of its powers at any other place.

"ADMINISTRATOR OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"SEC. 708. (a) The Office shall be composed of the Administrator and such officers and employees appointed by him as may be necessary to enable him to carry out his functions. The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years, and shall be eligible for reappointment. The Administrator shall receive a salary of $20,500 per year.

"(b) The Administrator shall have power—

"(1) to cooperate with and utilize regional, State, local, and other agencies, both public and private, and individuals;

"(2) to pay to witnesses whose depositions are taken or who are summoned before the Administrator or any of his agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

"(3) to furnish to persons subject to this Title such technical assistance as they may request to further their compliance with this Title or an order issued thereunder;

"(4) upon the request of any employer, whose employees or some of them refuse or threaten to refuse to cooperate in effectuating the provisions of this Title, to assist in such effectuation by conciliation or other remedial action;

"(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this Title and to make the results of such studies available to interested governmental and nongovernmental agencies; and

"(6) to create such local, State, or regional advisory and conciliation councils as in his judgment will aid in effectuating the purpose of this Title, and the Administrator may empower them to study the problem of discrimination forbidden by this Title and to foster through community effort or otherwise good will, cooperation, and conciliation among the groups and elements of the population, and make recommendations to the Administrator for the development of policies and procedures in general and in specific instances. Such advisory and conciliation councils shall be composed of representative citizens resident of the area for which they are appointed, who shall serve without compensation, but shall receive transportation and per diem in lieu of subsistence as authorized by section 5 of the Act of August 2, 1946 (5 U.S.C. 73b–2), for persons serving without compensation. The Administrator may make provision for technical and clerical assistance to such councils and for the expenses of such assistance.

"(c) Attorneys appointed under this section may, at the direction of the Administrator, appear for and represent the Board or Administrator in any case in court.

"(d) The Administrator shall, in any of his educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

"PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

"SEC. 709. (a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in sections 704 and 705.

"(b) Whenever a verified written charge has been filed by or on behalf of any person claiming to be aggrieved, or a verified written charge has been filed by the Administrator where he has reasonable cause to believe a violation of this Title has occurred, that any person subject to this Title has engaged in any unlawful employment practice, the Administrator shall notify the person charged with the commission of an unlawful employment practice (hereinafter referred to as the "respondent") of such charge and shall investigate such charge and if he shall determine after such preliminary investigation that probable cause exists for crediting such written charge, he shall endeavor to eliminate any unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such endeavors may be used as evidence in any subsequent proceeding.

"(c) If the Administrator fails to effect the elimination of such unlawful practice and to obtain voluntary compliance with this Title, or in advance thereof if circumstances warrant, the Administrator shall issue and cause to be served upon the respondent a complaint stating the charges in that respect, together with a notice of hearing before the Board, or a member thereof, or before a designated agent, at a place therein fixed, not less than ten days after the service of such complaint. In the event the Administrator shall fail or refuse to issue such complaint within a reasonable time, the person filing such charge may petition the District Court of the United States for the District of Columbia, or a district court of the United States within any district wherein the unfair employment practice in question is alleged to have occurred or wherein such person resides or transacts business, and such courts shall have jurisdiction to require the Administrator to issue such complaint. No complaint shall issue based upon any unlawful employment practice occurring more than six months prior to the filing of the charge with the Board unless the person aggrieved thereby was prevented from filing such charge by reason of service in the Armed Forces, in which event the period of military service shall not be included in computing the six-month period.

"(d) The respondent shall have the right to file a verified answer to such complaint and to appear at such hearing in person or otherwise, with or without counsel, to present evidence and to examine and cross-examine witnesses.

"(e) The Board or a member or designated agent conducting such hearing shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend its answer.

"(f) All testimony shall be taken under oath.

"(g) At the conclusion of a hearing before a member or designated agent of the Board, such member or agent shall transfer the entire record thereof to the Board, together with his recommended decision and copies thereof shall be served upon the parties. The Board, or a panel of three qualified members designated by it to sit and act as the Board, in such case, shall afford the parties an opportunity to be heard on such record, including oral argument, at a time and place to be specified upon reasonable notice. In its discretion, the Board upon notice may take further testimony. In the event a member of the Board conducts the hearings specified in subsection (c) of this section, such member shall be disqualified from participating in further proceedings before the Board concerning the case in which he has been acting as hearing officer.

"(h) With the approval of the member or designated agent conducting the hearing, a case may be ended at any time prior to the transfer of the record thereof to the Board by agreement between the parties for the elimination of the alleged unlawful employment practice on mutually satisfactory terms.

"(i) If, upon the preponderance of the evidence, including all the testimony taken, the Board shall find that the respondent engaged in any unlawful employment practice, the Board shall state its findings of fact and shall issue and cause to be served on such person and other parties an order requiring such person to cease and desist from such unlawful employment practice and to take such affirmative action, including reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, or any of them, as the case may be, to the extent responsible for the discrimination), as will effectuate the policies of the Title: Provided, That interim earnings or amounts earnable with reasonable diligence by the person or

persons discriminated against shall operate to reduce the back pay otherwise allowable. Such order may further require such respondent to make reports from time to time showing the extent to which it has complied with the order. If the Board shall find that the respondent has not engaged in any unlawful employment practice, the Board shall state its findings of fact and shall issue and cause to be served on such person and other parties an order dismissing the complaint. No order of the Board shall require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, religion, color, national origin, or ancestry.

"(j) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the case may at any time be ended by agreement between the parties, approved by the Board, for the elimination of the alleged unlawful employment practice on mutually satisfactory terms, and the Board may, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

"(k) The proceedings held pursuant to this section shall be conducted in conformity with the standards and limitations of sections 5, 6, 7, 8, and 11 of the Administrative Procedure Act.

"JUDICIAL REVIEW

"SEC. 710. (a) The Administrator shall have power to petition any United States court of appeals or, if the court of appeals to which application might be made is in vacation any district court within any circuit or district, respectively, wherein the unlawful employment practice in question occurred, or wherein the respondent resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court to which petition is made a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and the order of the Board. Upon such filing, the court shall conduct further proceedings in conformity with the standards, procedures, and limitations established by section 10 of the Administrative Procedure Act.

"(b) Upon such filing the court shall cause notice thereof to be served upon such respondents and thereupon shall have jurisdiction of the proceeding and of the question determined therein and shall have power to grant such temporary relief or restraining order as it deems just and proper and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board.

"(c) No objection that has not been urged before the Board, its member, or agent shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

"(d) The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive.

"(e) If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, or agent, the court may order such additional evidence to be taken before the Board, its member, or agent, and to be made a part of the transcript.

"(f) The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact it supported by substantial evidence on the record considered as a whole shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order.

"(g) The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals, if application was made to the district court or other United States court as hereinabove provided, and by the Supreme Court of the United States as provided in title 28, United States Code, section 1254.

"(h) Any person aggrieved by a final order of the Board may obtain a review of such order in any United States court of appeals of the judicial circuit wherein the unlawful employment practice in question was alleged to have been engaged in or wherein such person resides or transacts business or the Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board and thereupon the Administrator shall file in the court a transcript of the entire record in the proceeding certified by the Board, including the pleadings and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filings, the court shall proceed in the same manner as in the case of an application by the Administrator under subsections (a), (b), (c), (d), (e), and (f), and shall have the same exclusive jurisdiction to grant to the petitioners or to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Board.

"(i) Upon such filing by a person aggrieved the reviewing court shall conduct further proceedings in conformity with the standards, procedures, and limitations established by section 10 of the Administrative Procedure Act.

"(j) The Commencement of proceedings under this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

"(k) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes', approved March 23, 1932 (29 U.S.C. 101–115).

"(l) Petitions filed under this title shall be heard expeditiously.

"EFFECT ON STATE LAWS

"SEC. 711. (a) Nothing in this title shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this title.

"(b) Where there is a State or local agency which has effective power to eliminate and prohibit discrimination in employment in any cases covered by this title, and the Administrator determines the agency is effectively exercising such power, the Administrator shall seek written agreements with the State or local agency under which the Administrator shall refrain from filing a charge in any such case or class of cases referred to in such agreement. No person may file a charge under section 709(b) in any such case or class of cases referred to in such agreement, except that in the event the State or local agency shall fail or refuse to issue a complaint within a reasonable time, the person filing the charge may petition the District Court of the United States for the District of Columbia, or a district court of the United States within any district wherein the unfair employment practice in question is alleged to have occurred or wherein such person resides or transacts business, and such courts shall have jurisdiction to require the Administrator to issue a complaint under section 709. The Administrator shall rescind any such agreement when he determines such agency no longer has such power, or is no longer effectively exercising such power.

"INVESTIGATIONS, INSPECTIONS, RECORDS

"SEC. 712. (a) In connection with any investigation of a charge filed under section 709, the Administrator or his designated representative shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question.

"(b) With the consent and cooperation of State and local agencies charged with the administration of State fair employment practices laws, the Administrator may, for the purpose of carrying out his functions and duties under this title and within the limitation of funds appropriated specifically for such purpose, utilize the services of State and local agencies and their employees

and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered to assist the Administrator in carrying out this title.

"(c) Every employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom, as the Administrator shall prescribe by regulation or order, after public hearing, as reasonable and necessary for the enforcement of this title. The Administrator shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purpose of the title, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applications were received, and shall furnish to the Administrator, upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may (1) apply to the Administrator for an exemption from the application of such regulation or order, and (2) in the event the Administrator has failed or refused to grant such exemption, bring a civil action in the United States district court for the district where such records are kept. If the Administrator or the court, as the case may be, finds that the application of the regulation or order to the employer, employment service, or labor organization in question would impose an undue hardship, the Administator or the court, as the case may be, may grant appropriate relief.

"INVESTIGATORY POWERS

"SEC. 713. (a) For the purposes of any investigation provided for in this title, the provisions of sections 9 and 10 of the Federal Trade Commission Act of September 16, 1914, as amended (15 U.S.C. 49, 50), are hereby made applicable to the powers and duties of the Administrator, except that the provisions of section 307 of the Federal Power Commission Act shall apply with respect to grants of immunity, and except that the attendance of a witness may not be required outside of the State where he is found, resides, or transacts business, and the production of evidence may not be required outside the State where such evidence is kept.

"(b) The several departments and agencies of the Government, when directed by the President, shall furnish the Administrator, upon his request, all records, papers, and information in their possession relating to any matter before the Administrator.

"EQUAL FEDERAL EMPLOYMENT OPPORTUNITY AGENCY

"SEC. 714. (a) The President is authorized to establish an agency to be known as the Equal Federal Employment Opportunity Agency (hereinafter referred to as the 'Agency'). The President may confer upon the Agency such powers as he deems appropriate to prevent discrimination on the ground of race, religion, color, national origin, or ancestry in Government employment.

"(b) The Agency shall consist of the Vice President, who shall serve as Chairman, the Secretary of Labor, who shall serve as Vice Chairman, and not more than fifteen other members appointed by and serving at the pleasure of the President. Members of the Agency, while attending meetings or conferences of the Agency or otherwise serving at the request of the Agency, shall be entitled to receive compensation at a rate to be fixed by it but not exceeding $75 per diem, including travel time, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5 of the Act of August 2, 1946 (5 U.S.C. 73b-2), for persons in the Government service employed intermittently.

"(c) There shall be an Executive Vice Chairman of the Agency who shall be appointed by the President and who shall be ex officio a member of the Agency. The Executive Vice Chairman shall assist the Chairman, the Vice Chairman, and the members of the Agency and shall be responsible for carrying out the orders

and recommendations of the Agency and for performing such other functions as the Agency may direct.

"(d) Section 100(a) of the Federal Executive Pay Act of 1956, as amended (5 U.S.C. 2205(a)), is further amended by adding the following clause thereto:

"'(52) Executive Vice Chairman, Equal Federal Employment Opportunity Agency.'

"(e) The Agency is authorized to appoint, subject to the civil service laws and regulations, such other personnel as may be necessary to enable it to carry out its functions and duties, and to fix their compensation in accordance with the Classification Act of 1949, and is authorized to procure services as authorized by section 14 of the Act of August 2, 1946 (60 Stat. 810; 5 U.S.C. 55a), but at rates for individuals not in excess of $50 a day.

"NOTICES TO BE POSTED

"SEC. 715. (a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Administrator setting forth excerpts of this title and such other relevant information which the Administrator deems appropriate to effectuate the purposes of this title.

"(b) A willful violation of this section shall be punishable by a fine of not less than $100 or more than $500 for each separate offense.

"VETERANS' PREFERENCE

"SEC. 716. Nothing contained in this title shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

"RULES AND REGULATIONS

"SEC. 717. (a) The Board and Administrator shall each have authority from time to time to issue, amend, or rescind suitable procedural regulations or carry out their respective functions. Regulations issued under this section shall be in conformity with the standards and limitations of the Administrative Procedure Act.

"(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Administrator, or (2) the failure of such person to publish and file any information required by any provision of this title if he pleads and proves that he published and filed such information in good faith, in conformity with the instructions of the Administrator issued under this title regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual report, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this title.

"FORCIBLY RESISTING THE COMMISSION OR ITS REPRESENTATIVES

"SEC. 718. The provisions of section 111, title 18, United States Code, shall apply to officers, agents, and employees of the Commission in the preformance of their official duties.

"SPECIAL STUDY BY THE SECRETARY OF LABOR

"SEC. 719. The Secretary of Labor shall make a full and complete study of the factors which might tend to result in discrimination in employment because of age and of the consequences of such discrimination on the economy and individuals affected. The Secretary of Labor shall make a report to the Congress not later than June 30, 1964, containing the results of such study and shall include in such report such recommendations for legislation to prevent arbitrary discrimination in employment because of age as he determines advisable.

"EFFECTIVE DATE

"SEC. 720. (a) This title shall become effective one year after the date of its enactment.

"(b) Notwithstanding subsection (a), sections of this title other than sections 704, 705, 709, and 714 shall become effective immediately.

"(c) The President shall, as soon as feasible after the enactment of this title, convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this title to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this title when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the Equal Federal Employment Opportunity Agency, (2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives or private agencies engaged in furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and employment agencies who will be subject to this title."

(H. Rept. No. 570 from the Committee on Education and Labor and H.R. 405 are as follows:)

88TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 570

EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1963

JULY 22, 1963.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. POWELL, from the Committee on Education and Labor, submitted the following

REPORT

[To accompany H.R. 405]

The Committee on Education and Labor, to whom was referred the bill (H.R. 405) to prohibit discrimination in employment in certain cases because of race, religion, color, national origin, ancestry, or age, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

The amendments are as follows:

The amendment to the text strikes out all of the introduced bill and inserts in lieu thereof a substitute which appears in the reported bill in italic type.

The other amendment modifies the title of the bill to read as follows: "A bill to prohibit discrimination in employment in certain cases because of race, religion, color, national origin, or ancestry."

References in this report are to the provisions of the committee amendment rather than to the provisions of the introduced bill.

PURPOSE OF THE LEGISLATION

The basic purpose of H.R. 405 is to seek to eliminate arbitrary employment discrimination because of race, religion, color, national origin, or ancestry, through the utilization of formal and informal remedial procedures. The bill authorizes the establishment of a Federal Equal Employment Opportunity Commission and delegates to it the primary responsibility for preventing and eliminating unlawful employment practices as defined in the act.

BACKGROUND OF LEGISLATION

The committee finds that the testimony received regarding arbitrary discrimination in employment compellingly and cogently makes

manifest the need for this legislation. The conclusion inescapably to be drawn from 28 witnesses in 10 days of hearings, and from statements filed without oral testimony, is that discrimination in employment because of race, religion, color, national origin, or ancestry, is a pervasive practice. The evidence before the committee makes it abundantly clear that job opportunity discrimination permeates the national social fabric—North, South, East, and West. The act is directed at correcting such abuses wherever found and is not focused upon any single section of the country. An unequivocal declaration and implementation of a national policy on equal employment opportunity, predicated upon individual merit, competence, and capability, is of paramount importance at this stage of U.S. history. The following points, established during committee hearings, will pertinently emphasize the pervasiveness of the problem and the impact which employment discrimination has upon the Nation.

(*a*) Job discrimination is extant in almost every area of employment and in every area of the country. It ranges in degrees from patent absolute rejection to more subtle forms of invidious distinctions. Most frequently, it manifests itself through relegation to "traditional" positions and through discriminatory promotional practices. The maxim, "last hired, first fired," is applicable to many minority groups, but most particularly Negroes, as is evidenced by the greater unemployment rate for these groups. The Secretary of Labor, W. Willard Wirtz, testified with respect to unemployment:

> The hard central fact is that among male family breadwinners, the unemployment rate today among nonwhites is three times what it is among whites. The percentage figures are 9 percent for nonwhites, 3 percent for whites.
>
> Among younger workers, age 14 to 19, the unemployment rate today for whites is 12 percent, for nonwhites, it is 24 percent.
>
> The total number of nonwhites in the civilian work force is 8 million, which represents 11 percent of the total work force. There are in this work force today 600,000 men and women who have been out of work for more than 26 weeks. More than one out of every four in this group of long-term unemployed is nonwhite.
>
> Nonwhite workers are also increasingly bearing the brunt of involuntary part-time work. The proportion of employed nonwhites working part time in nonfarm industries for economic reasons is 10 percent—more than triple the 3-percent rate for whites. Significantly, this rate has been moving up for nonwhites for the past 6 years, but has remained virtually unchanged for whites.
>
> The Negro has steadily and consistently fallen behind in terms of unemployment. In 1947, the nonwhite unemployment rate was 64 percent higher than the white's; in 1952, it was 92 percent higher; in 1957, it was 105 percent higher; in 1962, it was 124 percent higher.

(*b*) Discrimination by labor organizations, particularly certain construction unions, with respect to membership and apprenticeship training is widespread. Segregated locals still exist despite continuous statements of opposition by national labor leaders.

(*c*) Employment agencies and services continue to refer applicants for job opportunities in a discriminatory manner. Such discrimination also manifests itself in various forms, from outright refusal to deal with minority group applicants to refusal to refer such applicants for specific jobs due to expressed agreements, tacit understandings, and assumptions based upon traditional practices.

(*d*) Unfair discrimination in employment opportunities is costly to the Nation.

(1) Underutilization of the Nation's manpower resources prevents the attainment of full national productivity and economic growth. The continuing progress of our democratic society depends on the effective use of the resources of all its people. The full employment of all talents and abilities, the unrestricted use of every individual at the level of his highest skill benefits the employee, the employer, and the Nation. Ineffective utilization of manpower poses a distinct threat to the Nation's ability to maintain its competitive economic position in the world.

(2) Current discrimination in employment opportunities has long-range adverse effects upon the economy through disillusionment of youths. Perceiving discrimination against adults, youths are discouraged from attempting to prepare for useful careers believing that they will meet with the same rejection. Such destruction of motivation frequently leads to poor performance in school, increased school dropouts, perpetuation of skill and knowledge deficiencies, unemployment, juvenile delinquency, adult crime, and increased welfare costs. Not only does this decrease the potential output of the country, it also acts as a drain upon existing growth by the unnecessary addition of crime and welfare costs.

(3) Discrimination in apprenticeship training programs, in management trainee programs, in employer-sponsored educational programs, and in other programs aimed at improving the skills, knowledge, and capability of individuals, will tend to perpetuate the existing system of widespread discrimination and uneconomic use of manpower if not immediately remedied.

(4) Arbitrary denial of equal employment opportunities is heavily concentrated in certain rapidly growing industries—traditionally prime employers of young people—such as banks and financial institutions, advertising agencies, insurance companies, trade associations, management consulting firms, and book and publication companies. Such concentration holds portent of increasing problems for the Nation if remedies are not provided.

(*e*) Discrimination in employment, as one phase of the total civil rights problem, has its international implications. Each incident pointing up our deficiencies in extending to all of our citizens full and equal rights and opportunities casts doubt upon our sincerity and motives in the international sphere. With the majority of the world's people being nonwhite and with their growing influence in international relations, these incidents cannot have but highly adverse effects upon our foreign relations, both politically and economically.

(*f*) Testimony before the committee has indicated that Federal legislation is necessary despite the existence of fair employment practice laws in almost half the States. First, many millions of individuals are not protected by State laws. Second, State laws very in coverage and effectiveness. Third, State commissions have en-

countered difficulty in dealing with large, multiphased operations of business in interstate commerce. Fourth, Federal responsibility, as well as authority, extends to activities and industries affecting commerce, particularly as a consequence of the expanded economic role of the Federal Government which financially supports many economic activities and, therefore, related practices.

(*g*) In brief, the committee found that employment practices commonly failed to conform to the written tradition and professed position of our Nation as regards the venerable principles of liberty, equality of opportunity, and the immutable dignity of man. To restore these principles to practice, to transform theory into reality, to assure that great words become implemented acts, is substantially the purpose of this act with respect to employment opportunities.

SUBCOMMITTEE HEARINGS

The General Subcommittee on Labor began public hearings on H.R. 405 on Monday, April 22, 1963. There were 10 days of public hearings, hearing in all 28 witnesses representing the administration, the U.S. Employment Service, unions, business groups, private organizations, and others, and additionally receiving several statements for insertion in the record by interested parties.

The subcommittee concluded its consideration in executive session on June 20, 1963, voting to report the bill to the full committee with amendments.

MAJOR PROVISIONS OF THE ACT

(*a*) In section 4 of the act, a limited exemption is provided for employers with respect to employment of aliens outside of any State, and also, to religious corporations, associations, or societies. The intent of the first exemption is to remove conflicts of law which might otherwise exist between the United States and a foreign nation in the employment of aliens outside the United States by an American enterprise. The second exemption is intended to be applied only insofar as such activities are of a religious nature or are related to religious endeavors.

(*b*) Sections 5 and 6 describe acts which are unlawful employment practices under this act. Subsection (e) of section 5 provides that, notwithstanding any other provision of the act, the employment of persons of a particular religion or national origin in limited situations, where religion or national origin is a bona fide occupational qualification in that specific enterprise, shall not be an unlawful employment practice. This language is meant to apply in those rare circumstances where a reasonable, good faith, cause exists to justify occupational distinctions based only upon religion or national origin.

(*c*) Sections 7 through 11 create the Equal Employment Opportunity Commission, the Office of the Administrator, the Board, and establish the procedures for remedying unlawful employment practices. The Commission is merely a vessel containing the two primary functioning bodies under the act. Within the Commission is the Board and the Office of the Administrator. The Board is primarily a quasi-judicial body with power to hear and determine complaints and issue lawful and appropriate orders. The Office of the Administrator, headed by the Administrator, is the body responsible for the

continuing implementation of the act in its entirety. The Administrator's responsibilities are described in sections 9 through 11 and include all responsibility delegated under the act not delegated to the Board. The major purpose of this functional division within the Commission is to separate to the greatest degree feasible the functions of "prosecutor" and "judge." It is also the purpose of these provisions to provide for an independent, bipartisan Commission.

(*d*) Sections 10 and 11 establish the procedures for prevention of unlawful employment practices. It is the intent of the committee that maximum efforts be concentrated on informal and voluntary methods of eliminating unlawful employment practices before commencing formal procedures. Emphasis should be placed upon conference, conciliation, and persuasion throughout the proceedings with a view toward reaching a mutually satisfactory agreement for eliminating unlawful employment practices. Formal proceedings leading toward an order of the Board shall be pursued only when informal methods fail or appear futile.

Where the Administrator fails or refuses to issue a complaint within a reasonable time, the person filing a charge may petition a Federal court to require the Administrator to issue such complaint. This is intended to inhibit unjustifiable delay or rejection of remedial action.

The bill provides for administrative hearings of complaints brought under the act with review under the substantial evidence rule in Federal courts. This is the procedural pattern followed by the vast majority of State fair employment practice laws, as well as a traditional practice among many independent Federal agencies. Numerous merits can be attributed to this procedure, perhaps the most important of which is speed. "Justice delayed, is justice denied," applies especially with great force in this area. Undue delay in achieving a final decision could make the ultimate result a pyrrhic victory. In addition to speed, this procedure would reduce costs for parties, allow for greater informality and flexibility, provide greater uniformity of result within a shorter period, tend toward the development and contribution of expertise in the area, be conducive to continuing supervision of compliance, create greater motivation to reach informal agreements, and establish unified implementation of a truly national policy.

It is to be noted that the unlawful employment practices of sections 5 and 6, with the exception of section 6(a) relating to publication of advertisements of a discriminatory nature, refer to discrimination against individuals rather than groups. This act is intended to apply equally to all individuals regardless of their race, religion, color, national origin, or ancestry, and is not intended to discriminate in favor of or against individual members of any group. The act is intended to prevent those unlawful employment practices specified in sections 5 and 6 and to encourage the consideration of individuals for employment opportunities based upon merit, capability, competence, effort, and other factors not related to an individual's race, religion, color, national origin, or ancestry. Nothing in the act is intended to allow charges to be brought based upon disproportionate representation of members of any race, religion, color, national origin, or ancestry within any business enterprise or labor organization. General rules as to percentages, quotas, or other proportional representation shall not be the basis of charges brought under this act.

However, disproportionate representation may be considered as background evidence in an unlawful employment practice proceeding under this act.

(*e*) The committee's intention with respect to the effect of this act upon State laws is both clear and firm. This act does not preempt the area of unlawful employment practices. State laws which do not require or permit the commission of an unlawful employment practice under this act are not in any manner affected by this act. Further, the Administrator is directed to seek agreements with States or local agencies to cede Federal jurisdiction where there is an effective power in the State or local agency to eliminate discrimination in employment in any cases covered by this act and where such power is being effectively exercised. Though these determinations are the responsibility of the Administrator, he is expected to affirmatively and diligently seek such agreements wherever practicable. Such agreements shall not be prevented by anything but substantial deficiencies in the State power or exercise of such power. Where Federal jurisdiction has been ceded, an aggrieved party may petition a Federal court to require the Administrator to file a complaint if, after a reasonable time, the State or local agency fails to process a complaint.

(*f*) Sections 13 and 14 provide for investigations, inspections, and the requirement that records be kept in specific situations. Investigations and inspections shall be in connection with verified charges filed under section 10. They shall not be harassing, unduly disruptive, nor unrelated to a matter under investigation or question with respect to a charge. They should seek always to be of minimal inconvenience to affected persons. With respect to records, they should always be relevant, reasonable, and necessary for the enforcement of this act. Regulations or orders requiring the maintenance of records shall be issued only after affording interested parties an opportunity to be heard publicly. Application to the Administrator, or courts after exhausting the administrative remedy, for an exemption from such regulations or orders because they may be unduly burdensome may be made by an affected party. Appropriate relief may be granted.

(*g*) Close cooperation between the Commission and other Federal, State, and local agencies has been one of the prime goals of the committee in the drafting of this act. Duplication of effort and expense are to be avoided whenever possible.

(*h*) The committee has established a ceiling of $2,500,000 for the administration of the act by the Comission for the first year after its enactment and not to exceed $10 million for this purpose during the second year after such date.

SECTION-BY-SECTION ANALYSIS OF THE BILL

Section 1. Short title

This section provides that the act may be cited as the "Federal Equal Employment Opportunity Act."

Section 2. Findings and declaration of policy

Subsection (a) of this section states a congressional finding that discrimination in employment against qualified persons because of race, religion, color, national origin, or ancestry is contrary to American principles of liberty and equality of opportunity, is incompatible

with the Constitution, forces segments of the population into substandard living conditions, foments industrial strife and domestic unrest, deprives the Nation of full use of its productive capacity, endangers the national security and general welfare, and adversely affects the domestic and foreign commerce of the United States.

Subsection (b) sets forth a congressional declaration of policy that all persons within the jurisdiction of the United States have a right to employment opportunity free from discrimination because of race, religion, color, national origin, or ancestry as specified in sections 5 and 6. It is declared to be the national policy to protect the right of the individual to be free from such discrimination.

Subsection (c) states that the act is necessary to remove obstructions to the free flow of interstate and foreign commerce and to insure the complete and full enjoyment of all persons of the rights, privileges, and immunities secured and protected by the Constitution.

Section 3. Definitions

This section contains definitions of a number of terms used in the act. A few of these definitions are particularly important to an understanding of the scope of the act.

"Employer" is defined to mean a person engaged in commerce who has 25 or more employees, except that during the first year after the date of enforcement provisions of the act become effective, employers having fewer than 100 employees will not be covered, and during the second year after such date, employers with fewer than 50 employees will not be covered. The definition excludes from the term "employer" all Federal, State, and local government agencies, and bona fide membership clubs (other than labor organizations) which are tax exempt under the Internal Revenue Code of 1954 (sec. 501(c)).

"Employment agency" is defined to include any person who regularly undertakes to procure employees for an employer or to procure for employees opportunities to work. This definition expressly includes the U.S. Employment Service and the system of State and local employment services receiving Federal assistance.

"Labor organization" is defined in substantially the same manner as defined in the Labor-Management Reporting and Disclosure Act of 1959, except that State and local central bodies will be treated as are other labor organizations.

Labor organizations will be covered only if they are engaged in an industry affecting commerce within the meaning of the act, and subsection (e) of this section describes the labor organizations which are so engaged. This provision is the same as the comparable provision in the Labor-Management Reporting and Disclosure Act of 1959, except that it excludes any labor organization having fewer than 25 members. Also, during the first year after the date the enforcement provisions of the act become operative, a labor organization having fewer than 100 members will be excluded from coverage, and during the second year after such date, those having fewer than 50 members will be so excluded.

The terms "person," "employee," "commerce," "industry affecting commerce," and "State," are defined for the purposes of the act in the manner common for Federal statutes.

Section 4. Exemptions

This section provides that the requirements of the act will not apply with respect to the employment of aliens outside a State, or to religious corporations, associations, or societies.

Section 5. Discrimination because of race, religion, color, national origin, or ancestry

Subsection (a) describes a number of activities which, if engaged in by employers, will constitute unlawful employment practices. It will be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of race, religion, color, national origin, or ancestry. It will also be an unlawful employment practice for an employer to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any person of employment opportunities or otherwise adversely affect his status as an employee because of his race, religion, color, national origin, or ancestry.

Subsection (b) provides that it will be an unlawful employment practice for an employment agency, because of race, religion, color, national origin, or ancestry to fail or refuse to refer an individual for employment or otherwise to discriminate against him, or for such an agency to classify or refer any person for employment on the basis of race, religion, color, national origin, or ancestry.

Subsection (c) describes a number of unlawful employment practices of labor organizations. Under this subsection it will be an unlawful employment practice for a labor organization to exclude or expel any person from membership because of race, religion, color, national origin, or ancestry. It will be an unlawful employment practice for a labor organization to limit, segregate, or classify its membership so as to deprive or tend to deprive any person of employment opportunities or to limit such opportunities, or otherwise adversely affect his status as an employee or as a job applicant because of his race, religion, color, national origin, or ancestry. It will also be an unlawful employment practice for a labor organization to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

Subsection (d) makes it an unlawful employment practice for persons controlling apprenticeship or other training programs to discriminate because of race, religion, color, national origin, or ancestry in admission to, or employment in, such a program.

Subsection (e) provides for a very limited exception to the provisions of the act. Notwithstanding any other provisions, it shall not be an unlawful employment practice for an employer to employ persons of a particular religion or national origin in those rare situations where religion or national origin is a bona fide occupational qualification.

Section 6. Other unlawful employment practices.

Subsection (a) of this section makes it an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual or for a labor organization to discriminate against any member or applicant for membership, because he has

opposed any practice made an unlawful employment practice by other sections of this act or because he has made a charge, testified, assisted, or participated in any manner in the enforcement of this act.

Subsection (b) makes it an unlawful employment practice for an employer, labor organization, or employment agency to be responsible for the publishing of any notice or advertisement indicating a preference, limitation, specification, or discrimination based on race, religion, color, national origin, or ancestry, except where based upon religion when religion is a bona fide occupational qualification for employment.

Section 7. Equal Employment Opportunity Commission

This section creates an independent agency to be known as the Equal Employment Opportunity Commission, consisting of an Equal Employment Opportunity Board and an Office of the Administrator of the Equal Employment Opportunity Commission, headed by the Administrator of the Equal Employment Opportunity Commission.

Section 8. Equal Employment Opportunity Board

Subsection (a) states the primary function of the Board, which is to hear and determine complaints of unlawful employment practices brought before it by the Administrator, and to ussue appropriate orders to enforce the act.

Subsection (b) provides for a five-member, bipartisan Board, appointed by the President for staggered terms of 7 years, subject to Senate confirmation. One member shall serve as Chairman and one as Vice Chairman.

The Board will have the usual powers and duties with respect to employment of personnel, quorum, right to act while vacancies exist, use of official seal, and reports to Congress and the President. Members shall receive $20,000 per year, except the Chairman shall receive $20,500. The principal office of the Board shall be in the District of Columbia.

Section 9. Administrator of the Equal Employment Opportunity Commission

Subsection (a) provides that the Administrator shall be appointed by the President for a term of 4 years, subject to Senate confirmation. The Administrator shall receive $20,500 per year and is authorized to appoint officers and employees necessary to enable him to carry out his functions.

Subsection (b) grants the Administrator power to create local, State, or regional advisory and conciliation councils and authority to empower them to study the problem of discrimination forbidden by this act and to foster through community effort or otherwise good will, cooperation, and conciliation among groups and elements of the population. The Administrator may also empower them to make recommendations for the development of policies and procedures in general and in specific instances. These councils will be composed of representative citizens of the areas for which they are appointed who will serve on an uncompensated basis (except for a per diem in lieu of subsistence). The Administrator will provide them with technical and clerical assistance. In addition, the Administrator will have power to cooperate with and utilize regional, State, and other agencies, both public and private, and individuals, he will be authorized to furnish technical assistance to persons subject to this act who request

it to further their compliance with this act or with an order issued thereunder. If the employees of an employer refuse or threaten to refuse to cooperate in effectuating the provisions of this act, the employer may request assistance from the Administrator in effectuating such provisions by conciliation or other remedial action. The Administrator may make such technical studies as may appropriate to effectuate the purposes of the act and may make the results of the studies available to interested agencies. The Administrator may pay to witnesses the same witness and mileage fees as are paid to witnesses in the courts of the United States.

Subsection (c) provides that attorneys appointed by the Administrator may represent the Board or Administrator in any case in court at the direction of the Administrator.

Subsection (d) requires that the Administrator cooperate with other departments and agencies in the performance of educational and promotional activities.

Section 10. Prevention of unlawful employment practices

The Commission is empowered, as hereinafter described, to prevent unlawful employment practices. Verified written charges may be filed by or on behalf of an aggrieved person, or by the Administrator where he has reasonable cause to believe a violation of the act has occurred, that an unlawful employment practice has been engaged in. The Administrator shall notify the respondent of such charge and shall investigate such charge. Where he determines that probable cause exists for crediting such charge he shall endeavor to eliminate any unlawful employment practices by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such endeavors may be used as evidence in any subsequent proceeding.

Where informal methods fail to effect the elimination of the unlawful employment practice (or in advance thereof if circumstances warrant), the Administrator shall issue a complaint stating the charges, together with a notice of hearing before the Board, a member thereof, or a designated agent, not less than 10 days after service of such complaint, at a place therein fixed. Should the Administrator fail or refuse to issue such complaint within a reasonable time, the person filing such charge may petition the District Court of the United States for the District of Columbia, or a district court of the United States within any district, wherein the unfair employment practice in question is alleged to have occurred or wherein such person resides or transacts business, and such courts shall have jurisdiction to require the Administrator to issue such complaint. A 6-month statute of limitations is placed upon the filing of a charge.

The respondent has the right to file an answer to the complaint, to appear at the hearing, with or without counsel, to present evidence and to examine and cross-examine witnesses. Power to reasonably amend both complaints and answers is authorized. Testimony shall be under oath.

Subsequent to the hearing, the entire record shall be transferred to the Board, together with a recommended decision, and copies shall be served upon the parties. The Board shall afford the parties an opportunity to be heard on such record, including oral arguments. In its discretion, the Board may, upon notice, take further testimony. A Board member shall be disqualified from participating in proceed-

ings before the Board if he has acted as hearing officer in earlier proceedings in such case.

A case may be ended prior to transfer of the record to the Board by agreement between the parties with the approval of the hearing officer.

If, upon a preponderance of the evidence, the Board shall find that the respondent engaged in an unlawful employment practice, it shall state its findings of fact and issue a cease and desist order and order such affirmative action, including reinstatement or hiring of employees, with or without backpay, as will effectuate the policies of the act. Interim earnings or amounts earnable with reasonable diligence shall operate to reduce the backpay otherwise allowable. The respondent may be required to report upon his compliance with the order. The Board shall issue an order dismissing the complaint where the findings indicate no unlawful employment practice. No affirmative action shall be ordered for any reason other than discrimination on account of race, religion, color, national origin, or ancestry.

Until a transcript of a record in the case is filed in court, the case may be ended by agreement between the parties with approval by the Board and the Board may modify or set aside any finding or order made or issued by it upon reasonable notice to the parties.

Proceedings held pursuant to this section must conform to the standards and limitations of sections 5, 6, 7, 8, and 11 of the Administrative Procedure Act.

Section 11. Judicial review

Subsection (a) provides that the Administrator shall have power to petition the courts specified in the act for the enforcement of the order of the Board and for appropriate temporary relief or restraining order. He shall certify and file in the court a transcript of the entire record of the proceeding. Upon such filing the court shall conduct proceedings in accordance with section 10 of the Administrative Procedure Act.

Subsection (b) grants jurisdiction to the court to grant temporary relief or restraining order, to enter a decree enforcing, modifying, and enforcing as modified, or setting aside in whole or in part the order of the Board

Objections not urged before the Board shall not be considered by the court unless due to extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. Upon motion by a party, the court may order the taking of additional evidence before the Board, to be made part of the transcript, if there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board and such evidence is material. The Board may modify its findings of fact by reason of additional evidence so taken and shall file such findings along with its recommendations with respect of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to traditional rights of appeal.

Subsection (h) provides that any person aggrieved by a final order of the Board may obtain a review of such order in the courts by filing a written petition. A copy of such petition must be served upon the Board and thereupon the Administrator shall file in the court a tran-

script of the entire record. The court shall have the same exclusive jurisdiction as in the case of an application by the Administrator.

Commencement of proceedings under this section shall not operate as a stay of the Board's order unless specifically ordered by the court. Jurisdiction of the court shall not be limited by the provisions of the Norris-LaGuardia Act (29 U.S.C. 101–115). Petitions filed under this act shall be heard expeditiously.

Section 12. Effect on State laws

Subsection (a) provides that nothing in this act shall be deemed to relieve or exempt any person from any liability, duty, penalty, or punishment provided by any State law, unless such State law would require or permit the doing of an act which would be an unlawful employment practice under this act.

Subsection (b) provides that where a State or local agency has effective power to eliminate and to prohibit discrimination in employment in cases covered by this act, and the Administrator determines the agency is effectively exercising such power, the Administrator is directed to seek written agreements with such agency by which the Administrator shall refrain from filing charges in any such case or class of cases. No person may file charges under section 10(b) in any such case or class of cases referred to in such agreement, except that where the State or local agency fails or refuses to issue a complaint within a reasonable time, the person filing such charge may petition a Federal court and such courts shall have jurisdiction to require the Administrator to issue a complaint under section 10. The Administrator shall rescind any agreement when such agency no longer has power, or is no longer effectively exercising such power.

Section 13. Investigations, inspections, records

Subsection (a) provides that the Administrator shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question in connection with a charge filed under section 10.

Subsection (b) provides that the Administrator may utilize the services of State and local agencies, with their consent, and reimburse such agencies for such services.

Subsection (c) provides that persons subject to this act shall keep and preserve such records, and make reports therefrom, as the Administrator shall prescribe by regulation or order, after public hearing, as reasonable and necessary for the enforcement of this act. Any person who believes that application to it of any order or regulation issued under this section would result in undue hardship may apply to the Administrator for exemption or to the U.S. district court in the event that the Administrator has failed or refused to grant such exemption. The Administrator or the court, as the case may be, may grant appropriate relief.

Section 14. Investigatory powers

The provisions of sections 9 and 10 of the Federal Trade Commission Act of 1914 are made applicable to the powers and duties of the Administrator for purposes of any investigation under this act, except that an individual must first claim the privilege against self-incrimination as a condition to grants of immunity as provided in section 307 of

the Federal Power Commission Act. It is also provided that the attendance of witnesses may not be required outside of the State where he is found, resides, or transacts business, and the production of evidence may not be required outside of the State where such evidence is kept. When directed by the President, the several departments and agencies of the Government shall furnish at the Administrator's request all records, papers, and information in their possession relating to any matter before the Administrator.

Section 15. Employment practices of governmental agencies

The President is authorized and directed to conform Federal employment practices to the policies of this act.

Section 16. Notices to be posted

Employers, employment agencies, and labor organizations subject to this act will be required to post in conspicuous places notices to be prepared or approved by the Administrator setting forth excerpts of the act and other relevant information. Failure to comply with this section will result in a fine of not less than $100 or more than $500 for each offense.

Section 17. Veterans' preference

This act will not repeal or modify any Federal, State, territorial, or local law creating special rights for veterans.

Section 18. Rules and regulations

Subsection (a) empowers the Administrator and the Board from time to time to issue, amend, or rescind suitable procedural regulations to carry out their respective functions. Such regulations must be in conformity with the standards and limitations of the Administrative Procedure Act.

Subsection (b) provides that in any action or proceeding based upon an alleged unlawful employment practice, no person will be subject to any liability or punishment because of the commission of an unlawful employment practice if he shows that the act complained of is in good faith, in conformity with, and reliance upon a written interpretation or opinion of the Administrator. No such person will be subject to any liability or punishment because of his failure to publish or file any information required by the act if he shows that he published or filed such information in good faith in conformity with the instructions of the Administrator issued under this act regarding the filing of such information. When such defense is established it will be a bar to the action or proceeding even though the interpretation or opinion in question is modified or rescinded or is determined by judicial authority to be invalid and even though, after publishing or filing, it is determined by judicial authority not to be in conformity with the provisions of the act.

Section 19. Forcibly resisting the Commission or its representatives

The provisions of section 111, title 18, United States Code, are made applicable to the personnel of the Commission. This section makes it a crime to forcibly assault, resist, oppose, impede, intimidate, or interfere with certain governmental employees while engaged in or on account of the performance of their official duties. The penalty provided is a fine of not more than $5,000 or imprisonment for not more than 3 years, or both, except that if a deadly or dangerous

weapon is used, the maximum fine is not more than $10,000 and the maximum imprisonment is not more than 10 years.

Section 20. Appropriations authorized

This section specifies the maximum amount which may be appropriated for the administration of the act by the Commission during the first 2 years of its existence. The section authorizes the appropriation of not to exceed $2,500,000 during the first year after the enactment of the act and not to exceed $10 million during the second year after such date.

Section 21. Separability clause

This section contains a traditional separability clause.

Section 22. Special study by the Secretary of Labor

The Secretary of Labor is directed to make a full and complete study of the problems relating to discrimination in employment because of age. He is further directed to report to the Congress not later than June 30, 1964, with the results of such study and such recommendations for legislation as he determines advisable.

Section 23. Effective date

It is provided that the majority of the provisions of this act will become effective on the date of its enactment; however, the very important provisions relating to the description of unlawful employment practices and section 10, which deals with the enforcement of the act, will not become effective until 1 year after the date of enactment.

The President is required as soon as possible to convene one or more conferences for the purpose of enabling leaders of groups whose members will be affected by this act to become familiar with the rights afforded and obligations imposed by it and for the purpose of making plans which will result in the fair and effective administration of the act when all of its provisions become effective.

ADDITIONAL VIEWS

While we support this legislation in principle, we must vigorously object to the administrative procedure which has been incorporated in this bill by the majority members of the committee.

At nearly the last minute in its deliberations, the full committee decided to vest the proposed Equal Employment Opportunity Board with powers to make final judgments and to issue cease-and-desist orders. This represents a complete reversal of the sound position taken in 1962 when the committee favorably reported H.R. 10144. Under the earlier bill if the proposed board (or commission) considered, after investigation of a complaint, that a violation existed—and a voluntary settlement could not be effected—then the agency would have been empowered to file a civil suit in a Federal district court, in much the same manner as the Labor Department enforces the wage-hour law, the Landrum-Griffin law, as well as the newly enacted equal pay for women legislation.

The historic safeguard of trial before an impartial judiciary would be abandoned in this bill by the majority in favor of hearings before a newly created NLRB-type administrative tribunal, with only a very limited right of review in a court of appeals. It is unfortunate that the committee in its zeal to protect one civil right has seen fit, unnecessarily, to cast aside other fundamental and well-established civil rights which are at least of equal importance.

Administrative agencies and tribunals have acquired a well-deserved reputation for ignoring the rules of evidence. In some instances administrative appointees who sit as judges have had no legal training. Once a finding of fact is made by an administrative tribunal, it cannot be disturbed by a court upon appeal if there is any substantial evidence in the record to support the findings.

Under such rules of justice the accused in an administrative proceeding often finds, as a practical matter, that he must bear the burden of proving his freedom from guilt. By contrast, under the wage-hour law, for example, the Government is required to prove in a court of law by a preponderance of the evidence that the accused has violated the law. This is in keeping with our historic concept of justice and fair play; and it would be ironic, indeed, if these fundamental principles should be abandoned by a Congress which seeks justice and fair play in employment practices.

The case for enforcement in a court of law was well stated last year by Representative James Roosevelt, chairman of the subcommittee which handled this legislation. Shortly after the committee reported H.R. 10144 in February 1962, Representative Roosevelt circulated a memorandum, some relevant portions of which are set forth below:

Excerpts From a Memorandum Dated February 21, 1962, by Representative James Roosevelt

Section 9 (of H.R. 10144, the 1962 equal employment opportunity bill) obviously departs substantially from the procedural patterns of most State fair employment practices laws and of many independent Federal agencies. That is to say, rather than investing the Equal Employment Opportunity Commission with quasi-judicial functions, including the power to hold public hearings and issue cease and desist orders in the event that conciliation and mediation fail to obtain compliance with the law, the Commission may take the matter into Federal district court to secure injunctive relief. The decision of the committee to institute such procedure is based upon the following observations:

(1) A considerable body of opinion holds that it is more in keeping with basic principles of American jurisprudence to have final judicial determinations made by the judiciary rather than by an investigative, prosecuting agency.

President Franklin D. Roosevelt, who created the majority of the independent Federal agencies, expressed his uneasiness upon the very point in question as follows:

"There is a conflict of principle involved in their makeup and functions * * *. They are vested with duties of administration * * * and at the same time they are given important judicial work * * *. The evils resulting from this confusion of principles are insidious and far reaching * * *. Pressures and influences properly enough directed toward officers responsible for formulating and administering policy constitute an unwholesome atmosphere in which to adjudicate private rights. But the mixed duties of the commissions render escape from these subversive influences impossible. Furthermore, the same men are obliged to serve both as prosecutors and judges. This not only undermines judicial fairness; it weakens public confidence in that fairness. Commission decisions affecting private rights and conduct lie under the suspicion of being rationalizations of the preliminary findings which the commission, in the role of prosecutor, presented to itself" (S. Doc. No. 8, 77th Cong., 1st sess. 206 (1941)).

It might be added that a long-standing position of the American Bar Association is against an agency serving as judge, jury, and prosecutor.

(2) The experience of State fair employment practices commissions furnished to the committee indicates that in actuality the mediation and conciliation provisions of State laws have been far more important in achieving compliance with said laws than the provisions for hearings and issuance of cease and desist orders. The following table shows the experience of the majority of States with effective laws. The period of time covered is from effective date of the State law to the end of 1961.

State	Cases	Hearings	Cease and desist order	Court action
California	1,014	2	2	2
Colorado	251	4	3	1
Connecticut	900	4	3	3
Massachusetts	3,559	2	2	0
Michigan	1,459	8	6	4
Minnesota	184	1	1	1
New Jersey	1,735	2	2	2
New York	7,497	18	6	5
Ohio	985	2	1	0
Oregon	286	0	0	0
Pennsylvania	1,238	19	0	0
Rhode Island	286	0	0	0
Total	19,394	62	26	18

It is apparent that in less than 0.3 percent of the cases has it been necessary to carry proceedings through the hearing stage; that in slightly more than 0.1 percent of the cases has it been necessary or appropriate to issue cease and desist orders; and that in less than 0.1 percent of the cases has it been necessary finally for the matter to be adjudicated in State courts.

(3) Since a cease and desist order issued by quasi-judicial bodies has no force and effect, if the respondent chooses not to comply with such order until the matter is taken into court, the committee believes that the procedure may well strengthen the hand of the commission in its efforts to remove unlawful employment practices by conciliation and mediation.

(4) The committee does not feel that the procedure of this section will unduly burden the Federal courts. To obviate such a possibility, however, this section allows the court to appoint a master to hear actions brought under this act.

Discrimination in employment on the basis of race, religion, color, national origin or ancestry is contrary to our national ideals and our national interests. But we will not act wisely if we destroy one fundamental right in our zeal to protect another.

Our heritage is seriously threatened by ever-increasing encroachments on the part of administrative tribunals which too often operate in an atmosphere of political and emotional pressures. Indeed, this process has gone so far that one member of the Committee on Education and Labor looks upon the suggestion of court trials under this legislation as a novel concept.

We believe it would be a serious mistake if this legislation were to deny the right of trial in a court of law, and we believe that such a denial could only serve to undermine and weaken the moral force of this legislation and public acceptance of it.

Accordingly, at the appropriate time we shall offer or support an amendment to reinstate the safeguard of court trials in keeping with the principle of the bill which was reported by the committee in 1962.

PETER H. B. FRELINGHUYSEN.
ROBERT P. GRIFFIN.

SUPPORTING VIEWS OF FIVE REPUBLICANS

This is a bipartisan bill, with substantial bipartisan support. Many Republican amendments were adopted in subcommittee and full committee, significantly improving the legislation. Although some important suggestions were rejected by the Democrats, we feel that the bill in its present form would be fair and effective.

There is no more crucial right than the right of equal opportunity to work for a living and to acquire the material blessings of life for self and family. Equal opportunity in education and training will never be fully attained until racial barriers are breached in the job world. A desirable job opportunity at the end of the line is one of the strong motivating factors for education at the higher levels.

Promises without fulfillment have contributed substantially to the racial crisis we face today. The Federal Government must raise a standard of fair and equal opportunity to which all good citizens may repair. Had such a standard been raised 2 years ago, unblemished by expediency and hypocrisy, the racial torsion of today would never have been.

Although the President only lately and reluctantly endorsed fair employment legislation, this bill is of vital importance to all Americans. We urge its passage without delay and with minimal partisan rancor.

WILLIAM H. AYRES,
ALBERT H. QUIE,
CHARLES E. GOODELL,
ALPHONZO BELL,
ROBERT TAFT, JR.

MINORITY VIEWS

We believe that it is morally wrong to deny equal employment opportunity to any person because of that persons race, color, religious faith, or national origin; yet we are opposed to the enactment of this legislation for the following reasons:

1. This is not a proper field for Federal legislation. A matter such as discrimination in employment or in labor-union membership is best handled at the State or local level, or through the force of public opinion. This legislation would involve the Federal Government in the most intimate details of the operation of every business enterprise and labor union local in the Nation, and in a matter in which the determinations to be made are extremely difficult. Moreover, there would be a considerable potential for hardships to both employers and workers. General enforcement of such an act would be virtually impossible.

2. The problem of racial and religious discrimination in employment is a problem of morality, in which public awareness and understanding has brought more progress than all the laws we could enact. In fact, without the willingness of individuals to achieve progress in this field, this legislation will be as impossible to enforce as was the prohibition amendment. Our experience with prohibition should be instructive as to the difficulty of trying to legislate morality in fields where there is a large and determined public resistance. The result tends to breed a contempt for the law and a public apathy about moral values.

3. This bill is fatally defective in its failure to provide for court determination of the facts and the law in those cases in which negotiation and arbitration do not lead to a settlement of issues. It is a major mistake to model legislation in this field on the National Labor Relations Board, which has one of the sorriest records of all the Federal agencies for political involvement and for shifting and uncertain decisions.

The vast majority of Americans feel that discrimination in employment opportunities is morally wrong, and most business enterprises and labor unions, who actually control employment, now recognize that discrimination of this kind also is a bad economic practice. Great progress has been made in this field by industry and labor and through the efforts of responsible community leaders. The progress has not been fast enough nor gone far enough, but every sign points to its rapid acceleration without Federal intervention.

For these reasons, we feel that this bill should be defeated.

DAVE MARTIN.
PAUL FINDLEY.

SUPPLEMENTAL VIEWS

We, the undersigned, wish to associate ourselves with the views of our colleagues, Peter H. B. Frelinghuysen and Robert P. Griffin, with respect to the absolute necessity—if this legislation were to be enacted—of providing for enforcement by an action brought in a U.S. district court.

The right to have disputes at law settled by a trial before an impartial judiciary is fundamental. This principle has been firmly established in our jurisprudence since the 12th century, and it then represented over 500 years of legal development from a state of near savagery. The right to trial has since been maintained only by constant vigilance and by the willingness of freemen to die for it. We do not propose to compromise this principle.

The right to trial has been compromised dangerously in the United States in this century. Every argument advanced against provision in this legislation for a final determination of disputes by court trial would have been applicable in another time to support the arbitrary fiat of king or baron, or to defend proceedings by star chamber or inquisition. We regard the modern development of trial by administrative tribunal as a threat to the liberties of every citizen. It is a reactionary device in the truest sense of that word.

DONALD C. BRUCE.
PAUL FINDLEY.
M. G. (GENE) SNYDER.

[H.R. 405, 88th Cong., 1st sess. Rept. No. 570]

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL To prohibit discrimination in employment in certain cases because of race, religion, color, national origin, ancestry, or age

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION. 1. This Act may be cited as the "Federal Equal Employment Opportunity Act".

FINDINGS AND DECLARATION OF POLICY

SEC. 2. (a) The Congress hereby finds that, despite the continuing progress of our Nation, the practice of discriminating in employment against properly qualified persons because of their race, religion, color, national origin, ancestry, or age is contrary to the American principles of liberty and of equality of opportunity, is incompatible with the Constitution, forces segments of our population into substandard conditions of living, foments industrial strife and domestic unrest, deprives the United States of the fullest utilization of its capacities for production, endangers the national security and the general welfare, and adversely affects the domestic and foreign commerce of the United States.

(b) The Congress, therefore, declares that the right to employment without discrimination of the types described in sections 5, 6, and 7 is a right of all persons within the jurisdiction of the United States, and that it is the national policy to protect the right of the individual to be free from such discrimination.

(c) The Congress further declares that the succeeding provisions of this Act are necessary for the following purposes:

(1) To remove obstructions to the free flow of commerce among the States and with foreign nations.

(2) To insure the complete and full enjoyment by all persons of the rights, privileges, and immunities secured and protected by the Constitution of the United States.

SEC. 3. For the purposes of this Act—

(a) The term "person" includes one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has twenty-five or more employees, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, or a State or political subdivision thereof, (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954: *Provided*, That during the first year after the effective date prescribed in subsection (a) of section 21, persons having fewer than one hundred employees (and their agents) shall not be considered employers, and, during the second year after such date, persons having fewer than fifty employees (and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person; but shall not include an agency of the United States, or an agency of a State or political subdivision of a State, except that such term shall include the United States Employment Service and the system of State and local employment services receiving Federal assistance.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if the number of its members (or, where it is a labor organization

composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) one hundred or more during the first year after the effective date prescribed in subsection (a) of section 10, (B) fifty or more during the second year after such date, or (C) twenty-five or more thereafter, and such labor organization—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended; or

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees or employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, the Commonwealth of Puerto Rico, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

(j) The term "Commission" means the Equal Employment Opportunity Commission, created by section 8 of this Act.

EXEMPTION

SEC. 4. This Act shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, or society.

DISCRIMINATION BECAUSE OF RACE, RELIGION, COLOR, NATIONAL ORIGIN, OR ANCESTRY

SEC. 5. (a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, religion, color, national origin, or ancestry; or

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, religion, color, national origin, or ancestry.

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, national origin, or ancestry, or to classify or refer for employment any individual on the basis of his race, color, religion, national origin, or ancestry.

(c) It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, religion, color, national origin, or ancestry;

(2) to limit, segregate, or classify its membership in any way which would deprive or tend to deprive any individual of employment opportunities,

or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, religion, color, national origin, or ancestry; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor management committee controlling apprenticeship or other training programs to discriminate against any individual because of his race, religion, color, national origin, or ancestry in admission to, or employment in, any program established to provide apprenticeship or other training.

DISCRIMINATION BECAUSE OF AGE

SEC. 6. (a) It shall be an unlawful employment practice for an employer to fail or refuse to hire any individual, or to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, otherwise lawful, because of such individual's age, when the reasonable demands of the position do not require such an age distinction; but no discrimination arising by reason of the operation of a bona fide seniority system shall be deemed an unlawful employment practice.

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to classify or refer for employment, or otherwise to discriminate against any individual because of his age, or to classify or refer for employment any individual on the basis of age, when the reasonable demands of the position or positions involved do not require such an age distinction.

(c) It shall be an unlawful employment practice for a labor organization—

(1) to exclude from its membership or to discriminate against any individual because of his age, if the reasonable demands of the position or positions involved do not require such an age distinction, or

(2) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training programs to discriminate against any individual in admission to or employment in any program established to provide apprenticeship or other training because of his age, where the reasonable demands of the position being trained for do not require such an age distinction.

OTHER UNLAWFUL EMPLOYMENT PRACTICES

SEC. 7. (a) It shall be an unlawful employment practice for an employer, employment agency, or labor organization to discriminate in any manner against another person because he has opposed any practice made an unlawful employment practice by this Act, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

(b) It shall be an unlawful employment practice for an employer, labor organization, or employment agency to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on race, religion, color, national origin, ancestry, or age, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion when religion is a bona fide occupational qualification for employment, or based on age when the reasonable demands of the position require such a preference, limitation, specification, or discrimination.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SEC. 8. (a) There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party, who shall be appointed by the President by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years, beginning from the date of enactment of this Act, but their successors shall be appointed for terms of five years each, except

that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and shall appoint, in accordance with the civil service laws, such officers, agents, attorneys, and employees as it deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the Classification Act of 1949, as amended. The Vice Chairman shall act as Chairman in the absence or disability of the Chairman or in the event of a vacancy in that office.

(b) A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

(c) The Commission shall have an official seal which shall be judicially noticed.

(d) The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken; the names, salaries, and duties of all individuals in its employ and the moneys it has disbursed; and shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

(e) Each member of the Commission shall receive a salary of $20,000 a year, except that the Chairman shall receive a salary of $20,500.

(f) The Commission shall maintain separate divisions within its staff, each of which shall be assigned responsibility for processing all cases involving one of the major categories of unlawful employment practices through the stage of conference, conciliation, and persuasion. The Commission shall, in addition, maintain such other divisions within its staff as it deems necessary or desirable.

(g) The principal office of the Commission shall be in the District of Columbia, but it may meet or exercise any or all of its powers at any other place. The Commission may establish such regional offices as it deems necessary, and shall establish at least one such office in each of the major geographical areas of the United States, including its territories and possessions.

(h) The Commission shall have power—

(1) to cooperate with and utilize regional, State, local, and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this Act such technical assistance as they may request to further their compliance with this Act or an order issued thereunder;

(4) upon the request of any employer, whose employees or some of them refuse or threaten to refuse to cooperate in effectuating the provisions of this Act, to assist in such effectuation by conciliation or other remedial action;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this Act and to make the results of such studies available to interested governmental and nongovernmental agencies, and

(6) to create such local, State, or regional advisory and conciliation councils as in its judgment will aid in effectuating the purpose of this Act, and the Commission may empower them to study the problem of discrimination forbidden by this Act and to foster through community effort or otherwise good will, cooperation, and conciliation among the groups and elements of the population, and make recommendations to the Commission for the development of policies and procedures in general and in specific instances. Such advisory and conciliation councils shall be composed of representative citizen resident of the area for which they are appointed, who shall serve without compensation, but shall receive transportation and per diem in lieu of subsistence as authorized by section 5 of the Act of August 2, 1946 (5 U.S.C. 73b 2), for persons serving without compensation. The Commission may make provision for technical and clerical assistance to such councils and for the expenses of such assistance. Members of such councils shall be exempt from the operation of title 18, United States Code, sections 281, 283, 284, 434, and 1914, and section 190 of the Revised Statutes of the United States (5 U.S.C. 99).

(i) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court.

(j) The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

SEC. 9. (a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 5, 6, or 7.

(b) Whenever a written charge has been filed by or on behalf of any person claiming to be aggrieved, or a written charge has been filed by a member of the Commission, that any person subject to the Act has engaged in any unlawful employment practice, the Commission shall notify the person charged with the commission of an unlawful employment practice (hereinafter referred to as the "respondent") of such charge and shall investigate such charge and if it shall determine after such preliminary investigation that probable cause exists for crediting such written charge, it shall endeavor to eliminate any unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such endeavors may be used as evidence in any subsequent proceeding.

(c) If the Commission fails to effect the elimination of such unlawful practice and to obtain voluntary compliance with this Act, or in advance thereof if circumstances warrant, the Commission shall have power to issue and cause to be served upon the respondent a complaint stating the charges in that respect, together with a notice of hearing before the Commission, or a member thereof, or before a designated agent, at a place therein fixed, not less than ten days after the service of such complaint. No complaint shall issue based upon any unlawful employment practice occurring more than one year prior to the filing of the charge with the Commission unless the person aggrieved thereby was prevented from filing such charge by reason of service in the Armed Forces, in which event the period of military service shall not be included in computing the one-year period.

(d) The respondent shall have the right to file a verified answer to such complaint and to appear at such hearing in person or otherwise, with or without counsel, to present evidence and to examine and cross-examine witnesses.

(e) The Commission or a member or designated agent conducting such hearing shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend its answer.

(f) All testimony shall be taken under oath.

(g) The member of the Commission who filed a charge shall not participate in a hearing thereon.

(h) At the conclusion of a hearing before a member or designated agent of the Commission, such member or agent shall transfer the entire record thereof to the Commission, together with his recommended decision and copies thereof shall be served upon the parties. The Commission, or a panel of three qualified members designated by it to sit and act as the Commission in such case, shall afford the parties an opportunity to be heard on such record at a time and place to be specified upon reasonable notice. In its discretion, the Commission upon notice may take further testimony.

(i) With the approval of the member or designated agent conducting the hearing, a case may be ended at any time prior to the transfer of the record thereof to the Commission by agreement between the parties for the elimination of the alleged unlawful employment practice on mutually satisfactory terms.

(j) If, upon the preponderance of the evidence, including all the testimony taken, the Commission shall find that the respondent engaged in any unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on such person and other parties an order requiring such person to cease and desist from such unlawful employment practice and to take such affirmative action, including reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the discrimination), as will effectuate the policies of the Act: *Provided*. That interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. Such order may further require such respondent to make reports from time to time showing the extent to which it has complied with the order. If the Commission shall find that the respondent has not engaged in any unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on such person and other parties an order dismissing the complaint.

(k) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the case may at any time be ended by agreement between the parties, approved by the Commission, for the elimination of the alleged unlawful employment practice on mutually satisfactory terms, and the Com-

mission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(l) The proceedings held pursuant to this section shall be conducted in conformity with the standards and limitations of sections 5, 6, 7, 8, and 11 of the Administrative Procedure Act.

JUDICIAL REVIEW

SEC. 10. (a) The Commission shall have power to petition any United States Court of Appeals or, if the court of appeals to which application might be made is in vacation, any district court within any circuit or district, respectively, wherein the unlawful employment practice in question occurred, or wherein the respondent resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court to which petition is made a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and the order of the Commission. Upon such filing, the court shall conduct further proceedings in conformity with the standards, procedures, and limitations established by section 10 of the Administrative Procedure Act.

(b) Upon such filing the court shall cause notice thereof to be served upon such respondent and thereupon shall have jurisdiction of the proceeding and of the question determined therein and shall have power to grant such temporary relief or restraining order as it deems just and proper and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Commission.

(c) No objection that has not been urged before the Commission, its member, or agent shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

(d) The findings of the Commission with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive.

(e) If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, its member, or agent, the court may order such additional evidence to be taken before the Commission, its member, or agent, and to be made a part of the transcript.

(f) The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order.

(g) The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals, if application was made to the district court or other United States court as hereinabove provided, and by the Supreme Court of the United States as provided in title 28, United States Code, section 1254.

(h) Any person aggrieved by a final order of the Commission may obtain a review of such order in any United States court of appeals of the judicial circuit wherein the unlawful employment practice in question was alleged to have been engaged in or wherein such person resides or transacts business or the Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Commission be modified or set aside. A copy of such petition shall be forthwith served upon the Commission and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding certified by the Commission, including the pleadings and testimony upon which the order complained of was entered and the findings and order of the Commission. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Commission under subsections (a), (b), (c), (d), (e), and (f), and shall have the same exclusive jurisdiction to grant to the petitioners or to the Commission such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing,

modifying and enforcing as so modified, or setting aside in whole or in part the order of the Commission.

(i) Upon such filing by a person aggrieved the reviewing court shall conduct further proceedings in conformity with the standards, procedures, and limitations established by section 10 of the Administrative Procedure Act.

(j) The commencement of proceedings under this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(k) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Commission, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (29 U.S.C. 101–115).

(l) Petitions filed under this Act shall be heard expeditiously.

EFFECT ON STATE LAWS

SEC. 11. (a) Nothing in this Act shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this Act.

(b) Where there is a State or local agency which has effective power to eliminate and prohibit discrimination in employment in cases covered by this Act, and the Commission determines the agency is effectively exercising such power, the Commission shall seek written agreements with the State or local agency under which the Commission shall refrain from filing a charge in any cases or class of cases referred to in such agreement. No person may file a charge under section 9(b) in any cases or class of cases referred to in such agreement. The Commission shall rescind any such agreement when it determines such agency no longer has such power, or is no longer effectively exercising such power.

INVESTIGATIONS, INSPECTIONS, RECORDS

SEC. 12. (a) In connection with any investigation of a charge filed under section 9, the Commission or its designated representative may gather data regarding the practices of any person and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as may be appropriate to determine whether the respondent has committee or is committing an unlawful employment practice, or which may aid in the enforcement of this Act.

(b) With the consent and cooperation of State and local agencies charged with the administration of State fair employment practices laws, the Commission may, for the purpose of carrying out its functions and duties under this Act and within the limitation of funds appropriated specifically for such purpose, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered to assist the Commission in carrying out this Act.

(c) Every employer, employment agency, and labor organization subject to this Act shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom, as the Commission shall prescribe by regulation or order as reasonable, necessary, or appropriate for the enforcement of this Act or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this Act which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purpose of this Act, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applications were received, and shall furnish to the Commission, upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship it may (1) apply to the Commission for an exemption from the application of such regulation or order, or (2) bring a civil action in the United States district court for the district where

such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment service, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief.

INVESTIGATORY POWERS

SEC. 13. (a) For the purposes of any investigation provided for in this Act, the provisions of sections 9 and 10 of the Federal Trade Commission Act of September 16, 1914, as amended (15 U.S.C. 49, 50), are hereby made applicable to the jurisdiction, powers, and duties of the Commission, except that the attendance of a witness may not be required outside of the State where he is found, resides, or transacts business, and the production of evidence may not be required outside the State where such evidence is kept.

(b) The several departments and agencies of the Government, when directed by the President, shall furnish the Commission, upon its request, all records, papers, and information in their possession relating to any matter before the Commission.

EMPLOYMENT PRACTICES OF GOVERNMENTAL AGENCIES AND OF CONTRACTORS WITH THE GOVERNMENT

SEC. 14. (a) The President is authorized and directed to take such action as may be necessary to provide protections within the Federal establishment to insure equal employment opportunities for Federal employees in accordance with the policies of the Act.

(b) The President is authorized to take such action as may be appropriate to prevent the committing or continuing of an unlawful employment practice by a person in connection with the performance of a contract with an agency or instrumentality of the United States.

NOTICES TO BE POSTED

SEC. 15. (a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts of the Act and such other relevant information which the Commission deems appropriate to effectuate the purposes of this Act.

(b) A willful violation of this section shall be punishable by a fine of not less than $100 or more than $500 for each separate offense.

VETERANS' PREFERENCE

SEC. 16. Nothing contained in this Act shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

RULES AND REGULATIONS

SEC. 17. (a) The Commission shall have authority from time to time to issue, amend, or rescind suitable regulations to carry out the provisions of this Act. Regulations issued under this section shall be in conformity with the standards and limitations of the Administrative Procedure Act.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this Act if he pleads and proves that he published and filed such information in good faith, in conformity with the instructions of the Commission issued under this Act regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this Act.

~~FORCIBLY RESISTING THE COMMISSION OR ITS REPRESENTATIVES~~

~~SEC. 18. The provisions of section 111, title 18, United States Code, shall apply to officers, agents, and employees of the Commission in the performance of their official duties.~~

~~APPROPRIATIONS AUTHORIZED~~

~~SEC. 19. There is hereby authorized to be appropriated not to exceed $2,500,000 for the administration of this Act by the Commission during the first year after its enactment, and not to exceed $10,000,000 for such purpose during the second year after such date.~~

~~SEPARABILITY CLAUSE~~

~~SEC. 20. If any provision of this Act or the application of such provision to any person or circumstance shall be held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.~~

~~EFFECTIVE DATE~~

~~SEC. 21. (a) This Act shall become effective one year after the date of its enactment.~~

~~(b) Notwithstanding subsection (a), sections of this Act other than sections 5, 6, 7, and 9 shall become effective immediately.~~

~~(c) The President shall, as soon as feasible after the enactment of this Act, convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this Act to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this Act when all its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President's Committee on Equal Employment Opportunity, (2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and employment agencies who will be subject to this Act.~~

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal Equal Employment Opportunity Act".

FINDINGS AND DECLARATION OF POLICY

SEC. 2. (a) The Congress hereby finds that, despite the continuing progress of our Nation, the practice of discriminating in employment against properly qualified persons because of their race, religion, color, national origin, or ancestry is contrary to the American principles of liberty and of equality of opportunity, is incompatible with the Constitution, forces segments of our population into substandard conditions of living, foments industrial strife and domestic unrest, deprives the United States of the fullest utilization of its capacities for production, endangers the national security and the general welfare, and adversely affects the domestic and foreign commerce of the United States.

(b) The Congress, therefore, declares that the opportunity for employment without discrimination of the types described in sections 5 and 6 is a right of all persons within the jurisdiction of the United States, and that it is the national policy to protect the right of the individual to be free from such discrimination.

(c) The Congress further declares that the succeeding provisions of this Act are necessary for the following purposes:

(1) To remove obstructions to the free flow of commerce among the States and with foreign nations.

(2) To insure the complete and full enjoyment by all persons of the rights, privileges, and immunities secured and protected by the Constitution of the United States.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(a) The term "person" includes one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock

companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has twenty-five or more employees, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, or a State or political subdivision thereof, (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954: Provided, That during the first year after the effective date prescribed in subsection (a) of section 23, persons having fewer than one hundred employees (and their agents) shall not be considered employers, and, during the second year after such date, persons having fewer than fifty employees (and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person; but shall not include an agency of the United States, or an agency of a State or political subdivision of a State, except that such term shall include the United States Employment Service and the system of State and local employment services receiving Federal assistance.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) one hundred or more during the first year after the effective date prescribed in subsection (a) of section 23, (B) fifty or more during the second year after such date, or (C) twenty-five or more thereafter, and such labor organization—

(1) is the certified representatives of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended; or

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

EXEMPTION

SEC. 4. This Act shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, or society.

DISCRIMINATION BECAUSE OF RACE, RELIGION, COLOR, NATIONAL ORIGIN, OR ANCESTRY

SEC. 5. (a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, religion, color, national origin, or ancestry; or

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, religion, color, national origin, or ancestry.

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, national origin, or ancestry, or to classify or refer for employment any individual on the basis of his race, color, religion, national origin or ancestry.

(c) It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, religion, color, national origin, or ancestry;

(2) to limit, segregate, or classify its membership in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, religion, color, national origin, or ancestry; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training programs to discriminate against any individual because of his race, religion, color, national origin, or ancestry in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Notwithstanding any other provision of this Act, it shall not be an unlawful employment practice for an employer to hire and employ employees of a particular religion or national origin in those certain instances where religion or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

OTHER UNLAWFUL EMPLOYMENT PRACTICES

SEC. 6. (a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this Act, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

(b) It shall be an unlawful employment practice for an employer, labor organization, or employment agency to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on race, religion, color, national origin, or ancestry, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion when religion is a bona fide occupational qualification for employment.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SEC. 7. There is hereby created an independent agency to be known as the Equal Employment Opportunity Commission, which shall consist of an Equal Employment Opportunity Board (hereinafter referred to as the "Board"), and an Office of the Administrator of the Equal Employment Opportunity Commission (hereinafter

referred to as the "Office") which shall be headed by an Administrator of the Equal Employment Opportunity Commission (hereinafter referred to as the "Administrator").

EQUAL EMPLOYMENT OPPORTUNITY BOARD

SEC. 8. (a) It shall be the function of the Board to hear and determine complaints involving unlawful employment practices brought before it under this Act by the Administrator, and to issue appropriate orders in connection therewith to enforce this Act.

(b) The Board shall be composed of five members, not more than three of whom are members of the same political party, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of two years, one for a term of three years, one for a term of five years, one for a term of six years, and one for a term of seven years, beginning from the date of enactment of this Act, but their successors shall be appointed for terms of seven years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board, and one member to serve as vice chairman. The vice chairman shall act as chairman in the absence or disability of the chairman or in the event of a vacancy in that office.

(c) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and three members thereof shall constitute a quorum. The Board shall have a seal which shall be judicially noticed.

(d) Each member of the Board shall receive a salary of $20,000 per year, except that the chairman shall receive a salary of $20,500. The Board shall employ a Secretary of the Board and such other officers and employees as it deems necessary.

(e) The Board shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken; and shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

(f) The principal office of the Board shall be in the District of Columbia, but it may meet or exercise any or all of its powers at any other place.

ADMINISTRATOR OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SEC. 9. (a) The Office shall be composed of the Administrator and such officers and employees appointed by him as may be necessary to enable him to carry out his functions. The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years, and shall be eligible for reappointment. The Administrator shall receive a salary of $20,500 per year.

(b) The Administrator shall have power—

(1) to cooperate with and utilize regional, State, local, and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Administrator or any of his agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this Act such technical assistance as they may request to further their compliance with this Act or an order issued thereunder;

(4) upon the request of any employer, whose employees or some of them refuse or threaten to refuse to cooperate in effectuating the provisions of this Act, to assist in such effectuation by conciliation or other remedial action;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this Act and to make the results of such studies available to interested governmental and nongovernmental agencies; and

(6) to create such local, State, or regional advisory and conciliation councils as in his judgment will aid in effectuating the purpose of this Act, and the Administrator may empower them to study the problem of discrimination forbidden by this Act and to foster through community effort or otherwise good will, cooperation, and conciliation among the groups and elements of the population, and make recommendations to the Administrator for the development of policies and procedures in general and in specific instances. Such advisory and conciliation councils shall be composed of representative citizens resident of the area for which they are appointed, who shall serve without compensation, but shall receive transportation and per diem in lieu of subsistence as authorized by section 5 of the Act of August 2, 1946 (5 U.S.C. 73b–2), for persons serving without compensation. The Administrator may make provisions for technical and clerical assistance to to such councils and for the expenses of such assistance.

(c) Attorneys appointed under this section may, at the direction of the Administrator, appear for and represent the Board or Administrator in any case in court.

(d) The Administrator shall, in a any of his educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

SEC. 10. (a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in sections 5 and 6.

(b) Whenever a verified written charge has been filed by or on behalf of any person claiming to be aggrieved, or a verified written charge has been filed by the Administrator where he has reasonable cause to believe a violation of this Act has occurred, that any person subject to the Act has engaged in any unlawful employment practice, the Administrator shall notify the person charged with the commission of an unlawful employment practice (hereinafter referred to as the "respondent") of such charge and shall investigate such charge and if he shall determine after such preliminary investigation that probable cause exists for crediting such written charge, he shall endeavor to eliminate any unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such endeavors may be used as evidence in any subsequent proceeding.

(c) If the Administrator fails to effect the elimination of such unlawful practice and to obtain voluntary compliance with this Act, or in advance thereof if circumstances warrant, the Administrator shall issue and cause to be served upon the respondent a complaint stating the charges in that respect, together with a notice of hearing before the Board, or a member thereof, or before a designated agent, at a place therein fixed, not less than ten days after the service of such complaint. In the event the Administrator shall fail or refuse to issue such complaint within a reasonable time, the person filing such charge may petition the District Court of the United States for the District of Columbia, or a district court of the United States within any district wherein the unfair employment practice in question is alleged to have occurred or wherein such person resides or transacts business, and such courts shall have jurisdiction to require the Administrator to issue such complaint. No complaint shall issue based upon any unlawful employment practice occurring more than six months prior to the filing of the charge with the Board unless the person aggrieved thereby was prevented from filing such charge by reason of service in the Armed Forces, in which event the period of military service shall not be included in computing the six-month period.

(d) The respondent shall have the right to file a verified answer to such complaint and to appear at such hearing in person or otherwise, with or without counsel, to present evidence and to examine and cross-examine witnesses.

(e) The Board or a member or designated agent conducting such hearing shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend its answer.

(f) All testimony shall be taken under oath.

(g) At the conclusion of a hearing before a member or designated agent of the Board, such member or agent shall transfer the entire record thereof to the Board, together with his recommended decision and copies thereof shall be served upon the parties. The Board, or a panel of three qualified members designated by it to sit and act as the Board in such case, shall afford the parties an opportunity to be heard on such record, including oral argument, at a time and place to be specified upon reasonable notice. In its discretion, the Board upon notice may take further testimony. In the event a member of the Board conducts the hearing specified in subsection (c) of this section, such member shall be disqualified from participating in further proceedings before the Board concerning the case in which he has been acting as hearing officer.

(h) With the approval of the member or designated agent conducting the hearing, a case may be ended at any time prior to the transfer of the record thereof to the Board by agreement between the parties for the elimination of the alleged unlawful employment practice on mutually satisfactory terms.

(i) If, upon the preponderance of the evidence, including all the testimony taken, the Board shall find that the respondent engaged in any unlawful employment practice, the Board shall state its findings of fact and shall issue and cause to be served on such person and other parties an order requiring such person to cease and desist from such unlawful employment practice and to take such affirmative action, including reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, or any of them, as the case may be,

to the extent responsible for the discrimination), as will effectuate the policies of the Act: Provided, That interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. Such order may further require such respondent to make reports from time to time showing the extent to which it has complied with the order. If the Board shall find that the respondent has not engaged in any unlawful employment practice, the Board shall state its findings of fact and shall issue and cause to be served on such person and other parties an order dismissing the complaint. No order of the Board shall require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, religion, color, national origin, or ancestry.

(j) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the case may at any time be ended by agreement between the parties, approved by the Board, for the elimination of the alleged unlawful employment practice on mutually satisfactory terms, and the Board may, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(k) The proceedings held pursuant to this section shall be conducted in conformity with the standards and limitations of sections 5, 6, 7, 8, and 11 of the Administrative Procedure Act.

JUDICIAL REVIEW

SEC. 11. (a) The Administrator shall have power to petition any United States court of appeals or, if the court of appeals to which application might be made is in vacation any district court within any circuit or district, respectively, wherein the unlawful employment practice in question occurred, or wherein the respondent resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court to which petition is made a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and the order of the Board. Upon such filing, the court shall conduct further proceedings in conformity with the standards, procedures, and limitations established by section 10 of the Administrative Procedure Act.

(b) Upon such filing the court shall cause notice thereof to be served upon such respondents and thereupon shall have jurisdiction of the proceeding and of the question determined therein and shall have power to grant such temporary relief or restraining order as it deems just and proper and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board.

(c) No objection that has not been urged before the Board, its member, or agent shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

(d) The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive.

(e) If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, or agent, the court may order such additional evidence to be taken before the Board, its member, or agent, and to be made a part of the transcript.

(f) The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact it supported by substantial evidence on the record considered as a whole shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order.

(g) The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals, if application was made to the district court or other United States court as hereinabove provided, and by the Supreme Court of the United States as provided in title 28, United States Code, section 1254.

(h) Any person aggrieved by a final order of the Board may obtain a review of such order in any United States court of appeals of the judicial circuit wherein the unlawful employment practice in question was alleged to have been engaged in or wherein such person resides or transacts business or the Court of Appeals for the

District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board and thereupon the Administrator shall file in the court a transcript of the entire record in the proceeding certified by the Board, including the pleadings and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Administrator under subsections (a), (b), (c), (d), (e), and (f), and shall have the same exclusive jurisdiction to grant to the petitioners or to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Board.

(i) Upon such filing by a person aggrieved the reviewing court shall conduct further proceedings in conformity with the standards, procedures, and limitations established by section 10 of the Administrative Procedure Act.

(j) The commencement of proceedings under this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(k) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (29 U.S.C. 101–115).

(l) Petitions filed under this Act shall be heard expeditiously.

EFFECT ON STATE LAWS

SEC. 12. (a) Nothing in this Act shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this Act.

(b) Where there is a State or local agency which has effective power to eliminate and prohibit discrimination in employment in any cases covered by this Act, and the Administrator determines the agency is effectively exercising such power, the Administrator shall seek written agreements with the State or local agency under which the Administrator shall refrain from filing a charge in any such case or class of cases referred to in such agreement. No person may file a charge under section 10(b) in any such case or class of cases referred to in such agreement, except that in the event the State or local agency shall fail or refuse to issue a complaint within a reasonable time, the person filing the charge may petition the District Court of the United States for the District of Columbia, or a district court of the United States within any district wherein the unfair employment practice in question is alleged to have occurred or wherein such person resides or transacts business, and such courts shall have jurisdiction to require the Administrator to issue a complaint under section 10. The Administrator shall rescind any such agreement when he determines such agency no longer has such power, or is no longer effectively exercising such power.

INVESTIGATIONS, INSPECTIONS, RECORD

SEC. 13. (a) In connection with any investigation of a charge filed under section 10, the Administrator or his designated representative shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question.

(b) With the consent and cooperation of State and local agencies charged with the administration of State fair employment practices laws, the Administrator may, for the purpose of carrying out his functions and duties under this Act and within the limitation of funds appropriated specifically of such purpose, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered to assist the Administrator in carrying out this Act.

(c) Every employer, employment agency, and labor organization subject to this Act shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom, as the Administrator shall prescribe by regulation or order, after public hearing, as reasonable and neces-

sary for the enforcement of this Act. The Administrator shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this Act which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purpose of this Act, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applications were received, and shall furnish to the Administrator, upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may (1) apply to the Administrator for an exemption from the application of such regulation or order, and (2) in the event the Administrator has failed or refused to grant such exemption, bring a civil action in the United States district court for the district where such records are kept. If the Administrator or the court, as the case may be, finds that the application of the regulation or order to the employer, employment service, or labor organization in question would impose an undue hardship, the Administrator or the court, as the case may be, may grant appropriate relief.

INVESTIGATORY POWERS

SEC. 14. (a) For the purposes of any investigation provided for in this Act, the provisions of sections 9 and 10 of the Federal Trade Commission Act of September 16, 1914, as amended (15 U.S.C. 49, 50), are hereby made applicable to the powers and duties of the Administrator, except that the provisions of section 307 of the Federal Power Commission Act shall apply with respect to grants of immunity, and except that the attendance of a witness may not be required outside of the State where he is found, resides, or transacts business, and the production of evidence may not be required outside the State where such evidence is kept.

(b) The several departments and agencies of the Government, when directed by the President, shall furnish the Administrator, upon his request, all records, papers, and information in their possession relating to any matter before the Administrator.

EMPLOYMENT PRACTICES OF GOVERNMENTAL AGENCIES

SEC. 15. The President is authorized and directed to take such action as may be necessary to provide protections within the Federal establishment to insure equal employment opportunities for Federal employees in accordance with the policies of the Act.

NOTICES TO BE POSTED

SEC. 16. (a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Administrator setting forth excerpts of the Act and such other relevant information which the Administrator deems appropriate to effectuate the purposes of this Act.

(b) A willful violation of this section shall be punishable by a fine of not less than $100 or more than $500 for each separate offense.

VETERANS' PREFERENCE

SEC. 17. Nothing contained in this Act shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

RULES AND REGULATIONS

SEC. 18. (a) The Board and Administrator shall each have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out their respective functions. Regulations issued under this section shall be in conformity with the standards and limitations of the Administrative Procedure Act.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Administrator, or (2) the failure of such person to publish and file any information required by any provision of this Act if he pleads and proves that he published and filed such information in good

faith, in conformity with the instructions of the Administrator issued under this Act regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this Act.

FORCIBLY RESISTING THE COMMISSION OR ITS REPRESENTATIVES

SEC. 19. The provisions of section 111, title 18, United States Code, shall apply to officers, acents, and employees of the Commission in the performance of their official duties.

APPROPRIATIONS AUTHORIZED

SEC. 20. There is hereby authorized to be appropriated not to exceed $2,500,000 for the administration of this Act during the first year after its enactment, and not to exceed $10,000,000 for such purpose during the second year after such date.

SEPARABILITY CLAUSE

SEC. 21. If any provision of this Act or the application of such provision to any person or circumstance shall be held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

SPECIAL STUDY BY SECRETARY OF LABOR

SEC. 22. The Secretary of Labor shall make a full and complete study of the factors which might tend to result in discrimination in employment because of age and of the consequences of such discrimination on the economy and individuals affected. The Secretary of Labor shall make a report to the Congress not later than June 30, 1964, containing the results of such study and shall include in such report such recommendations for legislation to prevent arbitrary discrimination in employment because of age as he determines advisable.

EFFECTIVE DATE

SEC. 23. (a) This Act shall become effective one year after the date of its enactment.

(b) Notwithstanding subsection (a), sections of this Act other than sections 5, 6, and 10 shall become effective immediately.

(c) The President shall, as soon as feasible after the enactment of this Act, convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this Act to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this Act when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President's Committee on Equal Employment Opportunity, (2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and employment agencies who will be subject to this Act.

Amend the title so as to read: "A bill to prohibit discrimination in employment in certain cases because of race, religion, color, national origin, or ancestry."

Mr. ROGERS. Our next witness is Hon. Gillis W. Long, a Member of Congress from the State of Louisiana, who has distinguished himself in the service here in Congress.

We welcome you. You have a prepared statement, Mr. Long, I understand. We are pleased to hear from you at this time.

STATEMENT OF HON. GILLIS W. LONG, REPRESENTATIVE TO CONGRESS FROM THE STATE OF LOUISIANA

Mr. LONG. Thank you, Mr. Chairman and members of the committee, for the opportunity of appearing before you this morning.

Mr. Chairman, I come before the committee today to express my views, my concern, and my strong opposition to President Kennedy's civil rights legislative proposal. I speak both as a Representative of the people of Louisiana in this Congress and as an American citizen who is deeply disturbed by the events of this summer across our land.

I have just returned from a 2-week trip to Louisiana. I listened to my people—I heard their concern—and I felt the sharp air of anxiety. I speak not of racists and extremists, who have polluted the air of North and South alike. These are the concerns of reasonable, fair-minded men and women—the vast majority of the people of Louisiana. They are worried. They are apprehensive of what this legislation will do to their communities and to their country.

These are fears of reasonable men—and their fears are based on substantial doubts. To suggest that all those who oppose this legislation are acting on the whims of prejudice and irrational motives—and some have suggested this—serves only to create a great gap between North and South, white, and Negro in America.

We oppose this legislation because of what we believe the consequences of such action to be. The Negro is not being opposed. We don't oppose the right of the Negro to be a free, productive citizen of America.

The Congress has been forced into the position of reacting to militant demands and militant actions. A casual reading of the proposal discloses the haste with which it was obviously drawn. We are not debating in a calm, reasonable way, the means to solve a great social and economic problem. We are rushing pellmell toward a contrived solution presented to us to pass or suffer the consequences. The proposed solution is really no solution—it will open a Pandora's box of grave constitutional and legal questions that will split asunder our great country again.

If Congress passes this legislation, it will be a party to a serious disillusionment that will surely come. For Congress will have twisted our Constitution to devise a hoax, for the problems of the Negro will still be with him and will still be with the country. Congress will have created an artificial solution. I would suggest that Congress can spend its time more productively, with far better results, by seeking to establish programs that will give all Americans, Negro and white, a better chance to become productive citizens that all do have a right to become.

No reasonable man questions the right of qualified Negroes to vote—the right of a Negro to have a good education and a good job to take care of himself and his children. But I do most emphatically say that this does not involve forced mixing of the races—it does not involve deliberate interference with the ways and ideas of a great number of Americans who have chosen this way as best suited to their conditions and their society.

Congress is being asked by President Kennedy to forcibly change a great segment of America through instruments that will violate constitutional principles and lead to an arbitrary exercise of power.

As an attorney with many years experience in administrative law, I submit that the public accommodations section of this legislation has no constitutional basis in either the Commerce clause or the 14th amendment. Should we torture the Constitution and damage ir-

reparably the right of property—so basic to this country—to serve a supposed human right to stay in a private hotel through legal force? All rights of Americans must be maintained or none have meaning. Congress cannot violate one right under the notion of safeguarding another.

The same is true of the discretionary powers which would be given to the Attorney General under provisions of this bill. If legal wrongs occur, Attorney General Robert Kennedy now has ample authority to bring suit involving the Federal law. Discretionary authority would only open the door to possible use of this power for political reasons. The constant theme that runs through this whole area of civil rights is political machinations. Why should Congress enlarge the danger of having the Negro used for political ends?

This legislation will not eliminate the problems facing the Negro. It will only aggravate them. President Kennedy is wrong. I believe many leaders are misleading the Negroes in their militant actions in pressuring Congress to act from fear of reprisal.

Too long now has the Negro been used as a political instrument. And this is particularly true in the South. The proposals before the committee now are the fruits of political action. But the solution to this problem will not be found in the arena of political oratory and irresponsible action. And it certainly will not be found in forced integration of the races.

What Congress should seek—what the American people desire—is a good, productive life for all citizens, free from fear and want. The bill before this committee claims that this legislation seeks this goal for the Negro. But the means that are being utilized are gross distortion of the real search for a peaceful, prosperous country. The end can never justify all means devised for it will lead to the destruction of basic principles.

I speak to you as a member of a leading political family of Louisiana. I take pride in the standards of public service built by the Longs in Louisiana for nearly two generations. The Longs have held their position of prominence in my State for a clear, direct reason: They have always sought to improve the lot of the people of Louisiana—all of the people, white and Negro. The Longs have never used the Negro as an instrument to gain power. The Negro in Louisiana has understood clearly the position of the Longs. Louisiana has not had to destroy its social traditions in order to advance the cause of its people. The record is clear. I am proud of that record.

I mention this to emphasize my position here today. I am concerned over these proposals of President Kennedy because of their grave constitutional and political consequences. I am concerned because this great Congress is being intimidated into taking rash action.

This is what I think Congress should be considering, if we really are going to help our people—white and Negro—to meet the challenges and problems that lie ahead of us:

1. In the field of education, we need to improve the opportunity for all to get the quality education that is so badly needed if this country is to continue to prosper and grow and meet the needs of this fast-moving space age. I feel strongly that our whole educational system needs upgrading—elementary, secondary, college, technical, and vocational training. I believe that this can best be done by the States

and communities themselves because it is the local areas that know best what the educational needs and problems are and can best solve these at the local level. However, the States are seriously handicapped in their efforts for lack of enough funds. Most taxes collected now go to the Federal Government. It appears to me that there is no logical reason why the States cannot have the benefit of some of this great source of tax money within its own borders to handle its educational problems. It would eliminate the serious entanglement of Federal aid to education and it would remove education from the issue of race. Louisiana has made great strides in this whole area of providing equal educational opportunity for all citizens. There is still much to be done in my State—and I would suggest in your States as well. We have far to go, and we had best be getting on with the job.

2. There is a great need for advanced technical training for the unemployed—so that they can develop new skills for new jobs. There are millions of unemployed Americans who cannot find jobs because they are not equipped to take on jobs that are available. We know that there are twice as many Negroes unemployed as there are whites in this country—but passage of this legislation will not get them jobs.

Only adequate training and personal initiative will do that. There is a growing great demand for skilled workers in this country, and you cannot tell me that a businessman will not hire the skills that he needs for his business. I think that he will.

3. Millions of Americans still cannot read and write. We should be seeking new ways to help the States to meet this pressing problem. And this is a particularly pressing problem, in the State of Louisiana, and it is a great problem among both whites and Negroes.

4. Many Americans do not have their own homes in which to raise their children in decent, peaceful residential neighborhoods. They cannot afford to purchase a home. Is it not possible for Congress to help the States in setting up private housing programs that would provide for quality, low-cost housing with 40-year, low-interest terms?

At least every man who hopes for a home of his own will have a chance to fulfill those hopes. I stress a private housing program—not public housing. Such a program would allow a man to own his home and to develop pride in his private property. No reasonable man wants to be a ward of the community—he seeks help when he needs it—not charity.

I stress these four areas, because it is these areas that I feel demand the greatest attention. I also stress the action of Congress, because the States have arrived at a position where they are financially unable to meet the burden of these pressing needs. Congress must redress the balance. The money is at the Federal level. But it is money that comes from the citizens of my State—and your States.

If the States, through action of Congress, could regain financial ability, they could do the necessary job.

Why should the movement only be to Washington to do these tasks. The States have the talents and abilities to do this work just as well—if they had the resources.

We consider Federal aid to the States as if Congress were aiding foreign countries—only there are ties on aid to the States. Why should the States be forced into either having to come to Washington—hat in hand—or having to fight the enactment of many programs

because the Federal involvement that such programs would cause in its own affairs represents too great a danger?

It is a frustrating affair—because the States want badly to provide for the needs of their people—but not at the expense of becoming no longer master of its own house.

The programs that I mentioned would benefit all Americans—but the immediate impact would be greatest in the Negro community because the need is greatest there at the moment. But I emphasize again the benefit would be for all.

There have been shortcomings in the South. We have not done all that should be done. But the South cannot put its house in order and serve its people if it is being constantly harrassed and coerced from all sides. Neither can the North solve its problems if it is constantly involved in political footwork against the South.

Where is that spirit of amity and partnership—that atmosphere of mutual respect and friendship that characterizes a progressive, open society—that provides the fertile ground in which the seeds of progress grow?

We do not find it today in this Congress. We do not find it in this summer of demonstrations, violence, threats and recriminations.

Social movements based on mob action, fear, and distrust carry the seeds of its own destruction. The lessons of history are plain—we can read it in the French Revolution of 1789—and we know what happened to the people of Cuba.

I do not suggest that this is our lot. I do suggest that the freedom of one man can become the chains of another.

We can insure that this does not occur by abiding by our constitutional principles—by protecting both property and human rights, because one is not the contradiction of the other—and by providing the States with the opportunity to care for the needs of all its people.

Mr. ROGERS. Mr. Long, I respect you as a Member of Congress, and I think you are a distinguished Member of Congress.

I know you speak out of sincerity and because you have a real concern.

However, I would like to point out, and I am sure that the statement you made on page 3, where you say that you are concerned because this great Congress is being intimidated into taking rash action, is one that we might really take a second look at.

I am sure you recognize, No. 1, that this subcommittee, composed of Democrats and Republicans, is not going to be intimidated into taking any rash action.

I am sure you would not want to include in your statement that this subcommittee, which I think has worked hard over the years on this great issue, would be intimidated at this time into taking any action at all.

Mr. LONG. I am not saying necessarily, Mr. Chairman, this will succeed.

But I do think there is an effort on the part of certain groups today in this country to force Congress to take certain action.

I did not mean to suggest that this committee or Congress would allow itself to be intimidated into any course of action.

Mr. FOLEY. Have you ever been a member of the State Legislature of Louisiana?

Mr. LONG. No; I have not.
Mr. FOLEY. Thank you, Congressman Long.
Mr. ROGERS. Thank you, Mr. Long.
Mr. LONG. Thank you, Mr. Chairman.
Mr. ROGERS. Our next witness will be the Reverend Walter E. Fauntroy, the regional representative in Washington of the Southern Christian Leadership Conference.
Mr. Fountroy, in view of the fact that Congressman Halpern was to testify at this time, and has had to go to answer a call, upon his return, if you are still on the witness stand, we will ask him to take the witness stand, and interrupt you.
Will you take the stand now?

STATEMENT OF REV. WALTER E. FAUNTROY, SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE

Mr. ROGERS. I understand, Reverend Fauntroy, and I wish you could confirm this, or say if you are not, that you are in charge of the Washington phase of the march?
Mr. FAUNTROY. Yes, sir; I am coordinator here in Washington.
Mr. ROGERS. You are the coordinator?
Mr. FAUNTROY. That is correct, Mr. Chairman.
Mr. ROGERS. All right. You may proceed.
Mr. FAUNTROY. Mr. Chairman, my name is Rev. Walter E. Fauntroy, and I am here on behalf of Rev. Martin Luther King, Jr., and the Southern Christian Leadership Conference. Dr. King and I wish to express our appreciation for this opportunity to express our views to this committee, many of whose members have contributed so much to the struggle for civil rights legislation in this and previous years.
As in previous years, this year there appears to be one central question as to the possiblities for the passage of civil rights legislation. As Prof. Daniel Berman, in describing the climate surrounding the passage of the 1960 Civil Rights Act, stated in his book, "A Bill Becomes a Law":

> It was generally taken for granted that a civil rights bill of some sort would be approved. Only one question remained. Would it materially aid the cause of the Negro, or would it be merely a token measure, designed to do little else but portray its sponsors as defenders of civil rights.

We, too, put this question to the conscience of this committee and of the Congress. Our testimony will consider the administration's civil rights bill H.R. 7152 and H.R. 7702, the civil rights bill proposed by Committee Member Kastenmeier, which our analysis has shown to contain the best parts of civil rights bills introduced by members of this committee and other representatives, both Democrats and Republicans, plus several important original features.
Mr. Chairman, our principal hope this afternoon is to bring to the attention of this committee our concern for the needs of the Southern Negro who remain the forgotten man of American society even if every provision of the administration bill passes Congress intact. We regret very seriously that the legislation presented to Congress by the administration has either disregarded entirely or considered only in token form the needs of the Negro of the South, particularly in the vital areas of voting rights, police brutality, and the abuses of the judicial

process. This concern has attracted us to the provisions of the Kastenmeier bill, in which we find measures admirably addressed to the terrible problems the Negro in the South confronts in these and other areas.

The present political climate in the United States is a factor that makes it particularly imperative that your committee, Mr. Chairman, not miss this opportunity to exercise its considerable influence over the processes which will produce the Civil Rights Act of 1963 to insure that these needs are answered. We feel that the dramatic shift in sentiment among Negroes and whites alike which suddenly prompted the President to change his mind and introduce important civil rights legislation constitutes a consensus that the Negro has earned his right to a new deal. This is an opportunity vastly greater than has ever been presented before and, we fear, greater than will appear again, at least for some time. A probable consequence of the present public sympathy for a breakthrough in civil rights legislation is that once the Civil Rights Act of 1963 becomes law, whatever its content, the public will feel that the Negro has obtained his "new deal." The public may well not soon be sympathetic to renewed demands for civil rights legislation, as polls now show to be the case.

Before turning to consideration of the areas of voting rights, police brutality, and the abuses of the judicial process, I would just like to say that we do not mean to imply by emphasizing these areas that the legislation proposed in the President's bill and other bills to end discrimination in public accommodations, employment, and other fields is unimportant. It is terribly important, and we support wholeheartedly the able testimony on these areas by our colleagues in the civil rights movement and other fine individuals and organizations. However, we would like today to emphasize the particular needs of the Negro of the South, because we feel that they have received insufficient attention to date and because the Southern Christian Leadership Conference has been especially concerned with the fight for Negro freedom in that region.

And, Mr. Chairman, if the Civil Rights Act of 1963 does not effectively protect the voting rights of the Negroes, it will certainly not materially aid the rights of the Negroes in the South.

Mr. ROGERS. In your reference, Reverend, that the question has received insufficient attention today, and that the Southern Christian Leadership Conference has been especially concerned with the Negro in that region, the Negro in the South, we have, of course, as a committee, been dwelling on this subject, and invited all persons who are concerned, and testimony has been taken, and we have given this question attention. And I am sure that in no way does it escape the attention of this committee, and those interested in civil rights, whether the Negroes be in the South or in the North, because we recognize that the problem is a basic problem. So, frankly, though I recognize again that probably there is a reason for your making this statement, I really must differ with you on the sufficiency, actually, of the attention being paid to this problem.

Mr. FAUNTROY. Well, this is a question of our judgment, and I am sure it is not a reflection on the attention given it by you. But certainly in the public mind we feel insufficient attention has been given to this particular aspect.

Mr. ROGERS. You may proceed.

Mr. FAUNTROY. And, Mr. Chairman, I would like to emphasize that again, if his voting rights are not guaranteed, the Negro of the South will not be free. I would like to emphasize to the committee that polls show public concern to be particularly sympathetic to legislation in the field of guaranteeing the franchise. A recent Louis Harris poll carried on the front page of the Washington Post showed over 90 percent of the people considered favorably securing the franchise for the southern Negro via Federal legislation. Strong legislation with effective enforcement provisions in such fields as discrimination in public accommodations and employment and even public education will, no doubt, encounter stiff congressional opposition when released by this committee. But the situation appears to be distinctly different in the field of voting rights. It would seem that if the committee releases a civil rights bill with a voting rights section that is meaningful, it will pass the Congress with little more difficulty than the present inadequate provisions of H.R. 7152, the President's bill. By meaningful, one can only mean provisions calculated to end quickly the disfranchisement of the southern Negro as a class, so that he can protect his interests and needs in the political arena of his Nation, State, and local community.

The provisions in the 1960 Civil Rights Act calculated to achieve this purpose were incorporated in the voter referee plan. Unfortunately, this has proven to be a purely paper advance. Thirty-eight suits have been filed by the Attorney General under the 1960 act and its predecessor, the Civil Rights Act of 1957, but in none of these has a district judge exercised his option to appoint a referee. In only one of these cases has the judge, himself, consented to hear the applications of Negroes in addition to the one on whose complaint the Attorney General's suit was based.

Mr. FOLEY. Are you aware that a judge in Louisiana recently restored many Negroes to the voting rolls? How many were restored to the rolls in that case, do you recall?

Mr. FAUNTROY. No, I do not.

Mr. FOLEY. If I recall, it was several hundred, or even maybe a thousand or more.

Mr. FAUNTROY. Thank you.

Even more unfortunately, the voting rights recommendations placed before this committee by the President can be with almost equal ease circumvented by a district judge intent on frustrating the purposes of the law.

We are happy that many of the leaders of the civil rights movement have already testified to this committee of their concern for strong measures to secure the franchise for the Southern Negro. Last week, Roy Wilkins, executive director of the NAACP, warned that the sixth grade presumption of literacy in the President's bill will only secure 100,000 more Negro votes, even if it is enforced in the South.

In Mississippi, Alabama, and Louisiana, and in large areas of other Southern States, the figures for Negro disfranchisement are particularly disgraceful. James Farmer of CORE echoed Mr. Wilkins' concern for strong voting rights provisions in his testimony. James Foreman, testifying for the Student Nonviolent Coordinating Committee, with which Dr. King and all of us in the Southern Christian

Leadership Conference have cooperated in voter registration campaigns across the South, presented this April in testimony on Chairman Celler's original voting rights bill several valuable suggestions for amending these provisions. These suggestions are among those incorporated in the present Kastenmeier bill. One of them, we have noted with pleasure, was adopted in the present administration version of the original Celler bill. This important amendment struck the word "accredited" from the provision declaring a sixth grade education to be a sufficient presumption of literacy.

Walter Reuther of the AFL–CIO urged the adoption of the Federal registrar plan rejected in the congressional battle over the Civil Rights Act of 1960. Civil rights attorneys William Kunstler, William Higgs, and Ben Smith, all experienced members of the struggle for civil rights in the South, testified in favor of several revisions of the administration bill that are contained in title I of the Kastenmeier bill.

Mr. Chairman, I would like to join in behalf of Dr. King and the Southern Christian Leadership Conference with our colleagues in the civil rights movement in urging the adoption of strong voting rights guarantees with effective enforcement procedures. We in the Southern Christian Leadership Conference have been particularly impressed by the provisions of the Kastenmeier bill. We urge the amendment of the voter referee plan rather than the substitution of the old Federal registrar plan. We make this suggestion because we feel that at this moment it would be extremely difficult to undertake a change so radical as to reject the entire administration scheme. We also feel that the voter referee plan as amended by H.R. 7702, title I, will be equally, if not more effective, than the Federal registrar plan. The voter referee scheme provides the optimal vehicle for Negro franchisement if it is administered by a fairminded judge. For this judge will have the advantage of combining in his own hands both decision and enforcement powers. The aim of title I of the Kastenmeier bill is to insure that the power of racist Southern district judges to frustrate the intent of the law will be eliminated to the greatest extent possible. To illustrate, I would like to give a brief comparison of the Kastenmeier provisions with those in the administration bill.

Generally, title I of the Kastenmeier bill accepts the legal frame of the administration voting title, tightening the procedure and strengthening the machinery in significant ways. There is, however, one more substantive innovation in the bill, with which we in the Southern Christian Leadership Conference have been profoundly impressed. This is section 101(a)(2)(c), under which section any voting test or device is prohibited if it denies the right to vote on account of race or color. If any test in fact falls more heavily on one class than on others then it is presumed that the State intended it to fall more heavily, and the State must prove to the court that its intent was innocent.

Mr. FOLEY. This means, then, that you could have litigation, protracted litigation, because there is no question in my mind that if this committee were to adopt and Congress enact the voting registrar plan, that is definitely going to be subject to a court test, and it is going all the way up to the Supreme Court.

Now, let us assume, then, the statute embodying that voting registrar plan is held valid by the Supreme Court. When you come back in these cases will not the opponents test every one of the decisions

of the voting registrar as to the State statute and its administration, in the courts? I know you are not a lawyer, of course.

Mr. FAUNTROY. I was going to say I am not a lawyer, and I, together with Dr. King, depend largely on the judgment of—

Mr. FOLEY. When you talk about the problem you are faced with today of the existing laws as administered by the judge, and you give this as the alternative plan, bear in mind you are not completely circumventing the courts, because these cases will be tested in the courts, and you are going back right into the same courts that you are now trying to avoid.

Mr. FAUNTROY. Well, as I said, we trust the advisers of Mr. Kastenmeier, who drafted this bill, and we do think it will seal up some loopholes.

Mr. FOLEY. If we try to circumvent the courts we are going to have a very difficult problem.

Mr. ROGERS. Proceed. You may proceed, Reverend.

Mr. FAUNTROY. As for procedural amendments to the administration bill:

1. All cases brought under either this title or title III in which the Government is the plaintiff shall be tried before a judge designated by the chief judge of the circuit. This is crucial, for unsympathetic district judges can succeed in frustrating almost any civil rights statute, no matter how tightly and forcefully drafted.

Mr. ROGERS. This proves just the point counsel is trying to make. You may proceed. We realize you are not aware of the implications here, legally, and various consequences that would ensue in setting up either of the systems, from a technical point of view. We are not going to impose that question on you.

Mr. FAUNTROY. But I would like to have it explained as perhaps best a layman could understand, why this would not be possible under this—

Mr. FOLEY. It is possible, but the point I make is that I am not sure it is going to obviate your problem.

Mr. ROGERS. Proceed, Reverend—just a moment. As I indicated before, Congressman Halpern who was called away has now returned, and if you would be willing we would like to hear his testimony now, and then allow you to return to the stand later.

Mr. FAUNTROY. Certainly.

Mr. HALPERN. Thank you.

Mr. ROGERS. Congressman Halpern, we are always happy to have you before this committee. We know you are a distinguished Member of Congress. We welcome your statement.

STATEMENT OF HON. SEYMOUR HALPERN, MEMBER OF CONGRESS FROM THE STATE OF NEW YORK

Mr. HALPERN. Thank you very much, Mr. Chairman.

I truly appreciate the oportunity of appearing before the committee today.

It is always a pleasure to appear before the distinguished membership of this hard working committee. My appearance here is primarily in support of H.R. 7152, introduced by the distinguished chairman of this committee and which I am privileged to have joined in sponsoring.

But I would also like to discuss other measures which I and other Members have introduced with a view of making recommendations for further strengthening H.R. 7152. I want to see this committee report the strongest, most effective and workable civil rights bill—encompassing a combination of approaches which have been offered.

I am convinced that a majority of this Congress and the American people are facing up to the issue of finally writing finis to the work begun almost 100 years ago with the adoption of the 13th, 14th and 15th amendments.

Recent events, Mr. Chairman, make it abundantly clear that our civil rights chickens have come to roost. The long-suppressed discontent over segregation and the frustration aroused by token racial integration has generated an upheaval of such intensity as to suggest a moral American revolution. Throughout the length and breadth of our land—in the North as well as in the South—American Negroes are demanding freedom now. The Negro movement against discrimination has become a nationwide surge of protest.

From a handful of sitins at segregated lunch counters and a score of freedom riders attempting to desegregate interstate travel facilities, the movement against racial injustice has grown into mass demonstrations by tens and, yes, hundreds of thousands. These are peaceful protests and lawful petition against an injustice that too many Americans have unawaredly been taking for granted all these years.

The fact that such protests have become necessary is a sad commentary for a Nation which, in two world wars and in the past 15 years or so, has claimed the mantle of the world's leading democracy. In the forceful words of the columnist, Joseph Alsop:

> It is disgusting, not to say macabre, that American citizens should be driven to use the device of mass protest over 100 years since the Civil War began for the sole purpose of securing equal treatment with their fellows * * *.

These manifestations of great social unrest are remarkable only in that they have taken 100 years to rise to the surface. To his everlasting credit, the American Negro has given his Government and his fellow citizens every opportunity to make good the promise of liberty and justice for all.

This, Mr. Chairman, is the central tragedy of the present state of affairs—that it could have been avoided. The whirlwind of recent events was totally predictable.

One hundred years ago, President Lincoln stated the proposition simply but forcefully:

> * * * this Government cannot endure half slave and half free.

At a cost of a civil war and untold human misery we abolished the institution of slavery.

But for the next 100 years, we left the Negro to flounder in a sort of limbo—a citizen in law, he exercised few of the rights and privileges of citizenship in fact. This, in brief, is the history of the last century. Omitted are the details of degradation, misery, and human indignities which attend second-class citizenship, squalid housing conditions; second-rate educational opportunities; employment at the lowest rung of the economic ladder. The list is virtually endless.

Time and events are beginning to outrun the legal processes and everywhere the same questions are being raised: Will the white man

recognize in time his constitutional, moral, and spiritual commitments and live up to them? Will forces of moderation prevail, or will they be ground underfoot by extremists on both sides?

We must seize the present opportunity and act boldly and with courage. Above all, we must act out of the conviction that what we do is right. There are no insurmountable obstacles in our path—we have only our own inertia to overcome.

To quote Justice Goldberg, the rights claimed by Negroes—

are present rights; they are not merely hopes to some future enjoyment of some formalistic constitutional promise. The basic guarantees of our Constitution are warrants for the here an now * * * they are to be promptly filled.

In this respect, Mr. Chairman, I pray there is no basis in the speculation that this Congress will pass a watered-down "compromise" civil rights plan. This kind of talk is morally and mortally dangerous. Personally, I have faith this committee will not be moved by such speculation and will report a strong bill.

I am confident under the leadership of its distinguished chairman, this committee will met up to the challenge before it. I trust that the Congress will respond accordingly. I pray that it will, for we have before us a historic opportunity to usher in the long awaited era when racial discrimination will play no part in the public life of the United States. Yes, we have before us a historic opportunity to realize a great part of the American dream where every man is judged by his ability and not by the color of his skin.

We must guard against compromise of the basic principles involved in this issue, especially moral compromise. This could be reflected in the present language of the bill which would make it seem that we were dealing solely with ordinary commerce or antitrust matters.

For instance, such conclusion could be interpreted in connection with the commerce clause, title II of H.R. 7152 (the public accommodations section of the bill). This provision has been advanced by some on the basis that it would be safer legally, and possibly more acceptable to certain Members of Congress.

Now I am not against the commerce clause if it contributes to sound workable legislation. But I feel this approach in itself is insufficient. As such it could erode the moral basis for the legislation which basis is the very core of the whole issue.

We must draft our legislation in language that is as strong morally as it is safe legally. Thus, I feel it absolutely necessary that we include strong reliance on the 14th amendment in this particular controversy over title II, because without it we are compromising the moral force of our intent.

As a matter of fact, I strongly feel the 14th amendment approach should be our main thrust but I see much advantage in employing both methods—the commerce clause and the 14th amendment. In doing so we legally encompass a greater sphere of business and provide the strongest and most comprehensive language to enforce our intent.

There has been some talk, incidentally, that we might further cut down on the possible exceptions to such coverage by adding provisions to the Federal Trade Commission Act. This aspect should be evaluated, and I am sure your committee will pursue this possibility.

In short, our actions must be bold and must brook no compromise of principle. Our task is not to ask timidly whether one device will be

better than another, but to boldly state our intent and move from there to seek any combination of approaches that will make our legislation most successful.

Certainly we are concerned that our legislation will be constitutional; but if, as the lawmakers of this country, we know in our hearts that what we do is in the spirit of the Constitution, and to the best of our knowledge, conforms to the letter of that document, then let us proceed with confidence and pass the legislation that the situation demands.

Mr. ROGERS. In other words, you are not wedded to any single approach?

Mr. HALPERN. I am not. I want to find the answer, and I offer my suggestions as I go along, sir. Certainly we are concerned that our legislation be constitutional, but if as the lawmakers of this country we know in our hearts that what we do is in the spirit of the Constitution and to the best of our knowledge conforms to the letter of that document, let us proceed and pass the legislation the situation demands.

On June 11, the President urged Congress to "Make a commitment it has not fully made in this century to the proposition that race has no place in American life of law." Your bill, H.R. 7152, embodies that commitment. As I mentioned in my opening remarks, I am honored to be among those who have joined in its cosponsorship, my bill being H.R. 7338.

Prior to joining in this sincere bipartisan move I had sponsored a series of bills covering a broad range of legislative proposals aimed at guaranteeing full civil rights and equal opportunities for all Americans. In fact, ever since I was elected to this House, civil rights has been my prime legislative concern. My many bills, appearances before committees, and floor appeals attest to that.

In January of this year, after introducing a series of 11 bills on specific aspects of the civil rights problem, I joined a group of my Republican colleagues, principally the minority members of your full committee, in cosponsoring an omnibus bill, my measure being H.R. 3156. The bill included many of the provisions I had earlier introduced and provided some new avenues of action. I felt such collective action by a large bloc of my colleagues presented a meaningful approach. I felt the same way June 3 when I joined a similar bloc of minority members (most of whom were identified with the earlier bill) in cosponsoring the Equal Rights Act of 1963 (my bill being H.R. 6739). Here again, the legislation complemented the previous measures and in some respects added new subject matter.

Then when the administration submitted its civil rights legislative package, I heartily welcomed it. In some ways its provisions are identical or similar to sections of other legislation. In other respects it is not as strong, and yet, still in others, it offers enlightened new approaches. The objective, however, is the same: a positive and as strong a rights bill as possible. Hence, I proudly associated myself with its introduction—determined as all its advocates are—in finding the legal answers and the most effective tools to combat this blot on our free democratic way of life.

I am truly convinced of the administration's sincerity on this issue. The legislation has been a long time in coming, but now we have it. So let's be affirmative about it, and from this point let's look ahead. The important thing is that action is being taken, and that the issue

is being met head on. This is no time for partisan politics. The issue is far too vital, too sensitive and there is too much at stake. Working together, victory for this hundred-year struggle is within our grasp.

Mr. CHAIRMAN. I am convinced H.R. 7152 provides the basis for a bill we can accept. I do think the other two omnibus bills, to which I referred, and many of the individual proposals have several features that should be considered as a means of strengthening the bill. In some respects the administration bill is stronger and in such instances I trust the language of the bill will be retained. With the committee's indulgence, I shall outline some of my observations. In so doing I will make a comparison of some of the provisions of the omnibus bills I mentioned and in the analysis point out what I believe to be the most desirable goal in the respective areas of civil rights. I will proceed according to the titles of H.R. 7152.

In regard to voting rights, both title I of the minority bill, H.R. 3139, and title V of the administration bill give the Civil Rights Commission power to investigate discrimination in voting. The administration bill does seem a bit stronger here in that it does not limit the Commission to Federal elections. If we are going to protect the Negro's right to register and vote, let us make sure that we do so in the State and local, as well as Federal elections. These smaller elections will often have a significant effect on the everyday life of the individual living in the community, perhaps more of an immediate effect than a Federal election. Furthermore, the administration bill contains a needed clause directing the Civil Rights Commission to act as a national clearinghouse of information, and provider of technical assistance to various agencies, communities, industries, and other interested groups in various areas of the civil rights problem. In regard to voting this would mean that the Commission would keep up-to-date statistics on Negro registration, generally keep abreast of progress in this field, and be available to advise any interested parties on their problems in the voting area. The minority bill contains something along these lines in that it authorizes the Bureau of the Census to compile voting and registration statistics by race and color. This provision is helpful and necessary, but it does not go as far as does that of H.R. 7152.

There are other sections in this title of H.R. 7152 that are also appealing. One is the so-called 15-percent provision which would add weight and force to any court finding of a pattern of discrimination. Under this provision the slow torturous case-by-case method of adjudication becomes unnecessary if discriminatory practices are being employed blatantly against one segment of the population. Another section of the bill up dates the provisions for voting referees, now enabling them to be appointed before a pattern of discrimination is determined.

Still on the subject of voting rights, I am pleased to note that both the minority bill and the administration bill take positive steps toward eliminating the much abused standard of the literacy test in determining eligibility to vote. Both bills specify that the sixth grade education should be sufficient to enable one to vote and I sincerely hope that we are all agreed that this measure is an absolute necessity to stop the flagrant abuses which have characterized the use of such tests in the past.

I have spoken spoken briefly, if indirectly, about my feelings on the public accommodations clauses, Mr. Chairman, covered in title II. I feel strongly that we should amend section 202 of H.R. 7152 to include 14th amendment safeguards. I say this for two reasons. First, I think that the double-edged blade will provide most effective in the long run. Second, even if all the implementation we seek is accomplished under the commerce clause, that is even if it is never necessary to invoke the 14th amendment provisions, I would still like the laws of this country to show that the 88th Congress realized that it was dealing with an unquestionably moral issue. Whatever the legal means we choose to deal with the question, let history show that we squarely faced our moral responsibility.

I am pleased to note that both omnibus bills incorporate the spirit of part III of the 1957 Civil Rights Act, authorizing the Attorney General to file suit for injunctive relief on behalf of persons who cannot do so on his own. I also applaud the temperate provisions of H.R. 7152 allowing State and local officials to act before the Attorney General steps in, and providing also that the matter should be referred to the proposed Community Relations Service before any action is taken by the Justice Department. These provisions wisely follow the rule that self-correction and voluntary adjustments are always better than arbitrary Federal dictates.

I must admit, Mr. Chairman, that I am a bit puzzled at the wording of the minority bill which guarantees 14th amendment rights. It includes only discriminations because of race or color, whereas, my H.R. 1638 and the admnistration bill covers race, color, religion, and national origin. Although our immediate reason for drafting this legislation is for the specific relief of the Negro population of this country, let us not forget that we are dealing here with national legislation, affecting all the citizens of this country. Discrimination is a vicious thing whether it be perpetrated because of skin color or religious belief. Our purpose is to make all discrimination affecting constitutional rights illegal under the laws of this country, not just some discrimination or discrimination directed toward some groups. If we are combating this evil, let us wage war on all fronts and keep the doors of opportunity open for all our citizens. In your final draft, I urge that we use the more inclusive terminology of "race, color, religion, and national origin."

Moving now to the field of education, I am happy to note the bipartisan support giving the Attorney General power to institute suits in Federal courts for the desegregation of certain school districts. Up until now, the burden for doing so has rested on individual citizens, or groups such as the NAACP, and indeed that burden is a heavy one. We are informed by the Civil Rights Commission that less than 10 percent of Negro schoolchildren in the South are in integrated schools today, 9 years after the *Brown* decision in the segregation cases. Part of the reason for that small figure is simply the difficulty and cost of instituting a systematic set of court cases seeking integration of segregated school districts. This measure will greatly speed up the entire process and will enable real progress to be made.

Another aspect of the education problem is that of providing schools with technical and financial assistance to carry out the desired desegregation of facilities. It is no easy task to overnight change patterns

which have existed for a hundred years. Even if communities are willing to change such patterns, they often lack the know-how or resources to make an adequate transition. Therefore, I am pleased that both major bills carefully give power to the Department of Health, Education, and Welfare to give aid, both monetary and technical to areas requesting it. My own bill, H.R. 1625, goes a bit further than either of the omnibus bills, in that it authorizes the allocation of funds for the construction, enlargement or alteration of facilities to aid in the process of desegregation. I think that this provision is a needed one and I would commend it to your attention. Ordinarily we would think of construction funds as being part of ordinary aid to education programs. Yet the process of desegregation of existing facilities might very well necessitate structural changes in the physical plants of some communities. I think we should recognize this possibility and provide for it in specific language under this section allocating funds for assistance of various kinds.

H.R. 1625 further provides that the Secretary can hold local, State, or regional conferences and set up advisory councils around the country. I cannot stress enough the importance of voluntary communications of this kind, and for this reason I would like to see such a measure incorporated into this committee's final report. There is no progress more gratifying than that made through open discussion on the part of calm men working in an atmosphere of rationality and a common desire to move forward without pressure, violence, or bloodshed. Such progress can be fostered by the Secretary if we give him the opportunity.

Along this same line of thinking I strongly support title IV of the administration bill calling for the establishment of a Community Relations Service. As I mentioned, my own H.R. 1632 accomplishes the same purpose. A standing organization of this kind has the potential to accomplish much toward opening the lines of communication in the civil rights area by assuring that a conference table and technical assistance are always available for communities desiring such services.

Another needed organization in this field is the Civil Rights Commission. On that point there is no disagreement. There is a disparity of views, however, on whether or not the Commission should be made permanent. The minority omnibus bill, H.R. 3139, would make it permanent, as would my own, H.R. 1637. I have strong convictions that we must give permanent status to the Commission and regret that the administration bill merely extends its life for 4 years.

Mr. Chairman, there is an entire branch in the study of political science which deals with the role of Government agencies, commissions, and departments. One of the major lessons that this science teaches us is that a commission or agency is rarely effective unless it feels secure of its own position. An outstanding example of this was the Federal Radio Commission which was transformed in 1934 into the Federal Communications Commission. When first established in 1927 under the Radio Act, the Commission was given only a year's lifespan. Faced with the necessity of a yearly fight for extension of its life, the FRC was naturally fearful of stepping on the toes of any group which held influence with the Congress. Well, for 3 years the FRC managed to avoid stepping on anyone's toes and it was renewed in 1927, 1928, and 1929. But during that time it also managed to

avoid doing anything of significance in the then jumbled field of radio broadcasting in this country. Only after it received permanent status in 1930 did the Commission start taking effective steps toward unraveling the difficulties in licensing and frequency assignments that were plaguing the industry. We face similar dangers today with the Civil Rights Commission. I am not contending that the Commission hasn't done fine work in the short years of its existence. It certainly has—in fact, a good deal of its work has been excellent. What I am contending is that it could be far more decisive in its work if it did have permanent status. It would not have to fear certain pressures which are undoubtedly now hampering it in the carrying out of its duties, it would not have to fear becoming a political football.

A 4-year extension would not allay fears of the Commission and it is quite naive to assume that we are going to solve our racial problems by 1967. What's more, I feel the importance of civil rights to all Americans for all times would be recognized by giving such significance to this body. We need the Civil Rights Commission in the executive branch and should give it our fullest support.

Mr. Chairman, if I may, I would like to move to title VI of the administration bill. While I would like to express my approval of the intent of this title, I do have strong reservations about the effectiveness of its approach. It leaves discretionary powers to the executive and is worded in a far from decisive manner. I strongly feel this section should be strengthened to make the prohibition mandatory and all encompassing, leaving no room for administrative discretion. In fact, I recently testified before an Education and Labor Subcommittee on Legislation to prevent the use of Federal funds for education where such funds would be used in a discriminatory fashion. I would like to see the wording of title VI similar in its forcefulness to that of the education bill. In my comments on that bill, I pointed out that it defeats the good intentions of Congress when Federal funds are used to help some members of society and not others, or what is even worse, to discriminate against one segment of society. Whatever legislation we may enact in this Congress toward insuring the civil rights of the Negro, and indeed of all Americans, that legislation will be faced with the constant mockery of the discriminatory use of Federal funds, unless we enact title VI into law.

Mr. FOLEY. If I may interrupt, in referring to the bills before the Committee on Education and Labor, is not the bill which they reported out limited to specific programs, such as schools, libraries, construction, and so forth?

Mr. HALPERN. To my knowledge it is. That is why I said the pattern should be adopted in all federally aided projects.

This should be strengthened so as not to leave it discretionary, but to have it mandatory.

Mr. FOLEY. By mandatory, do you mean if there is discrimination in, say, library matters, where say school assignments are involved, would you cut off school aid, and aid under the Hill-Burton Act and so forth, or would you limit it to the program wherein discrimination is practiced?

Mr. HALPERN. I would only cut off aid in the specific program where discrimination was being practiced. In reference to your example, I

would only cut off library funds, not general school aid, or Hill-Burton funds.

Mr. FOLEY. Thank you.

Mr. HALPERN. Mr. Chairman, it is true that some areas in this country might find themselves ineligible for some funds if we pass this measure. Yet the fact remains that their ineligibility would be entirely voluntary.

They have only to act in accordance with the American tradition of equality for all before the law to assure themselves of the desired funds.

On the other hand, if we do not enact this provision, then many Negro citizens will be involuntarily ineligible for many funds. I cannot stress enough the important difference here between voluntary and involuntary loss of funds.

Title VII of H.R. 7152 establishes a Federal Commission for Equality of Opportunity in Employment To Prevent Discrimination in Government Contracts.

I support this measure, Mr. Chairman, but I would prefer the language to title II of H.R. 3139 which goes even further in this area. And, I recommend to the committee the provisions of my own bill, H.R. 1623 which is far more comprehensive and which would establish a National Commission Against Discrimination in Employment.

Much as the public accommodations sections would rest on the commerce clause for enforcement, this bill would also prohibit discrimination in the field of labor where such labor could be shown to have substantial effect on interstate commerce.

The discrimination prohibited would be hiring and firing on the basis of race, religion, color, or national origin, and also any attempt on the part of a labor organization to limit, segregate, or classify its membership on such grounds.

I might point out at this time that the format and basic substantive effect of H.R. 1623 is quite similar to the bill which was reported favorably by the Education and Labor Committee last week.

I refer to H.R. 405. The essential feature of this bill and of H.R. 1623, in comparison with the other bills is that the omnibus bills apply only to situations in which the Federal Government is involved whereas 405 and 1623 encompass a much broader range of activities.

Mr. Chairman, I think it is necessary that our legislation cover that broader range and I hope that this committee will recommend such action.

This, Mr. Chairman, concludes my analysis—as much as reasonable time will allow. I have attempted to present guidelines for the final form of the legislation that will leave this committee. I hope that your decisions will be strong and unequivocal and I am heartened by my good faith in the membership of this committee.

I might point out at this juncture that the analysis I have presented deals only with legislation with which I am associated. There are, of course, other bills before your committee which are concerned with similar proposals.

For example, I have recently read with considerable interest H.R. 7702 introduced last week by the distinguished gentleman from Wisconsin, Mr. Kastenmeier.

His bill has many commendable features and should be, and I am sure will be, fully evaluated. In some ways it combines and strength-

ens other proposals along the lines I advocate. For instance, his voting provisions cover all elections not simply Federal ones; his public accommodations section does combine the commerce clause and the 14th amendment; he makes the Civil Rights Commission permanent; and his antidiscriminatory employment provisions extend to all economic areas in which discriminatory practices commonly occur.

He also includes one other measure which, incidentally, I too have introduced but neglected to mention above: that is the antilynching title to protect persons and their property from mob violence on account of race or color. No such title is present in the three omnibus bills.

Mr. Chairman, with H.R. 7152 as a solid base for the final legislation of this committee, I strongly urge that you consider all avenues that will strengthen the final measure. In reporting such a bill you will be making the greatest advance in the history of human freedom and dignity of the individual in America.

Now, before I close, I think it is most significant to quote a section of some resolutions presented to the people of the United States at a Negro demonstration for equality.

The resolutions declared:

We want full mankind suffrage, and we want it now, henceforth and forever.

Second. We want discrimination in public accommodations to cease. Separation in railway and street cars, based simply on race and color is un-American, undemocratic, and silly.

Third. We claim the right of free men to walk, talk, and be with them that wish to be with us. No man has a right to choose another man's friends, and to attempt to do so is an impudent interference with the most fundamental human privilege.

Fourth. We want the laws enforced against rich as well as poor; against capitalist as well as laborer; against white as well as black. We are not more lawless than the white race, we are more often arrested, convicted, and mobbed. We want the Constitution of this country enforced. We want the 14th amendment carried out to the letter.

Fifth. We want our children educated. And when we call for education, we mean real education. We will fight for all time against any proposal to educate black boys and girls simply as servants and underlings, or simply for the use of other people. They have a right to know, to think, to aspire.

Mr. Chairman, there is nothing very unusual about these resolutions. We hear similar ones, some stronger, some weaker, every day now on the air. We read similar ones in the newspapers and magazines. What makes these redresses unusual is simply this: They were read at a small meeting at Harper's Ferry, W. Va., early one morning in the year 1903. Yes, Mr. Chairman, that was 60 years ago, more than half a century ago. It is time now, not for Congress to start on this work, but to start to finish it. With that in mind, let us begin.

I commend the distinguished chairman of this committee, Mr. Celler. And I want to compliment the acting chairman on the superb job he is doing. I regret the sad news of Mr. Celler's sister's death and would like to extend my heartfelt sympathy. I would be remiss in appearing before the committee Mr. Celler chairs if I did not express my com-

mendation to him for his genuine and complete dedication to the cause of justice, freedom, and human dignity.

Few men in the history of our Nation have devoted so long a span of relentless hard work to a cause of such magnitude.

I know it has been trying, difficult, and often frustrating, to say the least.

But, I pray now he will see a fulfillment of his dreams—a realization of his broadest goals in the enactment of the Civil Rights Act of 1963.

I want also to commend the committee for its patience, for its diligence, its fairness, and determination to hear and probe every aspect of this subject. I trust it will result in the kind of bill I envision in this testimony today.

Mr. KASTENMEIER. I would like to compliment our colleague on his statement, and I appreciate his long, distinguished record in behalf of civil rights.

Also, I appreciate his testimony insofar as it semeed to me to be unselfishly comprehensive in terms of what may be hoped that this committee might do.

You made allusion to the fact that you had earlier introduced an antilynching bill—I think—or a section of one, in your proposal, perhaps very similar to mine, which I introduced later.

I think the reason for it should be understood. It is not so much that there is a great deal of lynching today, but really it is an antibrutality type of statute which I assume in your bill is pretty broadly conceived.

Mr. HALPERN. It certainly is. I used the term antilynching because of the terminology that has been applied to such measures in the past. It is all-inclusive and would cover the phases of brutality to which you refer.

Mr. KASTENMEIER. We have had a great deal of testimony of people who come up from the South, and we can read this in newspapers every day, as to the extent of brutality now existing which at least would be lynching in the broadest form, perhaps not the traditional type of taking a man out to a tree and having a mob string him up, but certainly citizens should be protected against this type of violence in connection with civil rights.

I compliment the gentleman.

Mr. HALPERN. Thank you very much.

Mr. ROGERS. We thank the gentleman. We appreciate his candor and analytical approach to this problem.

We compliment you on your longstanding and outstanding record as a champion of all human rights.

Mr. HALPERN. Thank you very much.

Mr. ROGERS. Reverend Fauntroy, would you care to proceed?

We thank you very much for your courtesy in allowing the interruption and for your cooperation.

Reverend FAUNTROY. Thank you, Mr. Chairman.

It is a privilege to be interrupted by such a distinguished Member of Congress, and to hear his very strong statement.

You will recall I was at the point of suggesting procedural amendments to the administration's bill.

1. All cases brought under either this title or title III in which the Government is the plaintiff shall be tried before a judge designated

by the chief judge of the circuit. This is crucial, for unsympathetic district judges can succeed in frustrating almost any civil rights statute, no matter how tightly and forcefully drafted. There is precedent for such a procedure: the chief judge of the circuit presently appoints three-judge courts to hear injunctive actions challenging the constitutionality of State and Federal statutes.

2. To insure the caliber of voting referees, their nomination is to be made by the chief judge of the circuit rather than by the district judge dominated Judicial Conference, the impartiality of which in race relations would be questionable.

3. The guarantees of the title are broadened to cover all elections, Federal or State, rather than Federal elections alone.

4. Under the administration bill the temporary voting referee procedure can operate only when the Attorney General alleges that less than 15 percent of the Negro population in a county is registered. The Kastenmeier bill raises the figure to 25 percent, thus reaching a far gerater number of counties where a pattern or practice of discrimination exists.

Mr. KASTENMEIER. The purpose was not only to include a greater number of counties, but also to make sure that there could not be, say, easy compliance by counties who might want otherwise to avoid implementation of this section, this procedure, who may be close to 15 percent and may, on purpose, register just enough. This makes it a little more difficult for them.

Mr. FAUNTROY. We appreciate certainly the purpose in suggesting 25 percent.

Mr. FOLEY. There is a problem, in my judgment here, that in the bill 7152, it refers to the effective area.

Now, you look at the State voting statutes and you find in almost all the States that you have voting areas consisting basically of wards or precincts, in New York City we call them election districts.

In most of the States that is where you can go to register, too. For instance, in New York, the 21st assembly district is a geographic area in Kings County. Every district in Kings County is broken into election districts. My problem comes here that everyone is talking about countywide, but we use the language "affected area," and I wonder, is it 15 percent or 25 percent of a ward which is set up by the State as the voting area? It is not clear.

I point that out to you, Mr. Kastenmeier. Maybe we would have to change some language.

Mr. KASTENMEIER. Maybe we would have to clarify it.

Mr. ROGERS. That is a good point that counsel raises. Do you want to proceed?

Mr. FAUNTROY. Thank you.

5. Applications by would-be registrants must be decided upon within 60 days. The administration bill hereby refers to decisions being "expedited." Many southern district judges have demonstrated in voting cases under the 1960 Civil Rights Act that they will not comply with hortatory language requiring expeditious decisions.

The usual process of registering to vote is a summary proceeding, normally taking minutes, even in Southern States; there is no reason why the 60-day limitation should tax any judge not intent on obstruction. While there is only little Federal statutory precedent for

timing judges in this way, several of the States, for example, New York, do place time limitations upon the courts.

6. Section 102, derived from the Republican bill, orders the Bureau of the Census to conduct an immediate State-by-State census to analyze limitations upon voting rights. With these determinations, Congress should have the data with which to enforce the second section of the 14th amendment if it so desires. Were that section enforced, it is estimated that Southern States would lose up to one-half of their representatives in Congress and in the electoral college unless the Negro were allowed to vote.

I would now like, Mr. Chairman, to turn to the related areas of police brutality and the abuse of the judicial process to explain the need for Federal action in these areas and to specify measures we consider well adapted to that need. For, Mr. Chairman, if police brutality and the maladministration of justice persist, and are not corrected this year, the cause of the Negro in the South will not be materially aided.

The use of the organs of justice to prevent the civil rights movement from securing the emancipation of the southern Negro, as well as to simply make the life of the Negro more hazardous, is not a subject unknown to the committee. Dr. Aaron Henry, the courageous fighter for freedom in Mississippi, has informed you of the lengths to which the police and courts in his area will go in order to force him to give up his struggle.

James Farmer, James Foreman, and others have testified to the same effect. Incidentally, Dr. Henry was arrested yesterday with 50 other citizens who are protesting for redress of grievances, in pursuit of their constitutional rights in respect to this.

In addition, other sources of information, principally the national press, have given all of us some indication of the irony with which the Deep South Negro must pronounce the word "justice."

It is, however, to be emphasized that the glare of publicity and even those pressures that have been exerted by the Federal Government on the local white officials of the South have had no appreciable effect on its customs. The brutal murder of Medgar Evers is only an extreme example of the day-to-day harassment, threat, arrest, conviction, et cetera, of people whose only crime is the desire to secure for Negro citizens such an elementary constitutional right as the vote.

Mr. Chairman, you and the members of your committee may be aware that Dr. King, speaking last week in New York of the desperate need for legislation to free the southern Negro from the yoke of a malevolent system of law enforcement, proposed a "national civil rights police force." This proposal has been termed "extreme." The important point, however, is that the problem at which the proposal was aimed is extreme. It is a problem which the Federal Government has, under the Constitution and the law, the power, the responsibility, and the duty to strive to solve. In the first place, already existing statutes charge the Federal Government with responsibility to attack this problem, a responsibility it has not exercised.

The United States Code (28 U.S.C. 549) empowers the Federal marshals to enforce the law and protect the constitutional rights of citizens, yet the Attorney General refuses to order them to do so. The President may use whatever force is necessary under 10 U.S.C. 322, yet he does nothing.

We feel Congress should play its role in correcting this default of responsibility by the executive branch. Title VIII, section 801(c), page 57, acknowledges the duty imposed upon the U.S. Government to exercise its powers to protect individuals from lynching and then proceeds to enact potent criminal sanctions against persons who deprive citizens of their constitutional rights.

Another interim measure of relief in this area is to be found in title IX, section 903 of the Kastenmeier bill. We understand that Mr. William Kunstler, an attorney of New York, has offered to the committee his experienced opinion as to the enormous value this provision would be to the Negro and the civil rights worker in the South.

The section deals with the right of "removal"—of transferring a case from the State court where it was initially brought to the nearest Federal court.

At present, the State courts in civil rights cases are often used as a brutal weapon in the arsenal of racist power. Bail, for instance, is used as a device to bankrupt the civil rights movement.

"They tried to shoot us to death," Aaron Henry of the Mississippi NAACP said recently. "Now they are spending us to death."

Mass short-term jail sentences following indefensible convictions are used to quelch demonstrations, voter registration classes, and even remedial education classes, by incarcerating the leaders and intimidating the Negro population as a whole. In Danville, Va., last month, the corporation court sentenced demonstrators to 45 days in jail, and then refused bail or to stay the sentences pending appeal. Since the higher court was not to sit during the 45-day period, appeal was empty.

I would call your attention to the fact Danville is now also on the verge of becoming a racial blood bath. Press notices today are to the effect the mayor, for example, is charged with throwing one of the Negro demonstrators, who happened to be a woman, down the steps three times. And police are charged with tossing one of the clergymen over the bannisters of the steps of the courthouse.

Of all of the civil rights bills introduced this session, only H.R. 7702 takes steps to rectify this judicial situation. The approach is to amend the existing civil rights removal statute, which has a 97-year history of nonuse. The statute allows removal in two generic situations: when a defendant cannot obtain a fair trial in a State or local court, or when a defendant is being prosecuted for an act which he performed under constitutional authority, such as conducting voter registration classes, registering to vote or speaking or walking for freedom.

The approach has two aspects: (*a*) A manifesto declaring that removal shall be liberally sustained (an early line of Supreme Court cases had construed the statute restrictively); (*b*) a clause making reviewable an order of remand (which transfers the case back to the State court). The remand order has not been reviewable by appeal since 1887 and not reviewable at all since 1948. Thus, the early, narrow Supreme Court interpretation was frozen into the statute, and southern district judges are given carte blanche control.

As amended, the removal statute will certainly be more effective than it has been. I believe Mr. Kunstler has already made clear the need for an effective removal statute. But the exact rules for its new use will be developed through decisions of the Federal courts.

To the Negro of the South—or any white person who might be sympathetic to his cause, for that matter, these are moderate measures for an extreme situation that has been endured for 100 years. Their enactment, even their enforcement, will not put an end to a system wherein the law and its agents of administration and enforcement are in fact agents of his oppression.

Only the legitimate sharing, through the franchise, in the power and responsibility of local and State government will give him the leverage to bring a final solution to this problem. But these measures will help. At this moment, even such moderate measures as these are missing from the administration's legislation.

Mr. Chairman, I now conclude with these thoughts. If this committee and this Congress of decades ago had acted to forge effective legislation guaranteeing the Negro his right to vote, then this committee and this Congress would have no need to sit today, belatedly to begin solving the "civil rights problem."

Mr. ROGERS. I would like to point out that this committee took vigorous action in 1957 and in 1960. And I think that the question is as to whether or not more effective civil action would be a matter of committee action, or total congressional action.

Mr. FAUNTROY. I say that in the statement, incidentally.

I say to you gentlemen that the Government of the United States has not placed democracy in the hands of the Negro. Instead, it has pushed him into the streets, and the squares, and the city halls and the courthouses. And yes, it is forcing him to make a pilgrimage to Washington.

Yes, Mr. Chairman, we believe in democracy, but does democracy believe in us?

Thank you.

Mr. KASTENMEIER. Mr. Chairman.

Acting Chairman ROGERS. Mr. Kastenmeier.

Mr. KASTENMEIER. I want to compliment Mr. Fauntroy on the presentation.

I am sorry that a quorum call interrupted me being in the room during part of your testimony, and I didn't hear all of it. But I have your testimony before me. It is excellent.

I want to say I think it is significant and useful that you are here representing the Southern Christian Leadership Conference, which has taken, really, the great role in this country, in recent years, in terms of this whole matter which we have hoped to assist through legislation, through committee activity.

Thank you very much.

Mr. FOLEY. If I may go back for a moment. On page 6 of your statement, on this question of the voting rights, and the voting referee, I would like to point out something to you and this is referring now to the provision in 7152 that the appointment be made by the judicial conference of the circuit. Under the existing law a judicial conference of the circuit has no authority, no power. It is merely a getting together of all the judges, circuit and district, and members of the bar which the court of appeals invites to attend. They are usually open discussions.

Now, on the other hand, you have the provision in Mr. Kastenmeier's bill that the designation be made by the chief judge of the circuit.

And I am not dealing in personalities, but I want to point this out: You know, chief judges are on a rotational basis. They must cease to function as a chief judge upon reaching the age of 70, and the next senior judge in line under 70 succeeds him.

Mr. FAUNTROY. Yes.

Mr. FOLEY. Now, without dealing with any particular circuit, I always hope that placing this power in one man it will be an individual who looks judicially at the problem. I am not so sure, it may be that you may have judges on the courts of appeals who may not be sympathetic, who may wind up as chief judge, and he may be a man 55 years old, as is one chief judge in the United States today, and he stays there, by law, until he is 70, or until he voluntarily relinquishes it.

Now, the only organization within a circuit that has any authority to issue any orders with respect to the court of appeals and the district courts in that circuit, I think, is the judicial council, composed of active judges, not those in retirement, though, of course, occasionally one may act on the council, but usually all active court of appeals judges. Now, personally, I would refer to the judgment of all the court of appeals judges, rather than taking a chance with a single man.

Mr. FAUNTROY. I think you understand, however, that our suggestion is to avoid a mechanical difficulty.

Mr. FOLEY. Under your reason, but I want to make sure you understand the position you may find yourself in. As I say, I prefer the balanced judgment of all the members of the court of appeals in a particular circuit, rather than the exercise of authority by one judge, even though he be designated the chief judge.

Mr. ROGERS. This is a point, I think, that merits deep and serious consideration. It may well be that this would be defeating the very thing you are trying to get at.

Mr. FAUNTROY. In your judgment, the chief circuit judge might conceivably be as prejudiced as many of the district judges now who have frustrated the efforts——

Mr. ROGERS. Then, as counsel points out, should a chief judge be one young in years, and who stays on for a length of time, we have to deal with that situation for a length of time.

Mr. FAUNTROY. We are just anxious that you appreciate the difficulty we have encountered in getting the right to vote to Negroes through the process which presently calls for the district court judges to appoint referees and to hear the cases.

Mr. ROGERS. We recognize, as you do, Reverend, that there are areas where there are judges who are not sympathetic, and whose judicial role doesn't always seem to find itself. There we may be in difficulty, if we were to spell out something like this which might, again, as I say, defeat the very thing that we are trying to correct.

Mr. KASTENMEIER. Mr. Chairman, on this point, I appreciate what counsel and the chairman have said. As a matter of fact, in the early draft of this particular bill we had "judicial council" in it. I suppose in the short run, granted a particular circuit, the way the bill is now drawn might be preferable. However, I think the suggestion is a good one, that is the possibility of a judicial council.

Mr. FOLEY. I want to say, too, this appointment is technically not a judicial function. It is an administrative function. You don't have quite the same control over an administrative function within the Federal judiciary as you do when it functions as the judiciary. Administrative powers can be used rather arbitrarily by a judge, and Congress has a lot of limitations on what it can do and say about it.

Mr. ROGERS. Reverend, I want to thank you for your appearance here today. We understand and appreciate the way you feel. And we, too, recognize that there has long been a delay in this area, which has needed correction for a long time.

We appreciate the candor with which you have made your statement. We want you to know that this committee, as always in its history, as its record proves, will approve this bill in the most expeditious manner, certainly believing that democracy should work for all.

Mr. FAUNTROY. Thank you very much, Mr. Chairman.

Mr. KASTENMEIER. Mr. Chairman, before we adjourn, I have a request to make of the Chair.

Mr. ROGERS. We may dismiss Reverend Fauntroy?

Mr. KASTENMEIER. Yes.

Mr. ROGERS. Thank you very much.

Mr. KASTENMEIER. Mr. A. Dudley Ward, associate general secretary of the Board of Christian Social Concerns, the Methodist Church, has asked me to have included, with permission of the chairman of the committee, his statement, and a statement of the Woman's Division of the Methodist Church, for the record.

Mr. ROGERS. Both statements will be included. Thank you very much.

(The documents referred to are as follows:)

AUGUST 7, 1963.

Mr. A. DUDLEY WARD,
Associate General Secretary, General Board of Christian Social Concerns of the Methodist Church, Washington, D.C.

DEAR MR. WARD: This will acknowledge receipt of your letter of July 25, 1963, enclosing two statements indicating official Methodist denominational interest in and support for civil rights legislation.

Please rest assured that these statements will be made a part of the record of the printed hearings on these proposals.

I wish to thank you for your interest in this legislation.

Very truly yours,

EMANUEL CELLER, *Chairman.*

GENERAL BOARD OF CHRISTIAN SOCIAL CONCERNS,
OF THE METHODIST CHURCH,
July 25, 1963.

Hon. WILLIAM M. MCCULLOCH,
House Office Building,
Washington, D.C.

DEAR MR. MCCULLOCH: The House Judiciary Committee of which you are a member is currently considering Federal civil rights legislation. I therefore beg leave to submit for the record the two enclosed statements indicating official Methodist denominational interest in and support for this legislation.

Very truly yours,

A. DUDLEY WARD.

STATEMENT OF A. DUDLEY WARD, ASSOCIATE GENERAL SECRETARY, GENERAL BOARD OF CHRISTIAN SOCIAL CONCERNS, THE METHODIST CHURCH, CONCERNING FEDERAL CIVIL RIGHTS LEGISLATION IN 1963

The people called Methodist have an overwhelming interest in encouraging the passage of strong and meaningful civil rights legislation by the 88th Congress. This interest is deeply religious and broadly human. The social, political, and economic health of the entire Nation greatly depend upon the removal now of long-suffered civil injustices from the daily lives of millions of our fellow citizens.

The Methodist Church shares with all elements of the Hebrew-Christian tradition a common faith that God is Father to all mankind. Under God all men are brothers. God shows no partiality among the races and nations of men. He plays no favorites. Neither should we, His children.

In accordance with this fundamental faith, we believe the best society for men is one in which all citizens are granted equal opportunities to exercise personal liberties and to seek personal fulfillment. We know that government cannot provide its citizens with personal fulfillment, but it can and should provide for those rights and liberties without which personal fulfillment is impossible. When any section or group in a society denies any other group the basic rights of citizenship, then we believe the proper redress is to be had at law. The question of majority or minority status is quite irrelevant to this issue—it is a question of basic right for all citizens. It is shameful beyond calculation that equality before the law in such areas of fundamenal human necessity as public accommodations, education, voting, employment, and housing, should have been so long denied to certain minority and racial groups in our land.

The general conference, which is the governing body of the Methodist Church, has unequivocally declared its opposition to such denial of basic human rights (see resolution on human rights, passed by the general conference of the Methodist Church on May 9, 1960: pp. 529, 632, Daily Christian Advocate, "Proceedings of the General Conference of 1960"). Meeting in Denver in May of 1960, the general conference declared without qualification "for the equal rights of racial, cultural and religious groups" ("Discipline," 1960, par. 2020). This same general conference called on the entire membership of the Methodist Church to work actively "to eliminate discrimination and enforced segregation on the basis of race, color, or national origin * * *" ("Discipline," 1960, par. 2026). In this connection, the general conference specifically mentioned the areas of housing, schools, employment, and community acceptance (ibid.).

The churches of this Nation must work primarily by the method of persuasion, under the law of love. The Congress, on the other hand, establishes law in the political order to be enforced by the administrative power of government. These are very different functions, but they are supplementary in the struggle for equal rights and opportunities for all citizens in our society. Other institutions and groups also have their own unique contributions to make in this struggle for basic human justice and dignity.

The inescapable implication of the Methodist position in these matters is that the guarantees of law should extend to those basic civil rights and liberties without which meaningful citizenship does not exist. Such rights and liberties include, as a minimum, equal opportunities in the following areas: voting, employment, education, public accommodations, and housing.

Discrimination solely on the basis of race, religion, or national origin, in any of these areas, is an unjustified and unjustifiable denial of constitutional liberties under our form of government. They are also a denial of the implications of the religious faiths professed by the great majority of Americans. Food, shelter, education, and work are basic necessities for all. Discrimination against any of our citizens as they seek these necessities is raw injustice. Such discrimination wastes both our economic and our human resources.

Many States and hundreds of cities in our land have already desegregated public accommodations. We read of a few such places where some degree of civic upset occurred before the desegregation took place. We read of practically none where civic upset took place after desegregation took place. We also note that the great majority of desegregation actions have occurred without untoward incident. This lends credence to the view that the American people are ready, as a whole, to accord to all citizens their full rights in our society. There is no justification for allowing an arbitrary few to perpetuate the denial of these rights in some localities and sections. The Congress can remedy this situation now by firm and fair legislation.

On the basis of its official voted positions the Methodist Church calls upon the Congress now to guarantee the basic human and civil rights mentioned here to all our people. It is a matter of simple right and justice.

STATEMENT OF CIVIL RIGHTS, PREPARED BY THELMA STEVENS, EXECUTIVE SECRETARY IN THE WOMAN'S DIVISION OF THE METHODIST CHURCH

The Woman's Division of Christian Service of the Board of Missions of the Methodist Church with headquarters at 475 Riverside Drive, New York, N.Y., is the duly elected policymaking body of organized Methodist women. Policies are recommended to the 36,000 organized local societies and guilds with a total membership of approximately 2 million. Mrs. J. Fount Tillman of Lewisburg, Tenn., is currently the national president of the division.

The women's division throughout its 23 years of official life has consistently supported National and State legislative and community programs for the achievement of civil rights. Action taken and local support recommended included such issues as voting, repeal of the poll tax as a prerequisite for voting, fair employment policies, open occupancy housing, support of goals and method of sit-in and other nonviolent efforts.

In 1962 the woman's division adopted new goals for its charter of racial policies. These goals were recommended to the division's auxiliary groups in jurisdiction, conference, district, and local societies and guilds across the Nation. Hundreds of the units have ratified these goals and are at work to put them into practice. A specific ongoing program of promotion is underway constantly. Following are the goals or racial policy pronouncements under which the division operates:

We will:

1. Commit ourselves as individuals called by Jesus Christ to witness by word and deed to the basic rights of every person regardless of cost.
2. Unite our efforts with all groups in the church toward eliminating in the Methodist Church all forms of segregation based on race whether in basic structure or institutional life.
3. Create in local churches opportunities for inclusive fellowship and membership without restriction based on race.
4. Act with other groups and agencies to involve families in new experiences with other races and cultures.
5. Share in creative plans that challenge youth, students, and young adults of all races to new understanding of the church's mission and ministeries.
6. Interpret and strengthen recruitment and employment practices of the woman's division consistent with our belief in the oneness of God's family.
7. Open the facilities and services of all woman's division institutions without restriction based on race and make such policies clearly known.
8. Establish all schools of missions and christian service and all leadership development and enrichment programs on a regional basis without restriction based on race.
9. Seek to change community patterns of racial segregation in all relationships including education, housing, voting, employment, and public facilities.
10. Work for national policies that safeguard the rights of all the Nation's people.
11. Support worldwide movements for basic human rights and fundamental freedoms for peoples everywhere.
12. Join with others who seek in church and community justice and freedom for all members of the family of God.

Goals 9–12 above provide a policy framework for support of the Civil Rights Act of 1963 by the woman's division. The Members of the Congress are therefore respectfully urged to enact into law speedily this Civil Rights Act of 1963 without crippling amendments and changes. It is hoped, however, that special attention will be given to the addition of a national fair employment practices provision. This is a grave omission from what otherwise seems to be an inclusive package of the most crucial questions. It should be speedily remedied by an appropriate amendment that is strongly supported. The President has already indicated his support of such a national policy.

The woman's division has already alerted its constituency to their responsibility in relation to the pending civil rights legislation and will continue to keep them informed as to the status of the bills and the votes of their Representatives and Senators on the issues.

GENERAL BOARD OF CHRISTIAN SOCIAL CONCERNS
OF THE METHODIST CHURCH,
Washington, D.C., July 25, 1963.

Hon. EMANUEL CELLER,
House Office Building,
Washington, D.C.

DEAR MR. CELLER: The House Judiciary Committee of which you are chairman is currently considering Federal civil rights legislation. I therefore beg leave to submit for the record the two enclosed statements indicating official Methodist denominational interest in and support for this legislation.

Very truly yours,

A. DUDLEY WARD.

STATEMENT OF A. DUDLEY WARD, ASSOCIATE GENERAL SECRETARY, GENERAL BOARD OF CHRISTIAN SOCIAL CONCERNS, THE METHODIST CHURCH, CONCERNING FEDERAL CIVIL RIGHTS LEGISLATION IN 1963

The people called Methodist have an overwhelming interest in encouraging the passage of strong and meaningful civil rights legislation by the 88th Congress. This interest is deeply religious and broadly human. The social, political, and economic health of the entire Nation greatly depend upon the removal now of long suffered civil injustices from the daily lives of millions of our fellow citizens.

The Methodist Church shares with all elements of the Hebrew-Christian tradition a common faith that God is Father to all mankind. Under God all men are brothers. God shows no partiality among the races and nations of men. He plays no favorites. Neither should we, his children.

In accordance with this fundamental faith, we believe the best society for men is one in which all citizens are granted equal opportunities to exercise personal liberties and to seek personal fulfillment. We know that Government cannot provide its citizens with personal fulfillment, but it can and should provide for those rights and liberties without which personal fulfillment is impossible. When any section or group in a society denies any other group the basic rights of citizenship, then we believe the proper redress is to be had at law. The question of majority or minority status is quite irrelevant to this issue—it is a question of basic right for all citizens. It is shameful beyond calculation that equality before the law in such areas of fundamental human necessity as public accommodations, education, voting, employment, and housing, should have been so long denied to certain minority and racial groups in our land.

The general conference, which is the governing body of the Methodist Church, has unequivocally declared its opposition to such denial of basic human rights. (See resolution on "Human Rights," passed by the General Conference of the Methodist Church, on May 9, 1960; pp. 529, 632, Daily Christian Advocate, proceedings of the General Conference of 1960.) Meeting in Denver in May of 1960, the general conference declared without qualification "for the equal rights of racial, cultural, and religious groups." (Discipline, 1960, par. 2020.) This same general conference called on the entire membership of the Methodist Church to work actively "to eliminate discrimination and enforced segregation on the basis of race, color, or national origin . . ." (Discipline, 1960, par. 2026.) In this connection, the general conference specifically mentioned the areas of housing, schools, employment, and community acceptance. (Ibid.)

The churches of this Nation must work primarily by the method of persuasion, under the law of love. The Congress, on the other hand, establishes law in the political order to be enforced by the administrative power of government. These are very different functions, but they are supplementary in the struggle for equal rights and opportunities for all citizens in our society. Other institutions and groups also have their own unique contributions to make in this struggle for basic human justice and dignity.

The inescapable implication of the Methodist position in these matters is that the guarantees of law should extend to those basic civil rights and liberties without which meaningful citizenship does not exist. Such rights and liberties include, as a minimum, equal opportunities in the following areas: voting, employment, education, public accommodations, and housing.

Discrimination solely on the basis of race, religion, or national origin, in any of these areas, is an unjustified and unjustifiable denial of constitutional liberties

under our form of government. They are also a denial of the implications of the religious faiths professed by the great majority of Americans. Food, shelter, education, and work are basic necessities for all. Discrimination against any of our citizens as they seek these necessities is raw injustice. Such discrimination wastes both our economic and our human resources.

Many States and hundreds of cities in our land have already desegregated public accommodations. We read of a few such places where some degree of civic upset occurred before the desegregation took place. We read of practically none where civic upset took place after desegregation took place. We also note that the great majority of desegregation actions have occurred without untoward incident. This lends credence to the view that the American people are ready, as a whole, to accord to all citizens their full rights in our society. There is no justification for allowing an arbitrary few to perpetuate the denial of these rights in some localities and sections. The Congress can remedy this situation now by firm and fair legislation.

On the basis of its official voted positions the Methodist Church calls upon the Congress now to guarantee the basic human and civil rights mentioned here to all our people. It is a matter of simple right and justice.

STATEMENT ON CIVIL RIGHTS, PREPARED BY THELMA STEVENS, EXECUTIVE SECRETARY IN THE WOMAN'S DIVISION OF THE METHODIST CHURCH

The Woman's Division of Christian Service of the Board of Missions of the Methodist Church with headquarters at 475 Riverside Drive, New York 27, N.Y., is the duly elected policymaking body of organized Methodist women. Policies are recommended to the 36,000 organized local societies and guilds with a total membership of approximately 2 million. Mrs. J. Fount Tillman, of Lewisburg, Tenn., is currently the national president of the division.

The woman's division throughout its 23 years of official life has consistently supported National and State legislative and community programs for the achievement of civil rights. Action taken and local support recommended included such issues as voting, repeal of the poll tax as a prerequisite for voting, fair employment policies, open occupancy housing, support of goals and method of sit-ins and other nonviolent efforts.

In 1962 the woman's division adopted new goals for its Charter of Racial Policies. These goals were recommended to the division's auxiliary groups in jurisdiction, conference, district and local societies, and guilds across the Nation. Hundreds of the units have ratified these goals and are at work to put them into practice. A specific ongoing program of promotion is underway constantly. Following are the goals or racial policy pronouncements under which the division operates:

We will—

(1) Commit ourselves as individuals called by Jesus Christ to witness by word and deed to the basic rights of every person regardless of cost.

(2) United our efforts with all groups in the church toward eliminating in the Methodist Church all forms of segregation based on race whether in basic structure or institutional life.

(3) Create in local churches opportunities for inclusive fellowship and membership without restriction based on race.

(4) Act with other groups and agencies to involve families in new experiences with other races and cultures.

(5) Share in creative plans that challenge youth, students, and young adults of all races to new understanding of church's mission and ministries.

(6) Interpret and strengthen recruitment and employment practices of the woman's division consistent with our belief in the oneness of God's family.

(7) Open the facilities and services of all women's division institutions without restriction based on race and make such policies clearly known.

(8) Establish all schools of missions and christian service and all leadership development and enrichment programs on a regional basis without restriction based on race.

(9) Seek to change community patterns of racial segregation in all relationships including education, housing, voting, employment, and public facilities.

(10) Work for national policies that safeguard the rights of all the Nation's people.

(11) Support worldwide movements for basic human rights and fundamental freedoms for peoples everywhere.

(12) Join with others who seek in church and community justice and freedom for all members of the family of God.

Goals 9–12 above provide a policy framework for support of the Civil Rights Act of 1963 by the woman's division. The Members of the Congress are, therefore, respectfully urged to enact into law speedily this Civil Rights Act of 1963 without crippling amendments and changes. It is hoped, however, that special attention will be given to the addition of a national fair employment practices provision. This is a grave omission from what otherwise seems to be an inclusive package of the most crucial questions. It should be speedily remedied by an appropriate amendment that is strongly supported. The President has already indicated his support of such a national policy.

The woman's division has already alerted its constituency to their responsibility in relation to the pending civil rights legislation and will continue to keep them informed as to the status of the bills and the votes of their Representatives and Senators on the issues.

Mr. ROGERS. The hearing is adjourned today and we will reconvene in the morning at 10 o'clock.

(Whereupon, at 1:50 p.m., the subcommittee adjourned until Thursday, August 1, 1963, at 10 a.m.)

CIVIL RIGHTS

THURSDAY, AUGUST 1, 1963

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 5 OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to adjournment, at 10 a.m., in room 346, The Cannon Building, Hon. Emanuel Celler, chairman, presiding.

Present: Representatives Celler (presiding), Rogers, Rodino, Jr., Toll, Kastenmeier, Meader, and McCulloch.

Also present: Representatives Corman and Ashmore.

Staff members present: William R. Foley, general counsel; William H. Copenhaver, associate counsel; and Benjamin L. Zelenko, counsel.

Acting Chairman ROGERS. The committee will come to order.

The first witness today is Hon. Daniel R. McLeod, attorney general of the State of South Carolina.

We have with us our distinguished member of the Judiciary Committee, Mr. Robert Ashmore.

Sir, would you like to present Mr. McLeod?

Mr. ASHMORE. It is a pleasure to present a great South Carolinian, who has been in public service in South Carolina since he was a very young man. He has been in the attorney general's office since 1949 and is serving his second term as attorney general.

Mr. McLeod is a moderate, clearheaded, sound thinker, well versed in public service, and a man who has knowledge of all the conditions in South Carolina and the South pertaining to this important legislation now pending before this committee. He is here today to tell us some of the things he believes and knows as a great lawyer on constitutional law, and as a person who is capable of bringing to you and other members of this committee the viewpoint of the South.

Acting Chairman ROGERS. Thank you, Mr. Ashmore.

Will you please come forward, Mr. McLeod, and I welcome you as attorney general of South Carolina. We are glad to have you.

Go ahead in your own manner. I understand you have a statement which you will submit.

STATEMENT OF HON. DANIEL R. McLEOD, ATTORNEY GENERAL OF SOUTH CAROLINA

Mr. McLEOD. Yes.

Mr. Chairman and gentlemen of the committee, I am grateful for the opportunity to appear here and express my views on the legislation pending before you.

I am Daniel R. McLeod, attorney general of South Carolina, in which office I have served since January 1959, and as Mr. Ashmore has

said, prior thereto I served as assistant attorney general for a period of 10 years.

The bill before you (H.R. 7152 imposes further restrictions upon the rights of the States by amending the civil rights provisions of the statutes of the United States so as to further extend the authority of the Federal Government into areas which should be matters of State concern alone.

During the period that I have been associated with the office of the attorney general of South Carolina I have worked in close cooperation with the election officials of South Carolina. A great amount of my time is expended in consideration of problems which arise in connection with the application of the election laws. Necessarily, I have frequent communication with local and State officials charged with the conduct of elections and I, therefore, believe that I am familiar with the problems encountered by election officials in my State and particularly with any disputes that may arise in the conduct of elections or procedures connected therewith.

Although the statutes of South Carolina provide a simple, prompt, and adequate remedy to anyone who claims the denial to be registered to vote, no complaint has reached my office during the last 14 years, alleging that any individual has been denied the right to register in order to vote. Nor am I aware of any proceeding that has ever been taken by way of appeal from a denial of registration. Had such an appeal been made, I am confident that I would know of it.

In May 1958, 538,915 persons were registered to vote in South Carolina. Of this number white registrants comprised 89.2 percent (480,793) and colored registrants comprised 10.8 percent (58,122).

In August 1962, the total registration in South Carolina was 666,694. No comparative figures of white and colored registrants is available as of that date, but the number of colored registrants has, to my knowledge, sharply increased.

It is therefore clear that there is an absence of discrimination in the registration of voters in South Carolina, as indicated by the total lack of complaints from denial of registration and as evidenced by the increased percentage of colored persons who have registered to vote.

This is evidenced also by the statement contained in the 1961 report of the Commission on Civil Rights with respect to South Carolina, in which it is stated:

> The Commission has never received any sworn complaints from South Carolina.

Mr. FOLEY. May I interrupt to ask you this: The U.S. Government has brought no action under the 1957 or 1960 acts in South Carolina, that you know of? I am talking about going into court, now, they have never instituted legal proceedings?

Mr. MCLEOD. Not in South Carolina. They have made inquiries, and there has been no action instituted that I know of, no, sir.

Mr. FOLEY. That is what I wanted to bring out.

Mr. MCLEOD. The determination of a propective voter's qualifications should be vested in the States where it has historically rested, and the attempt to impose upon the States the authority of a Federal Board of Registration can only lead to hostility and chaos in the elective processes.

It is appalling to think that merely because less than 15 percent of a designated race is registered to vote, any member of that race, although he may have been found by a State board to be not qualified by reason of residence or otherwise, is automatically entitled to vote in State elections.

Acting Chairman ROGERS. Right there, you do not contend that this legislation would have anyone vote regardless of his qualifications?

Mr. MCLEOD. It would not per se let anyone vote irrespective of his qualifications. But it would leave the determination of those qualifications to Federal officials, which is in my view contrary to historical and constitutional precedent.

Acting Chairman ROGERS. Wouldn't the officer, if he should be appointed by the Federal power, administer State qualifications? And it is your chief objection that the Federal authorities shouldn't have anything at all to do with it, that as far as South Carolina is concerned you have not had any problem is that it?

Mr. MCLEOD. That is true. Yes.

Mr. CORMAN. Mr. Chairman.

Acting Chairman ROGERS. Mr. Corman.

Mr. CORMAN. If the State of South Carolina prevented you from voting because you were an attorney would you think as an American citizen that should be a concern for the Federal Government?

Mr. MCLEOD. I would, indeed. But I would have redress under existing Federal statutes that have been there since 1875 and are adequate now. I would also have adequate remedy by way of appeal or procedure under State law, under our statute in South Carolina.

I might add at this time that the effectiveness of the State remedy from a denial of registration to vote has not been questioned at any time, it hasn't even been utilized.

Also, I point out that that procedure provides if a person is denied the right to register for the purpose of voting he can appeal to the circuit court, which is the trial court level, and from that court to the Supreme Court of South Carolina, and the law provides that the Supreme Court in the event of appeal of that nature may come into special session.

That, as I say, has never been utilized.

Mr. CORMAN. I don't think, obviously, we have problems in your State or mine.

But in Mississippi, schoolteachers are not permitted to vote, as a practical matter. And I think that is a concern for the Federal Government. We have the problem of when should the Federal Government inject itself, and you have made a good argument that we shouldn't under normal circumstances. But that is the problem we wrestle with. If a schoolteacher loses his job if he votes, which he has a right to do, as an American citizen, that is one problem we are trying to get at. Your advice would be welcomed.

Mr. MCLEOD. The remedies in my State are available to the citizens of Mississippi, regardless of their color. The Federal courts are available to the citizens of Mississippi.

My objection to this legislation, irrespective of constitutional views on it, is that principally you would place an awesome power in the hands of a Federal official.

The mere fact that less than 15 percent of a group of persons, white, colored, Chinese, whatever race, are not registered is, in every case

that I am aware of, due only to one thing, one thing alone, and that is apathy.

The mere fact that less than 15 percent have not registered enables a Federal official, and I don't see that it would be true of this, or preceding, or succeeding administrations, but in the hands of an improperly motivated person, place in the power of that person to say less than 15 percent of this group are not registered and therefore we are going to have the entire race register.

Mr. FOLEY. Mr. Attorney General, that is only a rebuttal presumption, part of the evidence that would be introduced in the court. It is rebuttable, and not automatic, and not conclusive.

Mr. MCLEOD. True, but if they are to show a Federal court that they have been denied the right to register in a State election——

Mr. FOLEY. Only a Federal election, Mr. Attorney General, not a State election. The 1957 and 1960 acts apply only to elections for specified Federal officials.

Mr. MCLEOD. I am talking of S. 1731, the same as the bill before this committee.

Mr. FOLEY. The one before us, H.R. 7152.

Mr. MCLEOD. This is a companion measure.

The forepart of the bill does relate only to Federal election, but on page 6, line 6, "such order shall be effective as to any State or Federal election," and in the event any—line 17, page 6, of the Senate bill, "notwithstanding any inconsistent provision of State law," and so forth, "applicants qualified to vote shall be permitted to vote, as provided herein," and so on.

The forepart of the bill does relate only to Federal elections, as you say.

Mr. CORMAN. Is it really an awesome power for this Government to be able to say that everyone may vote in a Federal election, that is that no one shall be denied the right to vote in a Federal election because of his race?

That is the thrust of this bill. The only time that this bill would be effective is when he is denied that right by State authority because of his race.

Is it really an awesome power that we protect that right to vote?

Mr. MCLEOD. It is to me, when you say merely because less than 15 percent of a certain group have not registered.

Not because they are denied the right to vote, but a presumption that they were discriminated against, if merely less than 15 percent have not registered to vote.

And, unfortunately, people don't register as they should, and vote as often as they should.

Mr. ASHMORE. As a matter of fact, only around 60 percent of the voters in the United States register and vote, isn't that right?

Mr. MCLEOD. There is no magic in 15 percent.

In the hands of a person so disposed——

Mr. FOLEY. Well, it would be in the hands of a Federal judge, first.

Mr. MCLEOD. That is true, but the referees can be appointed from anywhere in a judicial circuit, which would cover a number of States, and their conclusions would be highly persuasive as to any court as to fact and as to law.

So in effect you have Federal referees conducting the State elections.

Mr. FOLEY. Not appointed anywhere within the circuit. That is not quite accurate. It comes from a panel that would encompass the entire circuit. But as to the individual appointed specifically, the bill reads:

Shall be a resident and a qualified voter of the State in which he is to serve.

Mr. MCLEOD. I beg your pardon. You are quite correct.

Mr. ASHMORE. Doesn't the fact that there is a very sharp difference on page 6 of the Senate bill you just referred to, to this effect: "Such orders shall be effective as to any Federal or State election," and that you interpret that one way and the counsel for the committee interprets it another way show the field we are aiming at.

Mr. MCLEOD. That is correct.

Mr. FOLEY. I agree as to the scope of the order. But to have that order, you have first to start your proceeding because there is a Federal election. I am not disagreeing with you, Mr. Attorney General, as to the language. But I say you can't get that order unless you first have a Federal election involved.

Mr. MCLEOD. As I understand it, I merely will state my dissent most respectfully, but apparently all you need is to show a pattern of discrimination.

Mr. FOLEY. Where there is a Federal election about to be held.

Mr. MCLEOD. Any election.

Mr. FOLEY. Oh, no.

Mr. MCLEOD. Section C—I don't have it before me.

Either way, you have a State election involved, and if you find discrimination—I would like to point out one facet that occurs to me, and it has happened in the past, in an older case prior to the Federal second series, under the old Civil Rights Act before it was declared unconstitutional in 1880, where they had protection for Federal elections.

In Georgia there was an election where the Federal registrars admitted a person to vote. There was a conflict as to whether they acted properly. There was an appeal to the circuit court, to the court of appeals, and so forth, and it dragged on for several years, and ultimately I have forgotten which way it was decided.

But it is immaterial. The point is that for months and months and months the Federal election machinery had been extensively invoked, and the only persons involved were the commissioner of deeds and the coroner in the State of Georgia.

And that is the sort of thing you can lead to under this language.

Mr. ASHMORE. If it did not go that far in the beginning, it would ultimately lead to that, isn't that right?

Mr. MCLEOD. Exactly right, Mr. Ashmore. Any person who would be a candidate for office could if he chose under the law of our State or any other State, challenge any vote that was improperly being cast, and if I were a candidate and chose to, I would object to any vote that came in under the authority of a Federal court order, and if any supreme court, if the race were close and there were enough challenged votes to affect the outcome of the race, and if the supreme court found they were improperly permitted to vote, then the same thing would happen that happened in the older case.

Is the Federal Government going to come in and say who should be elected Governor of South Carolina, who should be declared Governor of South Carolina?

Under the bill before you that could happen, that is exactly what can happen.

Mr. ASHMORE. I wonder if counsel would agree with that.

Mr. FOLEY. I was looking at the 1957 act and did not quite follow you.

Mr. ASHMORE. Would you repeat your statement regarding the Governor, and the election?

Mr. MCLEOD. This has happened before, where persons were allowed to vote by Federal fiat under the Civil Rights Act of 1878.

The election contest was made, in Federal courts. The matter went for some months in extensive and controversial litigation, and I don't recall which way it was ultimately decided.

The fact that the persons eligible to vote in the Federal election, that is for Members of Congress, and so forth, participated in this election affected the State election, and the whole concern was about two races, one for coroner and one for registrar of deeds in a county in Georgia. That is "In re Fields"—I don't have the citation here.

Exactly the same thing could happen under this bill, if Federal referees are appointed and determine that 15 percent of persons of one race have been discriminated against. They could authorize enrollment and registration of all members of that race that they feel are qualified under State law.

Then a candidate is going to question the right of those persons to vote and the challenge must be handled under our law on a certain procedure. If it is ultimately determined by the South Carolina Supreme Court that in a close race—that is, that those persons should not have been permitted to vote for any number of reasons, nonresidence, age, so forth, and a sufficient number are rejected by the South Carolina Supreme Court for what they deem proper reasons, and that number is sufficient to affect the result of the election, what does that leave the State of South Carolina?

Say the Governor's race is in issue. And in Minnesota or Wisconsin, I think one vote makes a differences.

If you have enough votes to affect the outcome, is the Federal Government going to say you received that vote, and therefore this man is elected Governor of South Carolina?

Mr. FOLEY. I agree with what you have said but in any State today this bill will not affect a challenged vote.

I can get a registration order in my State, and get an order permitting me to challenge a ballot, and it is reviewable in the courts of New York, your election officials could challenge such a vote. Of course, they can. This is primarily registration, allowing the person to vote.

The minute he votes, your election laws come into play. And you provide for a challenged ballot to be reviewed by a court, and that bill does not affect that at all.

Mr. MCLEOD. But you bring in the Federal Government to say who is qualified to vote.

And who is going to determine whether his vote should be counted or not?

Mr. FOLEY. There is nothing in this bill that says the Federal Government shall determine the validity of any election.

Mr. MCLEOD. That is the point I raise. Who is going to determine it?

Mr. FOLEY. The State of South Carolina would determine the validity, not a Federal court judge.

The CHAIRMAN. I am sorry I was not here to welcome you at the beginning of this hearing.

I am happy to welcome you now. I am very happy to know that Mr. Ashmore, for whom I want you to know we all have a very affectionate regard, is here.

You tell your people back home that he is a very able and efficient representative of the people of his district.

Mr. MCLEOD. Thank you very much.

The CHAIRMAN. You might proceed with your statement.

Mr. MCLEOD. Thank you.

The power given the Federal Government under this legislation is a dangerous power which can be used to subvert our democratic processes.

It should not be granted to the Federal Government but should remain in the States where it was constitutionally intended to reside.

The CHAIRMAN. I note that in the report of the U.S. Commission on Civil Rights, the report for 1961, there is a quotation:

> Another example of well-founded fear involves McCormick County, S.C. Here in 1959 only one Negro was registered; early in 1960 there were three more. The reported reason for meager registration was fear of physical violence and economic reprisal.
>
> In June 1960, shortly after it was announced that the FBI would enter the county to inspect the registration books, 46 Negroes registered.
>
> Informants reported that a Negro maid was fired the day she registered; a Negro craftsman was forced to vacate his shop 1 week after he registered, and a part-time Negro county employee who was among the 50, lost his job shortly thereafter.
>
> When the primary election day arrived, only 1 of the 50 registered Negroes cast his ballot.

Do you care to comment on that?

Mr. MCLEOD. I suggest the chairman read the opening sentence of that report, that the committee received no sworn complaints with respect to deprivation of voting rights in South Carolina. It is substantially in those words.

The CHAIRMAN (reading):

> The Commission has never received any sworn complaints in South Carolina.

This lack of complaints cannot any more than in the case we have been talking about be taken as conclusive proof that there was no discrimination in the voting process there.

Mr. ASHMORE. The fact no complaints have been made certainly speaks well of South Carolina, Mr. Chairman.

If people even suspected they were deprived of voting rights, they could come in and complain.

The CHAIRMAN. The previous paragraph that I read seemed to indicate economic reprisals.

And of course I understand that in the face of economic reprisals, complaint might not be made, for fear of additional reprisals.

Mr. ASHMORE. If they have lost their job, there couldn't be much more.

The CHAIRMAN. Well, the Commission reports on the counties of Calhoun, Clarendon, McCormick, and Hampton, as to the percentage of voting age population who registered.

In Calhoun it is 0.8 percent registered. In Clarendon it is 5.0 percent registered.

In Hampton, it is 8.7 percent; in McCormick 2.2 percent.

The percentage of registered white in those counties, in Calhoun 81.8, Clarendon 76.4, Hampton 92.3, and McCormick 90.7.

There is a considerable disparity between those percentages. Would you care to comment?

Mr. MCLEOD. I made the comment some time back, Mr. Chairman, prior to the Chair coming in this morning, that it is my sincere belief than 99 44/100 percent, the vast majority if not the entire group of persons who fail to register do so for one reason, apathy.

I base that on my observation. You will find disparate figures with respect to economic conditions.

You might find it with respect to ownership of automobiles. You might find it with respect to criminal records. You might find figures that would be just as disparate in other fields of activity.

I urge this view, that the reason for that is simply because a person has neglected to register to vote, and if there is discrimination the remedies afforded under present State and Federal laws are adequate and are available and are effective.

I would like to repeat what I said previously, that to my certain knowledge no appeal from a denial of the right to vote or to register has been made in South Carolina, although there is a simple and effective remedy.

No complaint except in one instance has been made to me. That was my one person I recall who came by the office and complained that there was discrimination of the sort you referred to.

The CHAIRMAN. Let's address ourselves to that question.

On page 164 of the same report from which I quoted before, it says:

> A significant aspect of economic retaliation involves Negro teachers who not only should be qualified to vote but might be expected to be a source of leadership for the Negro community in general.
>
> In several of the 17 nonvoting counties teachers are prevented from providing such leadership, for they depend even more directly than do other Negroes on the white power structure for their jobs.
>
> In six of the counties white school officials were said to have warned Negro teachers not to try to register nor to agitate for their own rights or those of others, on pain of losing their job.

If that statement is true, and I have every reason to believe it is, apparently teachers are not permitted to indicate to Negroes in the community their right to vote.

Mr. MCLEOD. How many complaints have been made to the FBI or the Department of Justice alleging discrimination?

How many complaints have been made to the Commission in South Carolina or the Civil Rights Commission here in Washington identifying a specific instance where discrimination has been made?

The CHAIRMAN. Don't you think there should be some effort on the part of a State itself to dissipate apathy, if it exists?

In my State, New York, we advertise, have radio announcements, television programs, encourage people to vote, to assume their responsibility by casting their ballots.

Mr. ASHMORE. Mr. Chairman, may I say that is fine, wonderful, all States should do it, but you don't need a Federal civil rights law to bring that about.

That is something the people should do themselves.

The CHAIRMAN. I don't think you need a Federal statute to do that. But I think it is the duty of State officials to apprise their inhabitants of their rights.

I am only addressing myself to your use of the term "apathy."

Mr. MCLEOD. Mr. Chairman, we make efforts of that kind. There is an effort to persuade people to vote. They ought to do it. Certainly that is something that should be encouraged. And as a matter of fact I have undertaken to encourage schools to instruct high school students at some point on how to use a voting machine, because many people don't know how to do that, particularly on a lengthy election.

We have encouraged that at every level as much as possible.

Now, with respect to recrimination against a person who might assert his rights, let me say, and I do so at the risk somewhat of breaching a confidence, but I personally know of one instance where a person brought a segregation-integration suit in South Carolina alleging certain discriminations.

It was brought in the Federal court. That person was a schoolteacher, and I know she was advised that the bringing of the suit would likely cause her to lose her job.

She did not lose her job. She comes from a county in the State that is approximately 55 percent colored, where racial disturbances have taken place. And they were astounded and surprised that no action was taken.

I say that is indicative of the attitude that the responsible people have in South Carolina.

Mr. FOLEY. Did she win that lawsuit in court?

The court directed she be registered?

Mr. MCLEOD. She won. It was not a registration matter. It dealt with alleged discrimination.

I say that is typical. I don't think there is discrimination. If there is, certainly no one should be discouraged from voting, but the mere fact there might be a minimal amount of discrimination should not cause what I have called this awesome power to come into play to correct an evil like that, but the correction would be worse than any so-called discrimination.

The remedies are sufficient right now. There has been no effort to pursue those remedies. No complaint to the Federal people that I know of, no complaint made to me, no complaint made to an official of any court.

That offsets the allegation, I believe, that if they don't do this and this, something will be done to them.

Mr. ASHMORE. One more statement on the question of apathy and low registration, Mr. Chairman.

I think we should consider the fact that a low percentage of registration does not mean discrimination.

None of us can say that.

If it did we might have to consider discrimination, deprivation of civil rights, in the national election for President and Vice President.

Because 40 percent of the people in this country who registered to vote don't vote.

The CHAIRMAN. Except, there is such a sharp difference in the counties I mentioned between the percentage of eligible whites registered and the percentage of eligible colored persons registered.

Mr. ASHMORE. There is a disparity in numbers, of course. But this is a thing that has grown up over a period of 100 years. They don't want to vote, they have no interest in voting. It has to be done by degrees, and it is being done by degrees.

I think further evidence of what we are doing in South Carolina happened some years or a year and a half ago, wasn't it——

Mr. MCLEOD. Yes, sir.

Mr. ASHMORE. When a Negro student was admitted to Clemson College, the press and everyone was there, when to all their surprise, there was not a bit of trouble, and hasn't been.

And within the last few days a Negro student was admitted to the University of South Carolina, with no disturbance at all.

It shows what great progress we are making, in South Carolina, how fair and just we are to all people.

Mr. MCLEOD. Yes, sir.

Just last week——

The CHAIRMAN. I want to say there are some very fine spots in the history of your States.

I think at Orangeburg there wasn't the slightest degree of disturbance about Negroes registering there.

Mr. ASHMORE. Of course, we are not perfect. I think in New York you are having trouble now, people lying down in the streets, preventing people from going to their jobs, because they want those jobs.

We all have our troubles.

But the way to correct it is by good citizenship and voluntary efforts, rather than by forced attempts to bring it about, which do not work.

The CHAIRMAN. You may continue with your statement.

Mr. MCLEOD. Public accommodations.

I repeat here what I stated in testimony before the Senate Commerce Committee last week with regard to a similar measure introduced in the House of Representatives:

This legislation cannot be anchored with the 14th amendment. This was clearly established by the civil rights cases of 1883 which recognized that the assertion by Congress of power to enact such legislation would constitute a precedent threatening the continued existence of our dual or Federal system of government, because with such power Congress could go further and override or supersede the criminal laws of the States generally, and enter upon the regulation of such private rights as the right to make wills, to marry, to inherit or otherwise acquire porperty, to do business, and many other private individual rights now posessed and enjoyed under the laws of each State of the Union by its residents. If the power thus assumed were fully employed by Congress, the sovereignty of the States would have been totally usurped and destroyed, and the people of the United States stripped of their right of effective local self-government.

The Supreme Court of the United States has reaffirmed the validity of the civil rights cases as late as 1961 by asserting that—

individual invasion of individual rights is not the subject matter of the 14th amendment.

The Attorney General of the United States admitted before the Senate Judiciary Committee that to uphold the bill on 14th amendment grounds "would require overriding the civil rights cases of 1883," but he expressed the hope that it might "be upheld by this Supreme Court."

It is equally clear that the commerce clause of the Constitution affords no place of refuge for this bill. It is only necessary to read the preamble of the proposed legislation to see that the connection between the individual conduct dealt with in the bill and interstate and foreign commerce is pretensive, tenuous and completely illusory.

Irrespective of constitutional defects, this bill cannot attain its objectives. The businessman cannot compel customers to come to his place of business and if they choose not to deal with him because of his compliance with a Federal law, he has no recourse but to go out of business. Enforcement of this kind of legislation will not facilitate commerce; it will inevitably result in diminishing the number of restaurants, hotels, theaters, and other places of public accommodation.

There is no constitutional basis for this law. It strikes at private rights recognized as inviolate by past and modern day judges. It cannot subserve its own stated purposes but will be disruptive of commerce and will hinder, rather than help, harmonious race relations.

The bill provides for action by the Attorney General of the United States instituted by him upon receipt of a written complaint. The danger of such a procedure was recognized by Chief Justice Warren in the *Nelson* decision by the U.S. Supreme Court when he said:

The indictment for sedition under the Pennsylvania statute can be initiated upon information made by a private individual. The opportunity thus present for the indulgence of personal spite and hatred or for furthering some selfish advantage need only be mentioned to be appreciated.

PUBLIC SCHOOLS

We can well consider the meaning of the 1954 decision, *Briggs* v. *Elliott*, by noting the construction given that decision by the judge who was first called upon to implement that decision. Judge Parker said in *Briggs* v. *Elliott:*

It is important that we point out exactly what the Supreme Court has decided and what it has not decided in this case. It has not decided that the Federal courts are to take over or regulate the public schools of the States. It has not decided that the States must mix persons of different races in the schools or must require them to attend schools or must deprive them of the right of choosing the schools they attend. What it has decided, and all that it has decided, is that a State may not deny to any person on account of race the right to attend any school that it maintains. This, under the decision of the Supreme Court, the State may not do directly or indirectly; but if the schools which it maintains are open to children of all races, no violation of the Constitution is involved even though the children of different races voluntarily attend different schools as they attend different churches. Nothing in the Constitution or in the decision of the Supreme Court takes away from the people freedom to choose the schools they attend. The Constitution, in other words, does not require integration. It merely forbids discrimination. It merely forbids the use of governmental power

to enforce segregation. The 14th amendment is a limitation upon the exercise of power by the State or State agencies, not a limitation upon the freedom of individuals.

The American Legion, which can hardly be considered a sectional or biased or subversive group, at its 1958 annual convention in Chicago visualized the alarming tendency of the Federal Government to encroach into the field of education. At that convention there was adopted a resolution which should also be placed upon the list of required reading for those who would seek to federalize the education of our children by legislation such as is now being considered by this committee. The resolution reads, in part:

> The National Government should avoid interference, control, supervision, or direction in the educational processes, programs, activities, or systems of the respective States or local school districts, either directly or indirectly, by grants-in-aid, appropriations, gifts, or loans for construction of schools, buildings or facilities, teachers' salaries, general student scholarships, equipment or other purpose; by curriculum or program control, or by action of any officer, agency, branch or department of the U.S. Government.
>
> The American Legion believes that the real vitality of our country lies in decentralization of the powers of Government. We have an abiding faith in private enterprise and local initiative. We are convinced of the necessity to allow each community to decide its own educational policies and programs.

Throughout this legislation is the dangerous grant of injunctive power brought in the name of the United States. This tendency to substitute the injunctive process as a means of trial and enforcement of laws cannot be lightly regarded. The abuse of the injunctive process, which is evident in these bills, results in evils which strike at the freedom and liberty of the individual. Objection to such power being arbitrarily vested in the courts is well known: it deprives the defendant of his jury trial; it deprives him of the higher degree of proof required in criminal prosecutions; after punishment for violation of the injunction, he may be subjected to punishment under the criminal law for the same acts; it substitutes legislative punishment with a judge's punishment for contempt; it is often no more than a circumvention to overcome the supposed reluctance of jurors to convict; and it may result in the arbitrary exercise of power and in government by injunction.

It is no mere oratorical figure of speech to say that the abuse of the injunctive power leads to government by injunction; that government by injunction can quickly degenerate into government by edict; and that government by edict is the handmaiden of dictatorship.

These laws are another step toward Federal domination of the States. Conditions in my State do not warrant their imposition upon us even if they are assumed to be valid, and they will not achieve their avowed purpose of avoiding hostility but will generate discord and resentment. It is appropriate to repeat here what was said by Senator Borah in 1938 in commenting upon similar measures:

> It is not in the interest of national unity to stir old envies, to arouse old fears, to lacerate old wounds, to again after all these years brand the southern people as incapable or unwilling to deal with the question of human life. This bill is not in the interest of that good feeling between the two races so essential to the welfare of the colored people. Nations are not held together merely by constitution and laws. They are held together by mutual respect, by mutual confidence, by toleration for conditions in different parts of the country, by confidence that the people in the different parts of the country will solve their problems.

Mr. ASHMORE. Incidentally, Senator Borah was from Idaho, wasn't he?

Mr. MCLEOD. Yes.

Mr. ASHMORE. Not anywhere near the South.

The CHAIRMAN. I thank you, Mr. Attorney General, for coming here to tell us your views.

I want you to know our job is a difficult one, and not an easy task by any means.

Your statement, I am sure, has helped us in our task. We appreciate your coming here to tell us your views.

Mr. MCLEOD. Thank you very much.

Mr. MEADER. Mr. Attorney General, public accommodations provisions are founded in the administration bill primarily on the power of Congress to regulate interstate commerce.

In a bill offered by some of the minority members of this committee the public accommodations provisions are founded primarily—exclusively, I believe—upon the equal protection clause of the 14th amendment.

I don't have a copy of your statement, but I believe you said you thought the public accommodations provisions were unconstitutional.

Do you regard either one of these foundations for the public accommodations provisions of the legislation as not giving constitutional authority to Congress to act in this field?

Mr. MCLEOD. I do, sir, for these reasons: It is a distortion of the commerce clause merely to say that because some person entertains, or receives, a substantial number of travelers in interstate commerce, or because a substantial amount of goods has traveled in interstate commerce, to say that he comes within the interstate commerce clause of the Constitution.

It is carrying it to unreasonable limits. It would enable the Federal Government to go into any field of activity under the commerce clause.

Mr. MEADER. Do you contend Congress has not so far employed its power to regulate interstate commerce in any fashions that would be comparable to the regulation of public accommodations?

Mr. MCLEOD. Not as in bill H.R. 7152; no, not in that manner.

Mr. MEADER. You say that goes beyond anything you are aware of, of Congress exercising its power under the commerce clause?

Mr. MCLEOD. Yes.

Mr. FOLEY. The courts have upheld it, already, by decision, for instance, on the matter of segregation at lunch counters, at railroads, airports, and so forth.

Mr. MCLEOD. But the point is, the courts have defined that it must bear a "close and substantial relationship" to interstate commerce. They've extended it beyond reason in some cases, where merely because a person operates an elevator carrying persons who work in interstate commerce, they say he is working in interstate commerce.

The CHAIRMAN. There is also a case that says Congress has the power to determine the color the oleomargarine has.

Mr. MCLEOD. Exactly. I think you have to have some power and relationship. There is *Williams* v. *The White Tower* case, and a line of cases in Maryland—Judge Soper, who died recently, served on the Federal bench for a number of years, was a liberal judge, and if he could have disposed of this under the commerce clause or under the

14th amendment, he would have. But he said merely because a restaurant sits by the side of the road and serves people it is not in interstate commerce.

He said it did not subject them, merely sitting by the side of the road and serving travelers, said it did not put them in interstate commerce.

Mr. FOLEY. But if Congress, under this law, had made a finding that discrimination did have an impact on interstate commerce, I wonder if he would have ruled that way.

Mr. MCLEOD. Well, of course, I don't know. But there must be a close and substantial relation. Under the 14th amendment, it is, in short, that no State action is involved in these matters.

Mr. MEADER. You think the licensing or regulation of certain businesses by the State would not be a sufficient State involvement to justify founding public accommodation matters on the 14th amendment?

Mr. FOLEY. *Williams* v. *Howard Johnson*, 68 Fed. 2d, 45.

In that case the court considered not the power of Congress to legislate under the commerce clause, there was no statute involved, but rather the reach of the commerce clause unimplemented by any congressional legislation.

Mr. MCLEOD. That is right.

Congress has the power to regulate interstate commerce—but, as defined by the Supreme Court, which says there must be a "close and substantial relation" to interstate commerce.

Mr. MEADER. Would you say that interstate commerce is one thing but public accommodations is another?

Mr. MCLEOD. Under the 14th amendment—is it—the bill is sought to be grounded on the 14th amendment, equal protection of the law, or the commerce clause of the Constitution.

Admittedly, as the Attorney General of the United States has said, the *Civil Rights* cases would have to be overruled. They have been affirmed in Burton against the Parkway in 1961, and in the *Burton* case, by the U.S. Supreme Court.

The effect of those decisions, as I understand it, is that individual invasion of private rights is not the subject matter of the 14th amendment.

Mr. FOLEY. So long as it is by private individuals and not under color of law, custom, or usage.

Mr. MCLEOD. Well, I think the license extension is very tenuous.

I am licensed as a lawyer. A dentist is licensed. That is a regulatory measure, which cannot be distorted merely because under State action the license is granted upon payment of $5 or whatever it may be.

There is a constitutional authority mentioned, that has been quoted in testimony by a witness before the Senate committee, I believe, considering this same measure, with respect to that licensing extension.

And his comment on this, and I feel sure he is authoritative, and he said it was ridiculous to stretch a licensing provision into State action. That is my position.

The CHAIRMAN. Thank you, Mr. Attorney General. The next witness is Jack Lowery.

Mr. ASHMORE. Mr. Lowery is an outstanding lawyer from Louisville, Ky., representing an outstanding number of groups and citizens

in Louisville who want to be heard before this committee. Mr. Lowery has come here to speak for these people. There has been a great deal of publicity about the success of integration in the schools of Louisville, and practically no publicity or reports of statements giving the unfavorable conditions and the failures of integration, the bad side of it. Mr. Lowery wants to give the whole picture.

Mr. LOWERY. Thank you, very much.

The CHAIRMAN. Thank you, very much.

STATEMENT OF JACK LOWERY, ESQ., ATTORNEY AT LAW, LOUISVILLE, KY.

Mr. LOWERY. As a practicing attorney in Louisville, Ky., whose clients in the restaurant and tavern industry are faced with the problem of racial unrest that is of such vital and urgent concern to us all, I am grateful for the opportunity to present their side of the problem to this committee.

It is not my intention to engage in a discussion of the constitutional issues involved in the proposed legislation you are now considering. You, of all men, do not need my reminder that governmental regulation is invariably used as authority to justify further regulation; that the liberty of our people may be destroyed with equal finality by legislation offered for the noblest, as well as the basest, motives. It is rather my purpose to relate to you what might be called the other side of the Louisville story.

While several of the restaurants and taverns that I represent have a substantial business volume, the vast majority are small neighborhood businesses which operate on a small margin of profit and which represent the sole support of the owners and their families, most of whom have invested their life savings in those businesses. That these businesses depend almost entirely on the good will and continued patronage of their customers for economical survival is as obvious to my clients as it is to anyone else.

For this reason, when racial disturbances first occurred in Louisville some 3 years ago, immediate steps were taken to learn the economic impact of forced integration upon the restaurant and tavern industry generally. Inquiries directed to every conceivable source, from the National Chamber of Commerce to the Citizens Council of America were uniformly disappointing. There were no facts and figures available and so far as I have been able to determine, there are none available today of a definitive nature.

On March 20, 1960, however, the University of Louisville through its department of psychology and social anthropology attempted to gain insight upon the attitudes of our citizens regarding desegregation by conducting an opinion poll among the residents of Jefferson County.

Over two-thirds of those persons interviewed stated that they opposed forced integration by law. Even more significant was the fact that almost half of the persons questioned stated that they would not eat in restaurants where Negroes were also served.

As the pollsters pointed out, however, this data is merely evidence of what people think they will do.

The CHAIRMAN. Among whom was this poll taken?

Mr. LOWERY. White people, only, Your Honor.

As the pollsters pointed out, however, this data is merely evidence of what people think they will do. It is one thing to be broadminded in theory, another in practice. It is one thing to be opposed to Negroes attending movie, it is another to actually refrain from attending a theater because Negroes are admitted.

Actual business experience, however, tends to confirm the survey. Receipts of municipally owned swimming pools in both Louisville and nearby Shelbyville, show a drastic reduction following integration.

The CHAIRMAN. Suppose the poll were taken among white merchants as to whether they would have Negroes patronize them. Do you know what that poll would say?

Mr. LOWERY. I don't know, sir.

The CHAIRMAN. Do you think they would deprecate the Negro patronage?

Mr. LOWERY. I believe the majority of the white merchants would indicate in response to such a poll that they would not wish to serve Negro customers.

The CHAIRMAN. I am referring not to restaurants, but to merchants in general. Would the poll among merchants if you know, or have your finger on the pulse of the community, would the bulk of the Louisville merchants say they wouldn't want to have Negroes patronize their stores?

Mr. LOWERY. If you refer to merchants of all sorts, I wouldn't be prepared to say those merchants would take that position. I would say that would be the case in the case of restaurants, taverns, and so forth.

Mr. MCCULLOCH. How about stores that sell wearing apparel?

Mr. LOWERY. I would doubt if merchants of that sort in Louisville would be basically opposed to serving Negro customers.

The Switow Theatrical Agency was compelled to actually close its theater in adjoining Jeffersonville and the theater in neighboring New Albany continues 50-percent off in its receipts following integration. Private pools and private clubs have been established at a phenomenal rate.

Even more to the point, however, is the fact that the customers of my clients continue to express, in numbers too substantial to ignore, their intention to patronize private clubs rather than the traditional neighborhood tavern-restaurant in the event of integration. There is much more involved here than mere prejudice. There is the conviction that a breeding ground of violence and bloodshed is where alcohol and forced integration are mixed.

While these grave objections to the administration proposal are not lightly to be glossed over, I would like to turn your attention to what I feel are the underlying causes of the racial unrest that is of such common concern to us all.

As an attorney who has represented the restaurant and tavern industry in its attempts to cope with this problem, let me be the first to confess that not all of my clients nor their customers have been able to forget overnight the practices and prejudices of many years.

We recognize and agree with the proposition that ideally, mutual respect and understanding should be the basis of all relationships with our fellow men. No reasonable man can doubt, however, that the removal of prejudice and misunderstanding must come from within the hearts and consciences of men.

The plain truth of the matter, as anyone knows who considers it, is that men cannot be forced to love and respect their fellow men by even the most stringent governmental edict. If moral changes could be effected so easily, let me assure this committee that I would be the first to applaud the enactment of such laws.

The very fact that some of the most dangerously explosive manifestations of racial unrest have occurred in a number of the States where so-called antidiscrimination laws have already been in force for many years is a graphic illustration that racial harmony cannot be achieved by governmental edict.

To cite an analogous example from recent history, the fate of the 18th amendment affords eloquent testimony of the inevitable difficulties in enforcing any law about which the people hold sharply divergent moral and personal opinions.

Is there any more dramatic example that effective legislation on controversial moral issues must be responsive to the will of the people?

When the racial unrest that is now a surging torrent was a mere trickle of isolated sit-ins 3 or 4 years ago, those of us who expressed our concern were met with the reassurance that these demonstrations were patterned after the passive resistance techniques of Ghandi.

Is there any fairminded person who can point to the slightest resemblance between the lawless mobs who are surging, thousands strong, in tumultuous uproar through the thoroughfares of our cities and the silent, prayerful, and humble attitude of Ghandi and his followers?

The people of America are daily subjected to a proposition that is advanced in all earnestness and sincerity—a proposition that I believe is incredible. We are told that of all the domestic and international issues which vitally affect the interest of this Nation, the civil rights issue stands alone as the one about which there can be no honest disagreement; no delay; and no compromise.

Anyone foolhardy enough to suggest that reasonable and fairminded men may differ with either the methods or objectives of the Negro leaders is denounced as uninformed, un-Christian and un-American.

The leaders who have been responsible for fomenting the demonstrations have delivered an ultimatum which says, in effect, that if their demands are not met immediately, totally, and unconditionally, they will take to the streets in countless thousands even at the risk of bloodshed and violence.

The conclusion is inescapable that the irresponsibility of some Negro leaders is as much a cause of racial unrest as any prejudice or misunderstanding which exists in the minds and hearts of white citizens.

In my own attempts to negotiate a peaceful solution on behalf of my clients to the problem of racial unrest I myself have come up against this militant and adamant refusal to explore peaceful conciliation.

Some 2 years ago in Louisville demonstrations against private businesses had reached the point that our local police department was unable to effectively cope with the situation. I first was employed in this matter some 10 days before the running of the 1961 Kentucky Derby, an event which brings tens of thousands of visitors into our city.

Upon discussing this matter with the chief of the Louisville Police Department, I learned that the facilities of our police are strained to the breaking point on these occasions in an effort to simply handle traffic. Our police department was at a complete loss as to how any protection could be afforded any of our residents or guests in the event of extensive demonstrations.

I immediately sought and was granted an interview with the Negro leadership, including representatives of the NAACP and CORE.

At this meeting I made a strong and urgent plea for a cessation of demonstrations during the weekend of the Kentucky Derby, pointing out to these individuals the very real danger of bodily injury to innocent persons. The group unanimously and uncategorically refused to agree to this request. They stated that their people were excited to such a pitch of frenzy that no fear of arrest, authority, or other considerations would stop them.

My offer to meet with them to negotiate and discuss possible solutions to our problems immediately following the Derby was flatly rejected. As a result, we had no alternative but to go into court and seek an injunction to stop these activities.

The testimony and affidavits which were introduced in evidence, of which the attached affidavit is typical, established beyond dispute that in actual fact the so-called passive demonstrations had taken the form of lawless riots which blocked public sidewalks, as well as private entrances, and in which the filthiest obscenities imaginable were commonplace.

As the result of this testimony, the Jefferson Circuit Court had no alternative but to restrain and enjoin these defendants from this lawless activity. Although comparatively few people in our community are aware of this fact, because of the slanted news coverage by the local press, it was this injunction that brought about and protected the peace in Louisville.

There can be no question that demonstrations provided the initial impetus toward integration in Louisville. There is equally no loubt, however, that these activities rapidly degenerated into the deplorable conduct which we experienced and which the rest of the country is now witnessing.

In the period of peace which followed the injunction my clients made no effort whatsoever to rally businesses together under a segregationist standard or to dissuade the businessmen of our community from doing anything other than following their own independent business judgment as to the question of integration or segregation of their businesses.

During this period so much voluntary progress was made that Louisville was often cited as an example of a city with an outstanding record in racial relations. Despite this fact, there was almost no opportunity for any communication between the integrationist leadership and the owners of private businesses who had failed to integrate.

A Human Relations Commission was established for the ostensible purposes of assisting voluntary integration and we rather naively proposed that one of our representatives be included on the commission. This offer to serve was flatly rejected by the Louisville Courier-Journal and the Negro spokesmen in a storm of protest.

Although none of our members were ever invited or encouraged to utilize the services of our Human Relations Commission or to even exchange ideas and information with its members, this group almost immediately concluded that the conciliation and negotiation procedures for which is had been formed were futile and that an ordinance requiring compulsory integration was an immediate necessity.

Without warning, a mayor who was elected to office on a platform of personal opposition to any such ordinance, sponsored and secured its passage by our board of aldermen.

Not to be outdone, only weeks later, the Governor of Kentucky issued a so-called executive order requiring compulsory integration in all businesses and professions holding any kind of State license permit or certificate. The Governor's order is so patently invalid that it was even denounced by some of the Negro leadership.

(It should come as no surprise that invalid executive edicts and intemperate legislation are the inevitable products of an atmosphere of panic which fosters and encourages extremists to threaten violence and bloodshed unless their demands are met immediately, totally, and unconditionally.)

In view of Kentucky's outstanding record in the field of civil rights, one might well ask—Why was such an order and such an ordinance necessary? The only reason for the passage of such measures in Kentucky has been the spineless and almost unbelievable proposition that unless we do so, demonstrations may result. To us the passage of a law because of the fear of a mob, either real or potential, is unthinkable.

As a practicing attorney, who has seen that the courts of Kentucky, at least, will deal swiftly and effectively with those who threaten lawlessness and violence, I have not lost confidence in the courts of our sister States to such an extent that I will ever concede that they cannot also control these demonstrations.

The lawful avenues of influencing governmental policy and public opinion which are open to our farmers, businessmen, and laboring people are also open to our Negro citizens who feel that they have legitimate grievances which justify redress. They, like other citizens with special problems, can petition our legislatures by letters and telegrams, by press and radio, and by public meetings in hired auditoriums.

Our courts are open to them; and if all else fails, they have the right of every citizen to register their approval or disapproval of our government officials in the voting booth. To insure the Negro citizen of the free exercise of these rights is a matter to which the Federal Government should direct its attention.

The greatest single danger in the public accommodations feature of the administration proposal is its consideration in an atmosphere of fear. If the merits of this bill outweigh its dangers, then let it be passed because of its merits alone and not because its passage is felt to be the only alternative to lawlessness.

Finally, in considering the passage of legislation to improve the lot of our colored citizens, let us be careful not to destroy the equally fundamental rights and liberties of others. The stampede for automatic approval of any legislation bearing a civil rights label, regardless of its fault or virtue, will little avail us if we obliterate the rights and freedoms which are the bedrock of a free republic.

The CHAIRMAN. I can assure you, Mr. Lowery, this committee is not going to be arbitrary or capricious. We are trying to be as objective as we can be. We have been conducting these hearings for over 2 months. We are trying to get every possible shade of opinion for, as well as against, this bill.

We appreciate the sacrifice you have made in coming here today to give us some view of what is happening in your own State.

Mr. LOWERY. Thank you.

Mr. FOLEY. Do you have a copy of that executive order issued by the Governor, Mr. Lowery?

Mr. LOWERY. I don't believe I have. I would be delighted to furnish you with a copy of the order, and a copy of the complaint, also.

Mr. FOLEY. Yes. That is where you are going to have a test in court of that executive order. Would you furnish that, too?

Mr. LOWERY. I will be very happy to, and have those included in the record.

Mr. CHAIRMAN. Your affidavit appended to your statement will be included in the record.

Thank you very much.

(The affidavit referred to is as follows:)

JEFFERSON CIRCUIT COURT, CHANCERY BRANCH, FOURTH DIVISION
AFFIDAVIT

Robert P. Whitchouse et al, Plaintiffs v. *Frank D. Stanley, Jr., et al. Defendants*

Before me, the undersigned authority for the administration of oaths of this nature, personally appeared Ralph F. Grove who first being duly sworn, deposes and states as follows:

On Monday, April 24, 1961, at about 4 p.m., approximately 40 to 50 Negro persons, most of whom appeared to be minors, came on to my premises, located at 456 South Fifth Street, Louisville, Ky., and known as the Kupie Doubleburger. They scattered out in such a way as to occupy every booth and every stool. I immediately called the police after they refused my request that they leave. On this occasion it took the police almost 3 hours to arrive. While waiting for the police to arrive, several of these Negro minors directed the vilest imaginable language toward my white waitress. Several of them called her a (obscene epithet) and used other similar language. While waiting for the police, these Negro minors took my containers of sugar and poured them out upon the floor behind the booths. They put salt into the sugar and vice versa. They poured ketchup and mustard out over the booths and tables. The place was a complete bedlam and I was helpless to do anything to control it. Finally the police arrived and made approximately 40 arrests. While taking these 40 Negro minors to jail, great numbers of other Negroes came to the scene. They chanted and made a great amount of noise. They blocked my door and in a scuffle they went on outside, one or more of them whose identity I do not know, broke a large window which I have next to my entrance. This mob remained outside my place of business until 9 p.m. that evening. As a result of this mob my premises, including the booths and the windows, suffered about $75 of actual physical damage. The loss of business earnings would run into hundreds of dollars. Not only did I lose my business for the afternoon and evening described, but many of my customers have told me that they are afraid to come back in for fear of another such attack.

(S) RALPH F. GROVE, *Affiant.*

The CHAIRMAN. The next witness will be Mr. Coe, who is an attorney from Pensacola, Fla., and is a member of the board of directors and vice president of the Southern Conference Educational Fund.

Mr. Coe, we welcome you here.

Mr. COE. Thank you, sir.

STATEMENT OF JOHN M. COE, ESQ., VICE PRESIDENT, SOUTHERN CONFERENCE EDUCATIONAL FUND, PENSACOLA, FLA.

Mr. COE. Mr. Chairman and members of the committee, I wish first to identify myself as a lawyer from Pensacola, Fla., a native of that city who has practiced law there for upward of 46 years, principally trial work, with a considerable percentage of criminal practice, and some experience with integration cases.

While I have held State office in Florida, and have been president of the National Lawyers Guild, I presently appear merely as an interested citizen, although my appearance here was suggested by the Southern Conference Educational Fund, of whose board of directors, I have been a member for some years. The views I express have been developed through long legal representation, including the less privileged, both white and Negro.

From an examination of the several bills before the committee I am impressed with the fact that the public accommodations provisions of the administration bill are of great importance, because they lay the basis for a change of customs, and public education in racial equality. When our Negro fellow citizens are protected by the commands of the Government from those daily slights and insults which have galled them through life, they cannot but repay with appreciative loyalty the newfound human dignity which they will enjoy; and as for the white members of society, who even in the South are not all disciples of Faubus, Wallace, and Barnett, though they may look down upon those of their fellow citizens who are treated as pariahs, and whom they normally observe at a distance or in menial work; yet when these same Negroes shaven and shorn and accompanied by their wives and babies sit down at the table next them in a Howard Johnson Restaurant, they learn willy-nilly to regard them as human beings, entitled to the civilities, courtesies, and rights which men of good will are willing to accord to their associates. This tends to the development of a favorable public sentiment which is the necessary underpinning of all law.

I would further direct the attention of the committee to the fact that in enacting such requirements we are taking no revolutionary step, but merely applying the ancient common law doctrine of the duties of innkeepers to other businesses similarly affected with a public interest; because, under the common law of England and of the U.S. innkeepers were bound to receive and furnish accommodations to any traveler who presented himself in an orderly manner and was willing to pay the price.

This doctrine by the way has the full support of decisions from Alabama as well as most of the other States. (See Corpus Juris (first) vol. 32 p. 452, note 71.)

I do not see the need of confining these provisions solely to accommodations which are an adjunct to interstate commerce, although there, precedentwise we are on safer ground. It occurs to me that it would be entirely proper to extend this requirement to "all businesses for public accommodation licensed under the laws of any State, territory, or the District of Columbia," because if a business is licensed, inspected, and supervised by the State, it owes duties to serve the public not greatly dissimilar to those of a common carrier or the keeper of an inn.

May I suggest further that in enforcing these duties we might make use of the common law action for a penalty, with provisions for joining together suits by various persons, such as is used under the Fair Labor Standards Act, and we would thereby put into the hands of persons discriminated against, a transitory cause of action which might be brought against chain hotel, restaurant, and similar organizations in the tribunals of his own home State, or wherever else they were amenable to service of process.

Incidentally, if you brought an action for discrimination in a Southern State even in the Federal courts you would be met with a barrier of prejudice making it almost impossible to succeed.

But that is a transitory cause of action, and you might go home and bring that suit in New York, where I dare say you would have better luck.

The other primary aspect of the bill which we hope for, is vigorous enforcement of the right to vote in State as well as Federal elections. The American people, excepting only the lunatic fringe which is deaf to reason needs no argument to appreciate that the right to vote is the foundation upon which our political institutions rest, and must rest, if we are to enjoy the orderly government and the liberties which make our Nation what it is, or should be.

May I earnestly urge that Mr. Kastenmeier's approach to the question of elections is preferable to that of the administration bill, which with one exception seems to deal solely with Federal elections. It is of little consequence to Negroes who is Senator or Congressman, but of vital importance to them who is sheriff, because oppression springs from local officers who are near at hand, and responsive to a highly prejudiced local constituency.

It has been my privilege to live in a seacoast city, not as full of anti-Negro prejudice as the inland towns of the black belt, and the Mississippi Delta, where to take advantage of the cheap labor of intimidated Negroes is the chief motive for their suppression.

Where I live a substantial number of Negroes vote, a sufficient number in fact seriously to affect the result of a close election, and voting has brought a change from a half contemptuous treatment of them in court as well as in other relations, to a respectful treatment in court, and a most earnest solicitation of their vote and support from white politicians.

If they vote and hold political power, their rights will be respected; if they do not they will be the permanent underdog, kicked around as such.

In the South is a minority of highly vocal individuals who monopolize the public press, and intimidate most of their fellow citizens into silence; and while I do not say that there is any but a small Southern minority who would actively support civil rights, there is a very large and inactive minority, or perhaps even a majority, who would dearly love to see an end to the turmoil and strife which their assertive fellow citizens on both sides of the fence keep stirring up, and who would respond favorably to the work of the Community Relations Service which would be set up under title IV of H.R. 7328, particularly in view of subsection (b) of section 402 thereof, providing for the confidential nature of such activities.

I might digress to say that such rapprochement between Negro and white leaders had a substantial effect in quelling the Birmingham disorders, and if in the Community Relations Service a basis is laid for actual communication and meeting of minds between white and Negro leaders we may achieve by persuasion what we could rarely achieve by force.

May I in conclusion urge that in drafting the administrative provisions of the bill, the realm of discretion reposed in local officers (and in these I include Federal district judges) be curtailed as drastically as law permits, because local officers, be they State or Federal, have normally served a long apprenticeship in politics, and irrespective of their personal integrity they respond pliently to the noisy and blatant assertions of time-honored prejudices, even though in their hearts they know them to be outmoded and unjust.

Let me say in conclusion that your principled approach to this question is one with which no man of integrity can differ with.

It has been written in our law, the 15th amendment, for nearly 100 years.

It ought to be put into actual practice.

The machinery, I think, of the several bills before your committee is competent to take a long step in that direction.

The CHAIRMAN. Thank you very much, Mr. Coe.

We appreciate your coming here and giving us the benefit of your advice and counsel.

The committee will now adjourn and assemble tomorrow morning at 10 o'clock.

(Whereupon, at 11:45 a.m., the subcommittee was adjourned, to reconvene at 10 a.m., Friday, August 2, 1963.)

CIVIL RIGHTS

FRIDAY, AUGUST 2, 1963

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 5 OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to adjournment, at 10 a.m., in room 346, the Cannon Building, the Honorable Emanuel Celler (chairman) presiding.

Present: Representatives Celler (presiding), Rodino, Junior; Mculloch, and Kastenmeier.

Also present: Representatives Ashmore, Willis, Forrester, Waggonner, Corman, and Dowdy.

Staff members present: William R. Foley, general counsel; William H. Copenhaver, associate counsel; and Benjamin L. Zelenko, counsel.

The CHAIRMAN. Come to order, please.

Mr. WILLIS. Mr. Chairman, while I am not a member of this subcommittee, and this is my first appearance before the subcommittee during these hearings, I am delighted to be with you this morning and to present to you a witness from Louisiana of distinguished high repute, a distinguished lawyer, a good friend of mine, and a good friend of the people of Louisiana. He is from my congressional district. He is Lieutenant Governor of Louisiana, and my acquaintance and personal friend for many years.

These hearings before your subcommittee, Mr. Chairman, began, as I understand it, May 8, and have been going on now for almost 3 months, and you have just indicated that the hearing will quite likely come to a close, perhaps today or in the next few days.

I think it is well to terminate on such a high plane, to have as one of your last witnesses a distinguished representative of the people of Louisiana, Lt. Gov. "Taddy" Aycock.

The CHAIRMAN. Governor, we welcome you here. We have an abiding affection, I want you to know, for your distinguished citizen of Louisiana, Ed Willis. We also accept anything he tells us on faith. I am sure from what we know of him that what he has indicated concerning you is gospel. We are very happy to have you here.

I notice Mr. Forrester of Georgia, a member of our committee, and Mr. Waggonner of Louisiana, are present, and I am sure they will give you wonderful support from the left as well as the right. They are most distinguished gentlemen.

STATEMENT OF HON. C. C. AYCOCK, LIEUTENANT GOVERNOR, STATE OF LOUISIANA

Mr. AYCOCK. Thank you, Mr. Chairman. I certainly thank also the gentleman from Louisiana for the kind introductory remarks.

I would like to preface my remarks today by thanking you for this opportunity to appear before you and present my views on this proposed civil rights legislation, which is of such vital concern to all Americans.

At the outset, I would like to emphasize that what I have to say in connection with the bill under consideration is based on a careful consideration of this legislation from the viewpoint of an American citizen vitally interested in his country and its welfare, and certainly not alone as a citizen and representative of the State of Louisiana. I think it goes without saying that my background, as a citizen of Louisiana and a lifelong resident of the South, has instilled in me certain values which may not be shared entirely by all of the members of your committee nor certainly by all citizens of the United States. However, there are certain fundamental principles inherent in our American way of life upon which every American citizen will wholeheartedly agree, and it is to these fundamental objectives that I hope to direct my remarks here today. I have made a conscious, and I believe a successful, effort in my consideration of this legislation, to base my remarks and criticism, not on my personal feeling as a southerner or as the Lieutenant Governor of the great State of Louisiana, but rather on the sound and universally accepted principles of American constitutional government. I cannot help but feel that my training and actual experience as a practicing attorney for some years, fortified by a period of service in the Armed Forces of this country and my position as the owner of a small business in my hometown, a father, interested in the welfare of his family, and my experience as an official of the State of Louisiana qualifies me, to some extent, at least, to properly analyze this proposed legislation with some degree of intelligence and understanding. I am convinced that the feelings and conclusions I have on this subject are much the same as those of any other intelligent American citizen who will take a long and analytical look at the proposed civil rights bill. Mr. Chairman, I sincerely trust that we may together consider this proposed legislation and its ultimate effect on its merits, completely aside from any suggestion of emotion or prejudice.

Mr. MCCULLOCH. I would like to interrupt, if I may. I wonder in view of the fact that there are almost 200 bills on civil rights in the House of Representatives alone, if you have had sufficient time to thoroughly study and analyze H.R. 3139, a bill covering at least a part of this field, which I introduced on January 31, 1963?

Mr. AYCOCK. No, sir, I have not studied that.

Mr. MCCULLOCH. I can well understand that. I hope you will get a copy of that bill, take it home with you, and if I may be presumptive enough to offer to do it, I would like to send you a statement that I made when I introduced that legislation.

Mr. AYCOCK. I would be most happy to receive it.

Mr. McCULLOCH. To make assurance double sure, your comments are directed in their entirety to the administration bill which was introduced by our very able chairman, Mr. Celler?

Mr. AYCOCK. That is correct, sir. Thank you.

The consideration of any congressional legislation which grants power and authority to the Federal Government and directs its implementation, necessarily requires some consideration of the basic constitutional powers which are vested in the Central Government. We must keep uppermost in mind the provisions of the Constitution of the United States which specify, through the 10th amendment, the only power and authority possessed by the Federal Government. All power and authority not delegated to the United States by the Constitution or prohibited to the States, is reserved to the States or the people. In spite of the great inroads which have been made into the literal meaning of the terms of the Constitution, it is still correct to state that the U.S. Government is a Government of "enumerated" powers, and constitutional authorization must be found for any action which that Government takes through its legislative branch. The constitutional limitation was deliberately designed by the framers of our fundamental law to insure the fact that the individual liberties of the American people would be preserved, and that restriction must continue until changed by the people themselves. No objectives, regardless of how desirable it may appear to be, can justify the use of means for its accomplishment which will invade those limits and lay the basis for the ultimate destruction of individual liberty through unrestrained and centralized power.

With these thoughts in mind, gentlemen, I would appreciate your indulgence while, in a very brief way, I attempt to point out some of the provisions of this proposed bill which, it seems to me, are fraught with great danger and may become destructive of some fundamental constitutional rights cherished by every American.

I cannot fail to note that the preamble refers to the right to regulate commerce among the several States as a possible basis to support the legality of the proposals. If this can prevail it would be as much as to say that a single phrase in the Constitution directed to a particular subject suffices to write out of the Constitution every other concept within it. By the plainest rules of legal construction which lawyers everywhere apply to laws and contracts, each part must be given meaning, if meaning can be given, and the expansion of a phrase beyond its intended purpose is not to pursue the Constitution but to destroy it.

Gentlemen, I am going to take one section of the bill at a time, if it please the committee, and first discuss the provisions of the bill pertaining to voting rights.

Title 1 of the proposed legislation involves voting rights, and I believe a careful reading of the provisions with reference thereto discloses a declaration of principles and the establishment of machinery which would vest in the Federal Government the means for ultimately securing complete control and domination of all elections—Federal, State, parochial, and municipal.

Under Article I, Section II of the Constitution of the United States, the States are given the specific right to determine the qualifications

of voters in State and Federal elections. Certain restrictions are placed upon the determination to be made by the States on the qualifications of voters by the 15th amendment, which forbids any State to impose any kind of discrimination in voting because of race, color, or previous conditions of servitude. This is the only constitutional restriction, gentlemen, on the right of the States to determine the qualifications of its voters.

Numerous decisions of the U.S. Supreme Court have held that the determination of voter qualification lies in the States and that the States may use any reasonable tests to determine which voters are qualified and which voters are not qualified, so long as the test does not involve discrimination against any prospective voters because of race, color, or previous condition. In the light of these settled principles, let us examine the proposed civil rights bill.

In the first place, the bill limits the power of the State to establish the qualifications of voters by declaring that in any literacy test a sixth grade education creates the presumption of qualification to vote, so that the standard is that of a 12-year-old boy rather than the standards that ought to be expected of grown men and women. The State is thus limited in the qualifications which it can impose upon voters as relates to education, and it is obvious that if the Federal Government can determine one qualification, it can likewise determine others. It could lower or raise these educational qualifications, determine the age of the voter, fix residence requirements, and ultimately determine all voter qualifications. It is submited, gentlemen, that this is beyond the constitutional power of the Federal Government.

This legislation declares that when any member of a minority group submits proof that he has been deprived of the opportunity to register or has been found not qualified to vote by any person acting under color of law (which would, of course, include such determination by judges in the courts of justice) the Attorney General on his behalf may immediately obtain an order of court granting such person the right to vote in any Federal or State election. This order, granted by the Federal court, gives the person the right to vote in any election which occurs prior to the final determination of his actual qualifications. The Federal court is thus given the power to force the States to permit persons to vote who are actually not qualified to vote in a Federal or State election. The bill provides that should the party (or the Attorney General) fail to prove that there was discrimination as alleged in the request for the order authorizing him to vote, the party shall not be allowed to use the order and vote in any subsequent election. However, in the meantime, the person has illegally voted because he did not possess the qualifications under valid State laws and there was no showing of any discrimination such as had been alleged in obtaining the order permitting him to vote. And what, gentlemen, may we ask, is to be done about the votes which have already been cast under the order of the Federal court which is subsequently determined to be invalid because of the lack of the qualifications of the voter? Through the filing of such proceedings, an overwhelming number of wholly unqualified individuals may be permitted to vote in a Federal or State election, and yet the only relief which the bill provides is that in elections held thereafter the person could not again vote if he had not proved his case.

Mr. McCULLOCH. I would like to interrupt the witness at this point, if I may, Mr. Chairman. I am very pleased that this sentence is in your statement.

Mr. Chairman, I am of the opinion that the legislation in question needs substantial amendment, lest an order be granted authorizing a person to vote who is later determined not to be qualified to vote, in the meantime his vote having been counted. If we would have an election as close as the election in 1960 we would be in a position where we might have people elected as a Member of Congress or as President of the United States who later would be found to have been elected by individuals who should not have been qualified to vote.

Mr. ASHMORE. What would happen if a man were elected, sworn into office, and it was later determined he was elected by unqualified voters?

Mr. McCULLOCH. That goes to the very heart of the question I raise, and that the witness has so clearly pointed out. This section of the bill needs very careful study.

The CHAIRMAN. Mr. Counsel?

Mr. FOLEY. What is the present procedure under Louisiana statutes now where you have a challenged ballot, Mr. Governor?

Mr. AYCOCK. Go to a judicial proceeding, sir.

Mr. FOLEY. If you had an election today and had a challenged ballot, found to be invalid after the election was over, what would happen? If it was a close election, and a ballot was challenged, and the final ballots might change the final count, under Louisiana law today, what would happen?

Mr. AYCOCK. I think after proper proceeding, you would have a recount.

Mr. FOLEY. Wouldn't the same law apply to the challenged ballot even were this particular provision of H.R. 7152 enacted?

Mr. AYCOCK. No, sir. The way I understand this proposed section of the civil rights legislation, you would have no recourse except in subsequent elections.

Mr. FOLEY. Well, it doesn't strike down your State statutes on the validity of a ballot and the method by which you determine whether it is valid. It doesn't do that at all, there is nothing that says that.

Mr. McCULLOCH. I may comment, Mr. Chairman, if the Louisiana law be generally similar to the Ohio law you are contesting the validity of a single ballot. Under the legislation we are now studying, even before there be found a pattern or practice, a whole group of people would be qualified to vote, and thereafter weeks or even months later we would find that one official had been declared elected, in part, at least, on votes of individuals who were qualified by Federal officials even though it were later found that no discrimination existed and that State registrars should not have been superseded. That is how serious it is, in my opinion, Mr. Chairman.

The CHAIRMAN. Proceed, then, Governor.

Mr. AYCOCK. I think, gentlemen, such a practice is diametrically opposed to the American system. Instead of the voter having to establish his qualifications before the election, he is permitted to vote, and then ask the court to determine whether or not he was qualified. Such a practice, if allowed and sanctioned by congressional action, will effectively eliminate, in many instances, the constitutionally

guaranteed right of the State to determine the qualifications of its voters, and could conceivably do great injustice to candidates for public office, as well as to the entire properly qualified electorate.

The bill further authorizes——

The CHAIRMAN. Excuse me. I notice the Louisiana statute provides the prospective voter shall be able to read and write in the English language or his mother tongue.

I am happy to note that. That means in your State if a person doesn't speak English, or French, he would nonetheless be deemed literate and could vote?

In other words, literacy doesn't depend upon the particular language one possesses. Am I correct, in that regard, as to Louisiana?

Mr. AYCOCK. That is correct.

The CHAIRMAN. I wish my own State would take a leaf from the Louisiana book, because in my State, New York, we require the voter must know and understand English, and the result is the disqualification of a great many Puerto Ricans who only speak Spanish. I rather prefer your system to our own in New York, in that respect.

Mr. AYCOCK. The bill further authorizes the appointment of "temporary voting referees" who are to receive and process the applications upon which the orders to vote are based. The "proof" is apparently received by the "voting referees," and the court is completely relieved of that judicial function. Why is it necessary to bypass the court? What, may I ask, is the great need for such speed? Why could not the qualification of the particular voter be determined before the election in an orderly judicial process, rather than after he has voted? It would occur to me that the political possibilities in a situation such as that proposed would indeed be many and varied. Think, gentlemen, of the political implications from such procedure.

The plans proposed and included in the bill before us are clearly violative of those constitutional rights which are still reserved to the States, and regardless of how laudable may be the objective, it is submitted that there can be no justification for the abrogation of the constitutional right of the States to determine the qualifications of its voters.

II. PUBLIC ACCOMMODATIONS

The act seeks to require that the owners and operators of places of "public accommodation" completely integrate their facilities, and not only prohibits discrimination through State action which is taken "under color of law" but also the action of any person who denies the right to public accommodation "whether acting under color of law or otherwise." As all of you gentlemen on this committee fully realize, this is not the first time that Congress has been faced with a package of civil rights legislation aimed at the elimination of discrimination against persons because of race in various private business establishments and places of public accommodations throughout the country. The original civil rights bill was passed by the Congress in 1875 and a part of the bill contained language which is almost identical to certain parts of title II of the present bill. As you also know, the prior legislation was declared patently unconstitutional in the *Civil Rights* cases decided by the U.S. Supreme Court in 1883. A very careful

examination of the jurisprudence of the Supreme Court since the decision in the *Civil Rights* cases in 1883 discloses no expression by the Court which overrules the basic holding of those cases. The law, as declared by the U.S. Supreme Court in 1883 and which apparently still remains the law of the land, was very effectively summarized in the concluding statement of the Court when it stated:

> On the whole, we are of the opinion that no countenance of authority for the passage of the law in question can be found in either the 13th or 14th amendment of the Constitution; and no other ground of authority being suggested, it must necessarily be declared void, at least so far as its operation in the several States is concerned. (*Civil Rights* cases—109 U.S. 3 (1883).)

Since the *Brown* decision in 1954, there have been several decisions by the Federal courts declaring that any State law which compels a man to conduct his business on a completely segregated basis is unconstitutional under the 14th amendment, because it constitutes discriminatory State action.

As a southerner, I am not in sympathy with the position of the Supreme Court and do not believe that it is sound. However, the decisions of the Court apparently stand as the law today. As an American citizen we must accept the situation which presently exists. This being the case, it is clear that if laws which compel segregation are unconstitutional because they constitute an invasion of rights and prerogatives guaranteed by the Constitution, then it must inevitably follow that any law which compels integration likewise constitutes an invasion of rights and prerogatives guaranteed by the Constitution and is necessarily likewise unconstitutional. If the State cannot require segregation under the Constitution, necessarily the Federal Government cannot require integration. There is no authority whatsoever found in the Constitution which would support such action by the Federal Government. As was so aptly stated by Mr. Justice Harlan in his concurring opinion in the recent "sit-in cases" decided only this last May:

> An individual's right to restrict the use of his property, however unregenerate a particular exercise of that right may be thought, lies beyond the reach of the 14th amendment. The dilution or virtual elimination of that right cannot well be justified either on the premise that it will hasten formal repeal of outworn segregation laws, or on the ground that it will facilitate proof of State action in cases of this kin.
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> Freedom of the individual to choose his associates or his neighbors, to use and dispose of his property as he sees fit, to be irrational, arbitrary, capricious, even unjust in his personal relations are things all entitled to a large measure of protection from governmental interference. This liberty would be overridden, in the name of equality, if the strictures of the amendment were applied to governmental and private action without distinction. (*Peterson* v. *City of Greenville*, 373 U.S. 1119 (May 20, 1963).)

I submit to you, gentlemen, that there is simply no constitutional basis for the proposed "public accommodations" provisions of the present legislation. The Central Government just does not have the constitutional authority to dictate to the individual citizen the persons with whom he must associate or the manner in which he must use his property, or what individuals he can or cannot serve in his place of business. Every individual American citizen has the constitutional right to be let alone in the orderly operation of his business, and as stated by Justice Harlan he can be as arbitrary or discriminatory as

he likes and it is entirely his own affair. The late Justice Brandeis once said:

> The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning, but without understanding. * * * The makers of the Constitution * * * sought to protect Americans in their beliefs, their thoughts, their emotions, and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized man.

The individual right of self-determination is essential to a free society, and, if, through legislation such as this, an individual is no longer permitted to choose the persons he will or will not serve in his place of business, he is deprived of a fundamental right, and the first step has then been taken toward the elimination of all freedoms, and the acceptance of paternalistic domination of our individual lives by the Central Government.

We must never lose sight of the fact that, in every instance wherein one group obtains some preferential treatment by governmental action, the rights of some other group are thereby to some extent taken away, and only the most overwhelming reasons should lead to such action.

The "public accommodations" provisions of the proposed legislation would constitute a definite invasion of the constitutional rights of those individual American citizens who own and operate their businesses throughout the Nation.

The CHAIRMAN. May I say, Governor, I appreciate the argument you are making. And it has some merit. But it is well to remember that the Supreme Court has gone pretty far in construing the depth and width of the commerce clause.

For example, the Supreme Court has said that Congress has the power to regulate, for example, the color of the margarine that goes on a restaurant table. And the Supreme Court has indicated that Congress can regulate the growing of wheat for consumption right on the farm. The court has gone pretty far in construing some of the statutes that have been passed, under the commerce clause. I cite that to indicate that our problem is not an easy one.

I am sure you appreciate that.

Mr. AYCOCK. I am certainly aware of that, Mr. Chairman.

I think volumes could be written as to what is substantial in interstate commerce, and what is not.

Of course, I certainly take the position that the public accommodations section of this proposed act is too far reaching, and violative of individual liberty.

Desegregation of public education:

In title III of the proposed bill, I am convinced that the groundwork is effectively established for the complete takeover by the Federal Government of the eductaional systems of America. The provisions of this act would apparently constitute a big step toward giving the Federal Government control of education. As a result of the measures contained in the bill, the Federal Government, through the Commissioner and other Federal employees therein authorized, would be able to direct teacher training, control the operation and administration of schools through the use of Federal funds which may be granted or withheld, and ultimately to dominate the entire educational system.

Mr. MCCULLOCH. Do you later in your statement touch upon the authority of a Secretary of Health, Education, and Welfare or other

agency head to determine what conditions of fact exist and upon his sole determination thereafter withhold grants of Federal funds in school and other activities?

Mr. AYCOCK. I do, sir.

Mr. MCCULLOCH. You are going to touch on that at length?

Mr. AYCOCK. Yes, sir.

Mr. MCCULLOCH. I trust you do not believe that great authority should be lodged in any individual without either judicial or administrative review?

Mr. AYCOCK. I do, sir.

Mr. MCCULLOCH. Thank you.

Mr. AYCOCK. The right of a parent to educate and rear one's child in accordance with religious, educational, and social desires of the parent and the family, is an essential right of the individual American citizen, and no legislation should be permitted which may establish the machinery through which a strong Central Government may find it possible to take over the education of children and the training of youth throughout the Nation.

The requirements of desegregation in public education, regardless of the importance which some may attach thereto, can never be sufficient to justify the enactment of legislation which will invade fundamental constitutional rights.

The Supreme Court has apparently decided that separate facilities are inherently unequal. I do not agree at all with that conclusion and feel that such a conclusion is definitely wrong. However, here again we must accept the fact that the Supreme Court has so ruled and has also decreed that State directed segregation is unconstitutional.

However, the fact remains that there is still no basis whatever for enforced integration. The Supreme Court of the United States has never stated that the Constitution required integration.

It has declared State-imposed segregation unconstitutional, but the Court has never, in any way, stated that the percenage of Negro and white pupils must be in direct proportion to related percentages of population. On the contrary as stated by Justice Harlan, one of the fundamental liberties guaranteed by the Constitution is "Freedom of the individual to choose his associates or neighbors." The question has been squarely faced in a number of decisions of the courts of this country, one of them being a 1958 decision by the U.S. Court of Appeals wherein it was stated:

> Neither the 5th nor the 14th amendment operates positively to command integration of the races, but only negatively to forbid governmentally enforced segregation. (*Cohen* v. *PHA*, 257 Fed. 2d 73 (1958)).

In view of the fact that, at best, the law simply prohibits segregation, and canont require integration, I am at a complete loss to explain or understand the provisions of title III of the proposed bill wherein the law proposes to set up "measures to adjust racial imbalance in the public schools systems."

Does this mean that the Government proposes to tell the States how many Negroes, how many Mexicans, how many Indians, how many white people must be placed in each of the public schools operated by the State?

In order to handle this question of racial imbalance (whatever it means), the Commissioner of Education is authorized to take such

action as is deemed necessary, not only to achieve desegregation in the public schools, but to affirmatively correct racial imbalance in the public schools. With that in view, he is specifically authorized to arrange, through grants or contracts, for schools or training centers to train teachers and other school personnel in connection with problems incident to desegregation or racial imbalance in public schools. Apparently the teachers for such schools would be employed and appointed by the Federal Government, the curricula would be determined and controlled by the Federal Government, and these teachers would be trained in what to teach and how to handle and direct the local schools, and to bring in a sufficient number of students of other races to meet the formula which is set up to correct imbalance. This may perhaps be a small beginning but it is certainly a "foot in the door" for the Central Government to invade and control the entire field of public education. It is certainly not difficult to envision the ultimate complete takeover of the public school systems of each State through the activities of the Federal Government.

The Commissioner of Education is given the right to grant money to certain school boards, and to withdraw Federal funds from the school boards if in his judgment there is a failure "to comply in good faith with the terms and conditions upon which the assistance was extended." Thus the Commissioner of Education is given practical power of control over the schools because he has the power to either grant, withdraw or withhold money which may be necessary in connection with the operations. I have tried in vain to find some constitutional authorization for the Federal Government to finance, conduct, and control educational facilities in the various States of the Union. I have found none.

Mr. FOLEY. Recently, in *U.S.* v. *Prince Georges County*, a U.S. district court judge ruled where a school accepts funds from the Federal Government there is a contract formed between the Federal Government and the recipient of those funds. That gives the Government the standing to sue. It was the defendant's argument, that the Government did not have standing to sue. That is one of the reasons why people have talked about title II authorization.

If you accept Federal funds for construction of the school on condition that everyone will be treated equally in the school facilities, why do you now say there is no constitutional right of the Government?

It is a contractual right.

Mr. AYCOCK. I take the position that public education is clearly a prerogative of the States.

Mr. FOLEY. Don't you have a suit pending in Louisiana right now on an impacted area, on the very same question? I can't think of the name of the parish it is in. Is it Bossier Parish?

Mr. DOWDY. Bossier.

Mr. AYCOCK. Yes.

Mr. MCCULLOCH. What is the exact issue in that case, Counsel?

Mr. FOLEY. That the Government is granting funds to an impacted area had required that the children of parents who are on military bases would be granted the use of the local facilities, and in this issue the Government comes in on a contractual basis saying the contract has been violated because the schools are segregated.

Mr. WAGGONNER. May I speak on this momentarily, Mr. Chairman?

Mr. CHAIRMAN. Certainly.

Mr. WAGGONNER. The suit in question involves the Fourth Congressional District of Nola, Bossier Parish, and the question of whether or not a contract exists between the Bossier Parish School Board and the U.S. Government, the agency handling the particular administration of these laws being the department of Health, Education, and Welfare, and the question is one as raised by the Department of Justice involving whether or not there is a contract involved.

It is the contention of the authorities of the Bossier Parish School Board, their legal counsel, and the State of Louisiana, that there is no contract involved because the language of the legislation itself, the two public laws in question, involves an entitlement, not a contract.

The law itself provides for an entitlement to the Bossier Parish School Board in participating in these laws.

Furthermore, the question is this: The contract, if there be one, and I do not admit there is a contract, but only an entitlement, which is the position of the school board and the State of Louisiana, if there be a contract, and again I do not admit one, it is based upon the fact that the State of Louisiana and its political subdivisions who participate in the administration of these programs involving education under Public Laws 815 and 874 will provide for these people without discrimination under State law.

Mr. WILLIS. Would the gentleman yield? I am not a member of this subcommittee, and as you know, preside over a number of other subcommittees.

But on this particular lawsuit, I predict that is one that we can win, because at the time that statute was enacted the Supreme Court decision in the *Brown* case, and other cases, had not come out. And in order to pass the bill and especially a very strong report on it by the former chairman of the Committee on Education and Labor, the gentleman from Carolina, it was provided that in the distribution and use of these funds that the States would be permitted to do what they have done before. That is what was done to pass that bill.

So there is no violation of that statute. I think the Department of Justice is not naive, at all. They are going to lose this one, based on the statute that the suit is grounded on.

I say that for the record, because it was raised.

Mr. MCCULLOCH. It seems to me title III which is being discussed, is much wider than the issues involved in this case, because the case is limited to an impacted school district, whereas, title III, as written, covers every school district in the United States.

Mr. FOLEY. When I mentioned the decision of the district court in the *Prince Georges County* case, that is an impacted area. The decision, reported in 32 Law Week 2050, and I quote:

> It has long been recognized that the Federal grants authorized by Congress create binding contracts (see *Burt* v. *Southern Pacific Railroad*, 234 U.S. 669, and *U.S.* v. *Northern Pacific Railway Company*, 256 U.S. 51).

There is no essential difference between the grants to railroads and the grants to the school board. The arrangement by which the school board obtained money from the United States to assist in the construction of schools constituted a contract.

Mr. RODINO. Mr. Chairman?

The CHAIRMAN. Mr. Rodino.

Mr. RODINO. In your reference with respect to title II, your statement thereunder, you recognize, I am sure, no action can be taken by the Commissioner in this case and under this title unless an application is first forthcoming from the local body.

Does that give the Commissioner absolute control?

Isn't this something that initiates from local jurisdiction?

No action can be taken out prior to action on the part of a local body, local school body.

Mr. AYCOCK. I take the position that it is something to which they are entitled under the administration of the law.

I find no constitutional basis for it.

Mr. RODINO. I refer to your statement that the absolute authority you speak of, of the Commissioner of Education, when it comes to the questions of desegregation in the school system—I merely point out, and of course I am sure you are aware of it—my interpretation of the law is that it is clear, as written, that no action can be taken by the Commissioner to do anything that is pointed out here unless first the local body makes application to him.

Mr. FOLEY. Should the Government's position in the *Prince Georges County* case be sustained, then you don't really need school desegregation, if that is the condition on which it is granted.

Mr. WILLIS. If the gentleman will yield, Mr. Chairman, let's put this thing on the table, so far as these lawsuits are concerned.

On the one hand, the one in Bossier Parish particularly, the reason behind the suit—it could be we could lose it, but if it were lost, that would be a reason for this legislation.

On the other hand, counsel wants to turn the thing around, and if that case is won, we don't need this legislation.

Mr. WAGGONNER. I attended the preliminary hearings on the case in question. And I do not consider it inappropriate now to advise the committee that the U.S. district court judge in the preliminary hearings in this case asked Government counsel who handled the affairs of the Government and Department of Justice in this case whether or not it was the intention of the Department of Justice to bring suit in this manner to further demonstrate the fact they did not have this authority and to create a demand and try to show a need for this particular legislation.

Thank you, sir.

Mr. AYCOCK. I respectfully submit that there is absolutely no constitutional authority which would permit the Federal Government to enter the field of public education.

Mr. FOLEY. The Civil Rights Commission in a report referred to a Louisiana statute recently enacted, that if a schoolteacher taught in a desegregated school in Louisiana the funds to pay him would be cut off by the State.

Can you clarify that?

Was there such a statute enacted?

Mr. AYCOCK. I think there was.

Mr. FOLEY. Was that ever challenged in the court and declared invalid?

I mean, the U.S. district court declared it invalid, did it not?

Mr. AYCOCK. Yes.

Mr. FOLEY. Thank you.

Mr. AYCOCK. It is certainly not difficult to envision the ultimate complete takeover of the public school systems of each State through the activities of the Federal Government. The Commissioner of Education is given the right to grant money to certain school boards, and to withdraw Federal funds from the school boards if in his judgment there is a failure "to comply in good faith with the terms and conditions upon which the assistance was extended."

Thus the Commissioner of Education is given practical power of control over the schools because he has the power to either grant, withdraw, or withhold money which may be necessary in connection with the operations.

Mr. MCCULLOCH. At this point, I take it, you found no provision in the bill in question that would provide for review of that very great authority by a single individual, either judicial or administrative?

Mr. AYCOCK. That is correct.

The CHAIRMAN. I had a brief prepared on that subject, and a number of cases hold that those kinds of facts, withholding of funds, present judicial controversy and the problem concerned in one case a hospital, and a school district in a renewal project, denied a Federal contract in a school guarantee where the applicant practices discrimination, and dealing with the standing in court to challenge the constitutionality of the Federal limitation as well as its reasonableness as applied in the particular situation, we have the *State of Oklahoma* v. *U.S. Civil Service Commission*, and other cases.

In other words, the courts can and do review to insure administrative regularity. I will say to the gentleman from Ohio there are quite a number of cases that support that.

Mr. MCCULLOCH. I would like to ask if those cases without exception were determined before or after a contract with the political subdivision was negotiated?

I say that not having the benefit of having read all those cases.

The CHAIRMAN. I have not read all the cases. But in general, take a concrete case, where the Secretary of Health, Education, and Welfare, after granting certain funds for example, seeks then to withdraw those funds, there are a number of cases that hold that they are judicially reviewable.

Mr. MCCULLOCH. But what redress does this political subdivision have?

The CHAIRMAN. Under some of the cases, if the grant is not made the State has a right to check the Cabinet officer or head of the administrative agency who holds out the funds, to see whether or not he is acting capriciously or arbitrarily, and also to test the constitutionality of any action of his.

It is a very broad and sweeping power, according to these cases.

Mr. MCCULLOCH. I call to your attention where funds were withheld by the Department of Public Welfare from the State of Ohio by the Administrator of the Social Security Agency and legislation was thereafter passed by an overwhelming vote of Congress, only to be vetoed by the then President and the State of Ohio still has not received the money, though it was more than a quarter of a century ago.

In other words, I am trying to determine whether authority exists after the grant is made or the contract let to have judicial review. I

certainly agree that this country is bound by a contract. But under some conditions there is no relief.

If that be the case, I repeat the conclusion I reached weeks ago in this field, we must write into this legislation some safeguards to the States and political subdivisions by way of judicial or administrative review.

The CHAIRMAN. I quite agree it is incumbent upon us to write into that section the assurance that there would be at least judicial review under any and all circumstances.

Mr. MCCULLOCH. At this point in the record, I would like to provide for the record the factual development of the threat to withhold $17 million, from the State of Ohio, in 1962, in a controversy with the Department of Labor, and the ends to which Ohio had to go to see that that $17 million was not withheld.

I would like to insert that in the record here, or perhaps more properly at the end of the testimony of the Governor.

The CHAIRMAN. That shall be done.

And I would like to place in the record at this point the brief I referred to.

(The documents are as follows:)

JULY, 1963.

Re judicial review of administrative decisions withholding grant-in-aid or other funds appropriated by Congress.

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
U.S. House of Representatives,
Washington, D.C.

MY DEAR MR. CELLER: Title II of the pending civil rights legislation (H.R. 7152) would authorize withholding of Federal funds from any program or activity that receives Federal assistance. directly or indirectly, by way of grant, contract, loan, insurance, guaranty, or otherwise, when discrimination is found in such a program or activity. During my testimony on July 18 favoring enactment of pending civil rights legislation, the question arose whether or not the Federal courts would have jurisdiction to review the withholding of funds pursuant to the contemplated statute. It was and is my opinion that the courts would have jurisdiction and I was requested to supplement my testimony with a memorandum on this matter.

The leading Supreme Court decisions make it clear that the courts can and do review the withholding of what might loosely be termed "State gratuities or benefits at the behest of a party from whom the gratuities or benefits have been wrongfully withheld." If the litigant is not "injured," there is no "case or controversy" and hence no jurisdiction.

The Supreme Court, in upholding a 160-acre limitation on use of Federal irrigation water, recently held that the Government has power "to condition the use of Federal funds, works. and projects on compliance with reasonable requirements". *Ivanhoe Irrigation District* v. *McCracken*, 357 U.S. 275, 291 (1958). But, as in that very case, the courts are open to review questions of constitutionality, statutory authority, and overall "reasonableness" of the limitations as applied to a given situation.

Judicial review must be available to the applicant denied the opportunity to participate in a federally supported program; otherwise the Federal spending power might be used to buy up rights guaranteed by the Constitution. The opportunity to participate on equal and reasonable terms in a Federal program, like the "privilege" of incorporating and doing business in a "foreign" State, "cannot be made to depend upon the surrender of a right created and guaranteed by the Federal Constitution". *Security Mutual Life Insurance Co.* v. *Prewitt*, 202 U.S. 246, 267. This cannot be, for the Constitution protects from flank as well as from frontal attacks. Were it otherwise, "constitutional guaranties, so carefully safeguarded against direct assault, are open to destruction by the indirect, but no less effective, process of requiring a surrender, which, though in form volun-

tary, in fact lacks none of the elements of compulsion". *Frost* v. *Railroad Commission*, 271 U.S. 583, 593.

Accordingly, the courts are open to review the legality of limitations imposed upon the receipt of what are sometimes called privileges. Such a situation was presented in *State of Oklahoma* v. *United States Civil Service Commission*, 330 U.S. 127 (1947). There, the Civil Service Commission ordered that the Federal grant-in-aid highway program be diminished by the amount of the salary paid to one France Paris upon finding a Hatch Act violation of dual employment by a political party and by a State agency supported by Federal funds. Oklahoma filed suit in which it attacked the constitutional validity of the Hatch Act as applied. The Government argued that: "the State has no legal capacity to question the manner in which the United States limits the appropriation of funds." The Court rejected this contention of nonreviewability for two reasons: first, because the Hatch Act authorized judicial review; secondly, because "Oklahoma had a legal right to receive Federal highway funds by virtue of certain congressional enactments and under the terms therein prescribed. Violation of such a statutory right normally creates a justifiable cause of action even without a specific statutory authorization for review" (330 U.S. at 136). The Court sustained the limitation on the highway appropriations upon finding that the Hatch Act limitation was constitutional and applicable to the situation at hand.

Case illustrations wherein the Supreme Court has reviewed the legitimacy of conditions imposed upon the opportunity to use Federal or State "privileges" can be multiplied: *Heim* v. *McCall*, 239 U.S. 175 (1915) (State requirement that private contractors in the construction of public works employ "only citizens of the United States"); *Hamilton* v. *Regents of the University of California*, 293 U.S. 245 (1934) (requirement that students at the State university take courses in military science); *In re Summers*, 325 U.S. 561 (1945) (requirement that applicants for admission to the bar take oath to bear arms); *Hannegan* v. *Esquire*, 327 U.S. 146 (1946) (requirement that those enjoying the subsidy of a second-class mailing privilege conform to standards of "decency"); *Eccles* v. *Peoples Bank of Lakewood Village*, 333 U.S. 426 (1948) (requirement that applicant for membership in the Federal Reserve System agree to withhold stock ownership from designated persons); *American Communications Ass'n* v. *Douds*, 339 U.S. 382 (1950) (requirement of "non-Communist affidavit" as condition for opportunity to use National Labor Relations Board processes); *Speiser* v. *Randall*, 357 U.S. 513 (1958) (requirement that veterans seeking advantage of property-tax exemption file "non-Communist" affidavits); *Greene* v. *McElroy*, 360 U.S. 474 (1959) (requirement that employees of private contractors with Government contracts have "security" status); and *Nelson* v. *County of Los Angeles*, 362 U.S. 143 (1960) (requirement that probationary employee with "no vested right to county employment" answer questions put to him by congressional committee).

Cases sometimes cited for the proposition that courts lack jurisdiction to review the legitimacy of Government conditions attached to its "purchasing" or "dispensing" authority are entirely distinguishable. They involve situations wherein the plaintiff had not been denied a "privilege", but sought to deny the "privilege" to others. Lacking "legal injury", their suits did not raise to the level of a "case or controversy" and hence there was no jurisdiction in the Federal courts to entertain what, at best, were requests for "advisory opinions".

Massachusetts v. *Mellon*, 262 U.S. 447 (1923), is the oft-cited decision for the proposition that courts cannot review the constitutionality of Federal grant-in-aid programs. There, Massachusetts brought an original suit in the Supreme Court to enjoin the expenditures under a grant-in-aid program to assist State-enacted maternity aid projects. In a companion case, *Frothingham* v. *Mellon*, a taxpayer of the United States brought a suit alleging, as did Massachusetts, that the Federal grant-in-aid program usurped rights reserved to the States by 10th amendment. The Supreme Court dismissed the Massachusetts suit, holding that Massachusetts suffered no legal injury because the Federal statute 'imposes no obligation but simply extends an option which the State is free to accept or reject," and that Massachusetts could protect itself by "the simple expedient of not yielding." The suit by Mrs. Frothingham was dismissed for lack of jurisdiction, because, as one of millions of taxpayers, she could not show that she "has sustained or is immediately in danger of sustaining some direct injury." Thus, it appears that *Massachusetts* v. *Mellon* has no applicability to the question at hand, because (1) Massachusetts sought to prevent, not to obtain, the grant-in-aid; and (2) Mrs. Frothingham suffered no direct injury. This could not be said of an applicant denied benefits under a grant-in-aid program.

Alabama Power Co. v. *Ickes*, 302 U.S. 464 (1938), also involved a Federal grant-in-aid program, one to assist municipalities in obtaining electric power. Secretary of the Interior Ickes, pursuant to Federal statute, entered into an agreement with four Alabama municipalities whereby Federal funds would have been granted to construct an electricity distribution system. The Alabama Power Co. brought suit to enjoin the grants-in-aid on the theory that the program was unconstitutional. The Supreme Court dismissed the suit because the Alabama Power Co., with no exclusive franchise, suffered no legal damage from the lawful competition contemplated by the grant-in-aid program. It is to be noted that the Alabama Power Co. had not been denied any Federal funds; it merely sought to enjoin would-be competitors from obtaining Federal funds.

Tennessee Electric Power Co. v. *Tennessee Valley Authority*, 306 U.S. 118 (1939), is somewhat similar. This was a suit by 18 electric power companies to enjoin the TVA from generating and disbursing electric power to competitors of the complaining plaintiffs. The Court dismissed the suit for lack of jurisdiction on the authority of *Alabama Power Co.* v. *Ickes* and noted that there was no invasion of any legal right: "one of property, one arising out of contract, one protected against tortious invasion, and/or one founded on a statute which confers a privilege." In the subject here under discussion, the denial of the grant-in-aid program would deny rights "founded on a statute which confers a privilege."

Perkins v. *Lukens Steel Co.*, 310 U.S. 113 (1940), was a situation where potential bidders for Government contracts brought suit to enjoin the Secretary of the Interior from enforcing a minimum-wage requirement for those holding Government contracts. The Court dismissed the case for lack of a case or controversy on the authority of the three above cases and held "* * * it is by now clear that neithehr damage nor loss of income in consequence of the action of Government, which is not an invasion of recognized legal rights, is in itself a source of legal rights in the absence of constitutional legislation recognizing it as such." The Court emphasized that the plaintiff steel company had no contracts and no right under Federal statute "to bid and negotiate for Government contracts free from compliance with the determination made by the Secretary of Labor."

Here, hypothetically, the problem concerns a hospital, a school district, an urban renewal project, which is denied a Federal grant, contract, loan, or insurance guarantee, on the allegation that the applicant practices racial discrimination. The applicant has a legal right, one "founded on a statute which confers a privilege," *Tennessee Electric Power Co.* v. *Tennessee Valley Authority*, 306 U.S. 118; and, accordingly, has standing in court to challenge the constitutionality of the Federal "limitation," as well as its reasonableness as applied in the particular situation. See *State of Oklahoma* v. *United States Civil Service Com'n* and the other cases cited above.

I am confident that a condition prohibiting Federal support to applicants which utilize Federal funds in a racial discriminatory fashion is not only constitutional, but is required by the Constitution. But there can always be errors in the day-to-day administration of these programs, no matter how careful the administrators may be. Therefore, I am gratified that the Courts can and do review the administration of Federal grant-in-aid programs to insure administrative regularity. While unnecessary in legal theory, I could see the political practicality of a statutory provision spelling out judicial review.

I appreciate the opportunity to reinforce my oral testimony and thereby, hopefully, to eliminate this extraneous issue from the pending debate on the general need for speedy enactment of President Kennedy's civil rights legislation.

Sincerely yours,

JOSEPH L. RAUH, Jr.

[From the Congressional Record, Mar. 22, 1962]

Mr. BROWN. Mr. Speaker, I am following the rather unusual procedure of taking part of the time that is allotted to me as ranking member of the Committee on Rules to speak out of order on a matter which I, and the Members of the Ohio Republican delegation believe is of the utmost importance, not only to our own State, but also to the people and the governments of every State in the Union, and to all the employers and employees throughout the Nation who may be covered by various State unemployment compensation laws.

I have been requested and instructed by my delegation to bring this matter, which I believe is a very serious one, to the attention of the House of Representatives, and through this forum to the attention of other Federal officials.

The U.S. Department of Labor has threatened to cut off $17 million which it annually grants to the Ohio Bureau of Unemployment Compensation unless the bureau's appellate tribunal agrees to change two of its procedural rules. This $17 million, derived entirely from the $30 million annually contributed by Ohio employers, is used by the bureau to administer Ohio's statewide employment security program. If Washington makes good on its threat, Ohio's $200 million annual program to aid the unemployed will grind to a halt.

The board of review, operating under laws passed by the Ohio Legislature, formulates rules of procedure for the orderly disposal of cases before it. In 1959, the board, after holding public hearings, published a new set of rules in accordance with legislation enacted by the legislature in that year. The Federal Labor Department failed to make timely objection to those rules at the public hearings. But, shortly thereafter, it began to barrage the board of review with suggestions for rule changes on the ground that the present rules did not afford a claimant a fair hearing as required by Federal law. These requests rather amazed the board since it had disposed of hundreds of thousands of cases over its 22-year reign without one complaint of procedural denial of a fair hearing. Therefore, the board urged that it defer any rule changes for the time being unless the Labor Department considered them absolutely necessary.

Washington's initial response to this request was to assure the board that it was merely seeking clarity of the board's operations. But, attempts to satisfy the Department only proved partially successful.

As time passed, the Department became increasingly insistent that the board make 10 changes in its rules. The fact that these changes were not authorized by Ohio law or were already incorporated into the board's practice did not deter the Federal's demand.

Finally, after additional meetings and correspondence, the Department of Labor told the board that unless the changes were immediately made, the grant of funds to administrate the State's program would be cut off. Efforts to modify this demand until the legislature next met in its 1961 session met to no avail.

Having no alternative, the board scheduled a new public hearing and promulgated the 10 rule changes albeit many objections were raised by attorneys who regularly practiced before the board.

Following these changes, suit was brought in the Court of Common Pleas, Franklin County, to set six of the rule changes aside as being in contravention of Ohio law. In his decision of October 1961, Judge Draper ruled that four of the changes were valid, but that two went beyond the State statutes.

The Department of Labor is not satisfied with the result however. As late as March 6 of this year, it has informed the members of the board that the Labor Department will discontinue paying the State's grant unless the two rules are put into effect.

The result of this fiasco is that the State of Ohio presently faces an impossible situation. If it fails to comply with Washington's mandate, it will have to close down its unemployment compensation program. But if it does comply, it places the board of review in the position of being in contempt of the Franklin County court's decision.

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

Mr. BROWN. I yield to the gentleman from Ohio [Mr. McCulloch] who for many years was speaker of the Ohio State House of Representatives.

Mr. McCULLOCH. I thank the gentleman from Ohio. Has the State of Ohio ever been penalized for failing or refusing to adopt a rule by a Federal agency, and, if so, when and what was it and in what amount were we penalized and when were we paid back, if ever?

Mr. BROWN. I believe at one time, a number of years ago, a Mr. Hopkins, who held an official position, or some sort of a position, here in Washington, refused to give the State of Ohio some $2 million due it from a Democratic administration. Ohio is now under a Democratic State administration, by the way, so there is nothing partisan about this matter. But, despite the efforts of the State of Ohio, despite a law passed by the Congress ordering that this $2 million be paid to the State, which it was entitled to under law, the money was never forthcoming. I do not remember the exact year, but it was back in the administration of President Roosevelt.

Mr. McCULLOCH. Martin L. Davey, a former Member of this body, was Governor of the State of Ohio at the time, and he stood against the bureaucratic orders issued from Washington, and Ohio was penalized.

Will the gentleman yield for one further question?

Mr. BROWN. Yes.

Mr. MCCULLOCH. Would the gentleman please tell the House for what purpose that money would have been used had Ohio received its lawful allocation?

Mr. BROWN. That money would have gone for aid to the aged at that time.

Mr. MCCULLOCH. That is right.

Mr. BROWN. It was for the benefit of the needy aged.

Mr. MCCULLOCH. Sometimes called old-age pension benefits.

Mr. BROWN. That is right. But, Ohio never has received that money despite the fact the Congress took action by law ordering it be paid.

Mr. MCCULLOCH. Will the gentleman yield for one more question?

Mr. BROWN. Certainly.

Mr. MCCULLOCH. Does the gentleman feel that this is a pattern in a course of action by which the Federal Government is attempting to, and is from time to time, assuming jurisdiction in State affairs to the detriment of the State?

Mr. BROWN. I certainly agree with the gentleman wholeheartedly. I think it is another one of these grasps for power we see so continuously exercised by the bureaucracy here in the great Central Government of Washington.

Of course, I want to point out, as I attempted to do originally in my statement, that this is not just an Ohio matter. If this can be done in the case of Ohio, it can be done as far as the unemployment compensation agencies of every State in the Union are concerned.

Mr. MCCULLOCH. Would the gentleman yield for one more question?

Mr. BROWN. Yes; I yield.

Mr. MCCULLOCH. Is the gentleman aware of the fact that the Department of Health, Education, and Welfare, in the immediate past put this very same kind of pressure on the State of Michigan, and possibly on the State of Louisiana?

Mr. BROWN. I do not have detailed information on it, but I have been told that that same action is taking place through a different agency of Government, the Department of Health, Education, and Welfare, in a situation affecting Michigan.

I have taken this time to discuss this matter because, as I said a moment ago, it is of such great importance to every State in the Union, as well as Ohio. Sooner or later each Member of the House will be up against this same proposition.

Mr. Speaker, I shall conclude my remarks before I yield to the gentleman from Ohio [Mr. Harsha], by presenting a memorandum to the House which will substantiate, section by section, the laws and the situations I have described here as far as this particular matter is concerned.

The memorandum referred to follows: "Section 303(a)(1) of the Social Security Act requires that a State's unemployment compensation law include provisions for: 'Such methods of administration * * * as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due.' "Section 303(a)(3) of this act provides that a State's unemployment compensation law include provision for: 'Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied.'

"The above two sections are the sole legal provisions that have been relied upon by the Department of Labor in threatening to withhold administrative grants to the State of Ohio for use in administering its $200 million unemployment compensation program.

"Employers within the State of Ohio pay $30 million to the Federal Government every year for the administration of the program. Of this, $17 million is returned annually to the State unemployment compensation administration for the administration of the program. It is this $17 million annual grant which the Department of Labor now threatens to withhold if the board of review for unemployment compensation in Ohio fails to adopt two procedural rules.

"The Ohio unemployment compensation administration has been in operation for over 22 years. During this time, hundreds of thousands of cases have been decided by the board of review without one complaint being filed that the board's procedure denied an opportunity for a fair hearing. In the past 5 years alone, the board has disposed of 95,684 cases without a complaint. The Department of Labor itself admits the accuracy of these statements and indicates that its threatened action is only based on a hypothetical situation which might occur in the future. Furthermore, to the best of the Ohio board's knowledge, the

action being threatened Ohio is not being threatened against any other State in the Union, although it is believed many other States have existing provisions which the Department of Labor has found objectionable in Ohio.

"The Ohio board of review held public hearings on October 5, 1959, to promulgate proposed rule changes in its procedure in conformance with statutory changes made in the law by the Ohio Legislature during its 1959 session. The Department of Labor was notified 30 days in advance of these hearings, but failed to make any comments or issue any objections until a few minutes prior to the opening of the hearings. Since it was mandatory that the board certify the new rules to the Secretary of State on the following day in order to have them go into effect on October 16, 1959 (the effective date of the new legislation), the Labor Department's comments could not be carefully considered.

"Thereafter, on October 16, 1959, the day the new rules became effective—the regional director of the Bureau of Employment Security, U.S. Department of Labor, wrote the chairman of the Ohio board a lengthy letter. In this letter. he mentioned 17 items within the board's rules which were found to be objectionable. He requested that the board chairman comment upon these items so as to assure the Department of Labor thta they were not being used to deny a claimant a fair hearing. In addition, this letter contained suggested changes in some of the board's existing rules. The majority of these proposed rule changes, it may be added, were quite trivial in nature. None went to the substance of the grant of unemployment compensation and only a few could reasonably be considered of procedural importance.

"In response, the board stated that since it had already held public hearings and promulgated new rules, it did not wish to make any additional changes at that time unless the Labor Department considered it absolutely necessary.

"Following this response, the Department of Labor sent a number of additional letters to the board and held personal conferences both in Cleveland and in Washington with the board chairman. Initially, the Labor Department indicated that it had no intention of making the board introduce new rule changes—that it was only seeking the board's comments. But, as the months passed, the Department became more insistent that changes be made. In the process of becoming more insistent, it continued to barrage the board with lengthy suggestions as to how its rules should be changed.

"In June 1960, the Department informed the board that it should change the rules when the legislature next met in 1961.

"In August 1960, the Under Secretary of Labor approved the grant of administrative funds to Ohio for the following quarter provided that the board changed one of its rules. This was the only rule, it may be added, that the Under Secretary found objectionable.

"In September 1960, the Department requested that 10 rule changes be made in order for Ohio to qualify for further grants. By this time the board had satisfied the Department that the other seven items, as formerly proposed by the Department, were already covered by existing rules.

"In November 1960, the Department told the board that it was necessary to initiate the 10 rule changes promptly if Ohio were to continue to receive administrative grants.

"In December 1960, the chairman of the board informed the Department of Labor that it was prepared to make the rule changes. The chairman suggested, however, that the scheduling of the public hearing to discuss the changes, as required under Ohio's Administrative Procedure Act, be postponed until after the legislature met in its 1961 session.

"In February 1961, the Department of Labor informed the board that it would be appropriate to delay the rules revision until after the action by the legislature had been made clear.

"On May 1, 1961, the Secretary of Labor approved the following recommendation directed to the board by the Labor Department's regional director:

"In view of the possibility of legislative action and the board's need for time to make any revisions necessitated thereby, we recommend that the administrative grants for Ohio for the current quarter not be withheld but that the State be advised that we expect that the State will initiate its procedures for revising the rules of the board of review by the issuance of a notice of public hearing on the proposed rules before the end of June."

"The effect of this ultimatum was modified, however, at the end of this letter by the regional director stating that public hearings shoud be held before the end of June if it became apparent that the legislature did not intend to take any action.

"Then, on May 15, 1961, the Department in a letter to the board changed the conditional language contained in its May 1 letter to read as follows:

" 'We interpreted the Secretary's action to mean that we expect the board to issue notice of public hearings as soon as the results of legislative action can be ascertained, but in no event later than the end of June.'

"In a letter of June 22, 1961, the board chairman informed the Department of Labor that the Ohio House had passed certain bills containing changes in the State's unemployment compensation laws. The matter was pending in the Senate, he indicated, and the results should be known soon since the legislature planned to adjourn at the end of the week. Moreover, the Governor had only 10 days to act upon such legislation after its passage. The chairman then suggested that the proposed public hearings be postponed a short while until the action of the legislature became apparent.

"The following day, June 23, 1961, the Department of Labor instructed the board to 'proceed as originally planned with the June 30 call for a public hearing on the known pending changes.'

"On June 30, 1961, the board met and issued notice for a public hearing to be held on August 7, 1961.

"On July 7, 1961, the Department of Labor forwarded a 'Notice of Grant' for funds for the month of July. This notice contained the following warning:

" 'This grant has been made for July 1961, pending fulfillment by the Ohio board of review of its agreement to issue a notice of hearing as the initial step to amend its rules to meet the requirements (of the Social Security Act). Further grants will depend upon the progress made in adopting the necessary amendments.'

"Then, on August 2, 1961, the Labor Department informed the board that 'action has been taken to release an additional grant of administrative funds for the month of August pending completion of necessary rules revisions.' The letter went on to state: 'Accordingly, we are instructed to advise you that this Department will expect prompt action following the public hearing so that the outstanding conformity questions may be resolved before the end of August 1961.'

"On August 7, 1961, the board conducted the public hearings, as demanded by the Department of Labor, and adopted all 10 rule changes as required by the Department. As will be seen, the majority of the rules were highly insignificant and could not be considered to deny a claimant a fair hearing under any stretch of the imagination.

"At the hearings, 6 of the 10 proposed changes were objected to by outside counsel. When the board, under compulsion, promulgated all the rules in fear of facing a cutoff of funds, a taxpayer brought suit in the court of common pleas, Franklin County, Ohio, to have these six rules declared invalid. The other four rules, it may be added, which were not objected to involved: (1) permitting the referee to reopen a hearing if the appelle could demonstrate good cause for his failure to have appeared at the original hearing before the referee; (2) the deletion of the word 'remand' and the substitution of other language to make it clear that a hearing by a referee on remand by the board of review would be a full hearing; (3) making clear that the board must keep a complete record of all proceedings before it (although the board had always done so in the past), and (4) permitting a party to request or allowing a referee or the board on its own motion to issue subpenas in less than 5 days before a hearing for good cause shown (although the board and referees had always followed this practice).

"The six rules that the court of common pleas had before it and the court's ruling on each are as follows:

"1. The removal of the requirement that an applicant who seeks review of a referee's decision must state his reasons for the review. (The court held that the legislature never intended to prohibit an applicant's appeal for failure to state reasons thereof. The rule was therefore declared valid.)

"2. The promulgation of a new rule permitting an interested party to challenge the interest of a board member. (The court held this rule to be invalid since the Ohio statute deliberately requires one member to represent labor, one employers, and one the public. Since each member is supposed to represent a particular interest, the right to challenge would make the board inoperative—especially since Ohio law does not provide for the appointment of alternate members. Furthermore, Ohio law permits the Governor to remove a member for misfeasance or malfeasance of office, while a court on appeal may reverse a decision if partiality is shown. Such partiality, by the way, has never been raised against a board member.)

"3. Permit an interested party to cross-examine all adverse parties whether they are normally required to attend the hearings or not and to cross-examine in connection with the evidence and testimony introduced at a hearing. (It was the position of the board that this was a bad rule since it would tend to make a hearing far more complicated than it was originally intended and that it would require a claimant or other interested party to be subpenaed although Ohio law specifically exempted such individuals from the necessity if they so chose, to be present at the hearing. In addition, the board pointed out that it was the Department of Labor itself which 2 years previously had insisted upon the rule change so that only persons "present at the hearing" could be cross-examined. This was instituted so that a claimant need not appeal at a hearing if he did not wish to. Now, at the 1961 hearing, the Department of Labor changed its position and requested that the phrase be removed. Needless to say, the board had to go along in order to avoid having the funds cut off. The court held that the rule was valid on the ground that a fair hearing should embrace the right to subject every facet of the hearing to the scrutiny of cross-examination.)

"4. (a) The removal of the requirement that an applicant seeking an appeal of a referee's decision was required to state the reasons for introducing additional evidence on appeal which he had not introduced before the referee; (b) the reopening of a hearing by a referee if the appellee for good cause shown had failed to appear at the original hearing. (The court held the rule valid since it did not detract from a fair and impartial hearing, did not place additional burdens on any parties, and did not deprive any party of any right. It might be said, however, that the court ruled in favor of 4(b), although Ohio law was changed in 1959 to delete the right on the ground that it unduly delayed the adjudication of the cases.)

"5. The requirement that the board reopen a hearing at the appeal level if the appellee for good cause shown had failed to appear at the original appellate hearing. (The court held this invalid since it could delay the final adjudication interminably, it would require a hearing de novo, and it would permit the appellee to demand a reopening even though he had already had a hearing before the referee.)

"6. (a) The removal of the requirement that an interested party who desires to inspect the unemployment compensation records must include in his application the class of information to be examined and the reasons for same; (b) also to include provision that such records may be inspected by an interested party at the time and place of the hearing. (The board objected to this rule because it had always made the records available at the hearing and because the elimination of the requirement for stating the reasons for examining the records would permit the examination for improper purposes—not related to the hearing. Nevertheless, the board was forced to promulgate the rule in order to satisfy the Department of Labor. The court, in turn, found the rule change to be valid.)

"Thus, out of the 17 proposed rule changes originally urged upon the board of review, all but 2 were incorporated into the board's procedures. The two that failed to be incorporated were not the fault of the board, however. As was seen, the court of common pleas declared these to be invalid, under Ohio law.

"Did this action satisfy the Department of Labor? It did not. On January 26, 1962, the Department wrote the board, as follows:

"'As to the remaining two [rules], which were broader in scope than necessary to meet the requirements of the Social Security Act, the problems are again brought forward unless substitute rules are adopted which will at the same time conform to the decision of the Court and to the requirements for certification under the Social Security Act.'

"What the Department of Labor is saying here is that the two rules that the court declared invalid need not have been drawn so broadly by the board. This was said, it is to be remembered, by the same Department which encouraged and approved the two proposals that eventually were declared invalid. In regard to the first rule, the Department stated that the rule should be redrawn so that it would only apply to appellees who had not had a hearing before a referee below. With respect to the second rule, the Department indicated that challenges to the interests of a board member could be limited to situations in which the member has 'an interest in the controversy' immediately under consideration.

"The Department concluded this letter of January 26 with the following admonition: 'Since the next grant certification period will be near the end of March 1962, it would be desirable for the board to take action as soon as possible.' During a conference on March 9, 1962, the Department repeated the warning by

indicating that unless the two rules were adopted as it proposed, the Department would hold up the funds.

"Thus, it may be asked what is the board to do? If it promulgates the two rules as ordered by the Department it places itself in possible contempt of the court of common pleas. If it does not promulgate the rules the $200 million a year unemployment compensation program in Ohio may grind to a halt. This is particularly so, since short of seeking a Federal court injunction, there are no rules or regulations within the Department of Labor which permit the Ohio board to appeal an internal decision of the Department to the Secretary of Labor or to the courts."

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

Mr. BROWN. I yield to the gentleman.

Mr. HARSHA. Would the gentleman answer this question, please? If this precedent is not stopped or quashed right now is this a precedent that could be established in programs such as Federal aid to elementary or secondary education, no matter how cleverly the initial legislation may be drafted?

In other words, could rules and regulations be adopted to bring about such a situation with reference to Federal aid to elementary or secondary education?

Mr. BROWN. I will say to my colleague that this same type of an operation, this same type of bureaucratic blackmail, if you want to call it that, because that is all it is, against a State or of an educational institution, or of any other agency or government, whether it be State, or city, or county, could be used, of course, not only in the field of education but in every other field of activity with which the Federal Government has any connection whatsoever, even though the law definitely says that it comes under State and local jurisdiction only.

Mr. HARSHA. Would the gentleman yield further?

Mr. BROWN. I do.

Mr. HARSHA. Would the gentleman agree also that if local and State governments are to have any autonomy at all that this precedent must be stopped forthwith?

Mr. BROWN. It is my opinion, sir, that unless the Congress takes some definite stand, and unless the States take some definite stand against these kinds of threats and blackmail tactics on the part of Federal bureaus, agencies, and departments, that in the end, of course, all State rights, and all local rights, will go down the drain, so, in the end, of course, we will have complete control of all local State activities through the Central Government here in Washington.

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

Mr. BROWN. I yield to the gentleman.

Mr. MCCULLOCH. And, when that time comes and when the State and local governments are paralyzed, we will no longer have the Federal system which has been the greatest government known to mankind, will we?

Mr. BROWN. That is correct. Of course, what it does is to continue and stimulate these efforts to destroy State and local rights. I think every Member of this Congress, and every State in this Union, should be interested in what is going on in this particular Ohio case, as an example of what can and will eventually happen to them.

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

Mr. BROWN. I yield to the gentleman from Ohio.

Mr. ASHBROOK. The gentleman certainly knows if we go down the line that is being advocated in the bill which is coming up supposedly to help unemployment compensation in this country, the so-called King bill, we will probably find all of the other States in the Union knuckling under even further to Federal regulations. In the State of Ohio, for example, we have the regulation that one is not allowed to come under unemployment compensation unless one is actually out of work and is available for work. If we continue the trend which the gentleman is so ably pointing out sooner or later the Federal Government will be telling Ohio that it cannot set up these restrictions.

Mr. BROWN. Of course, if the Department of Labor can tell Ohio what it must do in this particular field, where the Ohio law and the Ohio courts have already acted, as they are authorized to do by Federal law, then, of course, Federal agencies can do anything they want in connection with the amounts which may be paid for unemployment compensation, or the persons who may receive them, or anything else, under the threat they will cut off the return to the States of moneys their citizens have paid in to the Federal Treasury. This is not money that belongs to anybody else but the State of Ohio. The fact of the matter is that Ohio employers have paid in twice as much, in these taxes, as the Federal Government sends back for unemployment compensation administrative purposes only.

Mr. ASHBROOK. The gentleman is completely correct. I certainly want to associate myself with him in his remarks and commend him for pointing this out. It certainly is a signal that we should be looking at and consider, lest we go further down the path of even more Federal control.

Mr. BROWN. I thank the gentleman very much.

Mr. MCCULLOCH. Mr. Speaker, will the gentleman yield further to me?

Mr. BROWN. I yield to the gentleman from Ohio.

Mr. MCCULLOCH. Mr. Speaker, I was particulary pleased to note the gentleman from Ohio remark that this was not a partisan political matter. I am sure the gentleman from Ohio knows that the senior Senator from Ohio is much concerned about and has spoken out against the tentative order of the Federal Department of Labor, in this case.

Mr. BROWN. The senior Senator from Ohio, of course, of the opposite political party to mine, was five times the Governor of the State of Ohio, elected as Governor more often than any other individual in our State's history. He knows the effect of this order, and, of course, is opposed to it. I do not know of a single individual, attorney, or otherwise, who has read and studied this action in Ohio and this threat made by the Department of Labor, who does not insist that it is completely wrong, it is illegal, it is morally improper, and is a violation of concepts of good government and endangers unemployment compensation administration on a sound basis everywhere.

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

GENERAL LEAVE TO EXTEND

Mr. BROWN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to extend their remarks on the subject which I just discussed on the floor, the unemployment compensation situation in the State of Ohio

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

There was no objection.

Mrs. BOLTON. Mr. Speaker, because of an unwarranted demand by the U.S. Department of Labor for two procedural rule changes on the part of the Ohio Board of Review for Unemployment Compensation, there is a grave danger that Ohio's $200 million annual program to aid the unemployed will be stopped. This results from the Department's threat to cut off $17 million which it grants annually to the Ohio Bureau of Unemployment Compensation to administer Ohio's statewide employment security program. This $17 million is derived entirely from the $30 million employers within the State of Ohio, pay to the Federal Government for the administration of the program.

The Board of Review for Unemployment Compensation, operating under laws passed by the Ohio Legislature, formulates rules of procedure for the orderly disposal of cases before it. In 1959, the board after holding public hearings published a new set of rules in accordance with legislation enacted by the legislature in that year. The Federal Labor Department failed to make timely objection to those rules at the public hearings. But, shortly thereafter, it began to barrage the board of review with suggestions for rules changes on the ground that the present rules did not afford a claimant a "fair" hearing as required by Federal law.

This was rather amazing to all persons familiar with the operations of the Board. The Ohio Unemployment Compensation Administration has been in operation for over 22 years. During this time hundreds of thousands of cases have been decided by the board of review without one complaint being filed that the board's procedure denied an opportunity for a fair hearing. In the past 5 years alone, the board has disposed of 95,684 cases without a complaint.

Nevertheless, in 1961 the board of review scheduled a new public hearing and promulgated 10 rule changes suggested by the Department of Labor. At the hearing many objections were raised by attorneys who regularly practiced before the board.

Following these changes, suit was brought by an Ohio taxpayer in the court of common pleas, Franklin County, Ohio, to set six of the rule changes aside as being in contravention of Ohio law. In his decision of October 1961, Judge Draper ruled that four of the changes were valid, but that two went beyond the State statutes.

However, the Department of Labor is not satisfied with the result. As late as March 6 of this year it has informed the members of the board that the Labor Department will discontinue paying the State's grant unless the two rules are

put into effect. The result of this fiasco is that the State of Ohio presently faces an impossible situation. If it fails to comply with Washington's mandate, it will have to close down its unemployment compensation program. But if it does comply, it places the board of review in the position of being in contempt of the Franklin County court's decision.

The Department of Labor has admitted the accuracy of the statements that in its 22 years of existence, no complaint has ever been filed that the board's procedure denied an opportunity for a fair hearing. Instead the Labor Department indicates that its threatened action is based only on a hypothetical situation which might occur in the future. Furthermore to the best of the Ohio board's knowledge, the action being threatened against Ohio is not being threatened against any other State in the Union, although it is believed many other States have existing provisions which the Department of Labor has found objectionable in Ohio.

I urge the Department of Labor to reconsider their decision in the light of all the facts and not penalize the great State of Ohio until it has been proven to be guilty of some overt act justifying such action. The record certainly does not show that it is guilty. The board of review has a wonderful record of extreme fairness in the more than 200,000 cases it has decided.

POLITICAL SCENE—FUND CRACKDOWN HINTS AT STRINGS ON SCHOOL MONEY

[From the Columbus Dispatch, Mar. 18, 1962]

(By Carl Debloom, Dispatch Washington Bureau)

WASHINGTON.—The fact that the Federal Government has been waving a multi-million-dollar-club over Ohio to make it illegally bow to demands of bureaucrats probably came as a shock to the unemployed whose checks are involved.

Actually the situation should not have surprised anyone. Many public officials have warned that this is the price local governments and citizens must pay for accepting financial participation by Washington in local programs.

Furthermore, Ohio has been the victim of the money club in the past. In 1935 it cost the State around $2 million to stand on a principle.

In the current case, about $17 million in Federal funds and $200 million in State unemployment checks are involved.

The argument is simple enough. Bureaucrats want Ohio to change its unemployment compensation regulations despite the fact courts have ruled the change would be illegal.

Even if this case is solved it probably will not be the end of Federal demands in the unemployment field. For more than a year Labor Department officials have been demanding changes in Ohio regulations.

Ohio has been giving in on the demands in an effort to keep the Federal funds flowing in to administer the unemployment program.

The man responsible for exposing the latest move by the Federal Government to pressure Ohio into more controls was U.S. Representative William M. McCulloch. In his quiet way the Piqua Republican alerted his colleagues and the situation was exposed in the Dispatch.

Although Labor Department officials quickly began to hedge on whether they would really withhold the funds, in the back of McCulloch's mind was another Federal threat that cost Ohio $2 million.

This occurred under the Roosevelt administration, which also seemed to feel that the Federal Government was much more capable of managing local affairs than local officials.

In 1935, Social Security Administrator Arthur J. Altmeyer set up high qualifications for county caseworkers in the aid-for-aged program. The late Gov. Martin L. Davey refused to comply and about $2 million in Federal funds—a sizable amount in depression years—was withheld from Ohio.

The late Ohio Congressman Thomas A. Jenkins sponsored legislation, which reportedly had the President's approval, to restore the money to Ohio. It received favorable action by both the House and Senate.

However, Altmeyer allegedly pressured the President and the legislation was vetoed. Ohio is still waiting for the money it lost 27 years ago fighting for a principle.

And it is the principle that is bothering many Government leaders in these matters.

Such people as Democratic Senator Frank J. Lausche, as a former big city mayor and five-term Governor of Ohio, has consistently fought against the expansion of Government participation in local affairs. He is urging Ohio to stand its ground in the unemployment matter.

Another consistent fighter in the battle against Federal controls is Representative Samuel L. Devine, who is presently warning against the club that is contained in the administration's farm bill before Congress.

Not only is the Government asking for controls over farm money used for subsidies and supports, it wants to be able to take criminal action against those who do not comply.

The Ohio incidents may help put such controversial programs as aid to education in focus. The central question of who should control school programs—local officials or Washington—is often lost in the propaganda that schools cannot survive withut bureaucratic aid.

Taxpayers sometimes forget that they "buy" the clubs that Washington holds over their heads.

The $17 million club used in the unemployment case cost Ohio employers about $31 million in tax money. The $31 million was the amount Uncle Sam charged employers to help cover their workers.

The $17 million was what Washington said Ohio could have back to administer the program.

Although it may appear that Uncle Sam is a mighty generous fellow at times, Senator Lausche points out that it is estimated that Ohio sends $1.50 to Washington for every $1 it receives from the Federal Government.

NAKED FEDERAL POWER BEING EXERTED ON OHIO

Extension of Remarks of Hon. Samuel L. Devine, of Ohio, in the House of Representatives, Monday, March 26, 1962

Mr. DEVINE. Mr. Speaker, under leave to extend my remarks, I am including an editorial that appeared in the Columbus Dispatch, Sunday, March 25, 1962.

Congressman Clarence Brown, the dean of the Ohio Republican delegation, brought this subject to the floor of the House on Thursday, March 22, 1962:

"NAKED FEDERAL POWER BEING EXERTED ON OHIO

"In effort to override Ohio law and force the Board of Review of the Ohio Bureau of Unemployment Compensation to follow a procedure dictated by the U.S. Department of Labor, contrary to Ohio law, the Federal Government is threatening to withhold $17 million in essential administrative funds necessary to operate unemployment compensation in Ohio after March 31.

"The $17 million due Ohio from the Federal Government has been paid to the Federal Government by Ohio employers and belongs here.

"If the money is not paid, the payment of unemployment benefits to men and women out of work in Ohio will come to a standstill.

"The point at issue is a couple of rules governing hearings before the Ohio Board of Review. The Ohio law on the subject is specific. The Franklin County court of common pleas, which has jurisdiction in interpreting the law in such matters, has held that the Ohio law must be followed. The Labor Department nevertheless is insisting on having its way, the Ohio law notwithstanding.

"Representative Samuel L. Devine, of Columbus, has stated the basic issue succinctly. He said: 'This is a living monument to the myth that Federal money does not bring Federal control.'

"We might append the footnote that the 'Federal money,' like all 'Federal money,' comes from the people—in this instance it is money paid into the Federal Government by Ohio employers.

"When the dispute on hearing rules, which has been running for several months, was decided in common pleas court last October, Judge Robert M. Draper, upholding the stand of the Ohio Board of Review, commented as follows in his written decision:

" 'No branch of government has a right to force its will on another sovereign branch of the government by the threat of withholding funds which rightfully belong to that branch for public purposes.

" 'Once we have started subrogating law to political or financial pressure, we have entered the realm of chaos from which there is no return, but complete annihilation of our way of life. In America no person and no organization is above the law.'

"On the question of Ohio law governing hearings before the board of review, Judge Draper said:

" 'This court cannot see that the statutes of Ohio deprive any party of any rights, or that they need to be changed to make them function more easily.

" 'Government only survives when all the branches thereof mutually respect and recognize the sphere of all other branches and does not try to dominate, or control them.'

"In Congress last week, Representative Clarence J. Brown of Ohio stated that the U.S. Labor Department has refused to wait until the Ohio General Assembly meets to consider a possible change in the Ohio law before shutting off its distribution of the $17 million due Ohio.

"When asked why he thought Ohio was being pressured by the Federal Government, Representative Brown said: 'Probably when you get to the bottom of this you will find some two-bit bureaucrat behind it.'

"Yes, 'two-bit bureaucrats' too often make decisions affecting the lives and welfare of people in all walks of life in the United States.

"But isn't that the underlying trend being vigorously advanced by the present administration? The trend has been in evidence for a number of years during several administrations, but never has it been pushed as it is being pushed today.

"The President has proposed a centralization of urban affairs in a department in Washington which would be able to exert on the cities just the sort of influence the Labor Department in the present instance is attempting to use on the government of the State of Ohio. Congress has squelched the proposed Department of Public Affairs for the time being.

"The Federal bureaucracy is pushing for Federal aid to education on various levels, including the public schools. While it denies that this would mean Federal control of education, it is obvious that local education could be controlled through the giving or withholding of Federal funds in just such a manner as it gives or withholds in the matter of unemployment compensation.

"Federal bureaucracy involves the power to punish. That power is now being wielded as a club over the heads of Ohio in the unemployment compensation matter.

If the Labor Department goes ahead with its plans, States rights in Ohio will be defied and thousands of persons entitled to unemployment benefits will have to go without the benefit checks which are due them in the weeks and months ahead. Never was naked desire to wield Federal power more plainly exposed."

Mr. FOLEY. I might for the record, so it is clear, cite the case of *Oklahoma* v. *the Civil Service Commission*, 330 U.S., quoting from page 136:

If it were not for section 12—

referring to the Hatch Act—

Oklahoma would have been legally entitled to have received payment from the Federal disbursing office of the sums, including the amount that section 12(a) authorizes the Civil Service Commission to require the disbursing Federal agency to withhold from its loans or grants. Oklahoma had a legal right to receive Federal highway funds by virtue of certain congressional enactment under the terms therein prescribed. Violation of such a right creates justifiable cause of action even without a specific statutory right to review.

The CHAIRMAN. I think nonetheless we should put definitely into the wording of the statute the right of judicial review.

Mr. AYCOCK. I have tried in vain to find some constitutional authorization for the Federal Government to finance, conduct, and control educational facilities in the various States of the Union. I have found none. I respectfully submit that there is absolutely no constitutional authority which would permit the Federal Government to enter the field of public education. Furthermore, there is no con-

stitutional authority which would authorize the Federal Government to interfere with and take over the operation of public education by the States. No such power is found anywhere in the Constitution.

It is also noteworthy that whenever any complaint is received by the Attorney General from any parent, the Attorney General in his sole judgment can initiate legal proceedings for such relief as may be appropriate, and may implead as defendants all additional parties as are "or become necessary to grant the effective relief."

There is no declaration to indicate whether the defendants in such cases would be entitled to jury trial, and there is in reality little, if any, limitation on the power of the Attorney General's Office to proceed to institute legal proceedings against anyone pursuant to a simple complaint. It is submitted that there is simply no constitutional basis for the authority conferred by this title of the bill.

Mr. KASTENMEIER. Before we leave the question of schools, many of us elsewhere in the country have noted recently that either the diocese or archdiocese of New Orleans has taken massive steps toward integration in terms of the school system in Louisiana.

I wonder whether you approve the church's action in this respect?

Mr. AYCOCK. I think that is their right, sir.

Mr. KASTENMEIER. Since the parochial school system in Louisiana is substantial, doesn't this influence what is done or would need to be done in terms of a public school system existing side by side with a large parochial school system?

Mr. AYCOCK. I don't necessarily agree.

Mr. KASTENMEIER. You think there would be two systems in Louisiana?

Mr. AYCOCK. One is a private school, one is a public school system.

Mr. KASTENMEIER. I understand the parochial school system is private.

But it is certainly so substantial in sum of citizens that it would influence what would happen in the public school system.

Mr. AYCOCK. Not necessarily.

Mr. KASTENMEIER. Do you think as a matter of fact it would not influence what happens in the public school system?

Mr. AYCOCK. No, I do not.

Title IV of the act provides for the establishment of a Community Relations Service, with a Director to be appointed by the President. The Director is authorized to appoint such employees as he deems necessary. There is apparently no limit. It is the function of this Community Relations Service to go into every community in which any racial disputes may arise, and provide assistance in connection with any such dispute or disagreement which involves any question of race, color or national origin.

The determination of the question as to whether or not any assistance is needed apparently rests entirely in the discretion of the Director. His activities are to be conducted in confidence and the information derived shall be considered confidential.

I must confess that I am again at a loss to understand what possible purpose could be served by the vast army of Federal employees which may be established for the purpose of assisting local communities and persons confidentially in the matter of race relations. In the first place, I have always considered that it is the responsibility of the

State and local governmental bodies to resolve any disputes, disagreements or difficulties, and certainly the local authorities should be given the opportunity to correct any such disagreement in the community before having the Federal Government come in. It has been my experience, in Louisiana at least, and I am certain that the same is true in every State in the Nation, that the local governmental bodies are eminently qualified and capable of carrying on their governmental functions.

The injecting of a foreign and Federal element into every family dispute that arises in the various communities throughout our Nation, will not only require an army of Federal employees, but will serve only to stimulate and excite controversy and stir up distasteful relations between the local and National Governments. The idea of having a Federal agent step into every disturbance wherein race may be an element indicates that the Federal Government is simply going to take over as a "big brother," in order to carefully police and supervise every action taken by any State or local governmental unit. Incidentally, the Director is to receive a salary of $20,000 a year and has the right to appoint such additional officers and employees as he deems necessary. There is no limit on the power of appointment, and I can therefore evision the situation where the Commissioner may feel that someone should be appointed at a fair salary in almost every community of the Nation to see that racial difficulties do not arise or if they do that they are properly ironed out, all at a cost which may assume tremendous proportions.

COMMISSION ON CIVIL RIGHTS

This provision of the proposed legislation delegates powers in connection with the investigation of violations of civil rights which require most careful analysis. It apparently sets up a "Star Chamber" proceeding which has long been outlawed by the American concept of government and the administration of justice. Under the proposed act whenever the Commission so determines, it may go into executive session, and in such instances the testimony of witnesses is completely secret and private. The Commission is the sole judge of all factors connected therewith. Whether or not one who is summoned before the Commission has the right to subpena additional witnesses rests entirely with the discretion of the Commission. The evidence taken in the executive session is completely secret, and cannot be released under any circumstances without the consent of the Commission. If anyone does release any such information, he is subject to a fine of $1,000 or 1-year imprisonment. Even a witness himself cannot get a copy of his own testimony which he gave at the executive session, unless it is authorized by the Commission.

Mr. FOLEY. That is so under the rules of the House of Representatives today.

That provision is designed for the protection of the witnesses and originates on an amendment offered several years ago when the first civil rights bill was considered by the House, by Mr. Dies, former Congressman from Texas.

That is the history of that, legislatively speaking.

Mr. AYCOCK. I think it still does not give the man the right to face his accuser.

Mr. FOLEY. There is no question in that phase of it.

Mr. ASHMORE. What other Commission or Commissioner has the right to know what testimony is presented, the right to rebuttal, the right to know the other side of the situation.

Mr. FOLEY. Those are the rules that govern the actions of the committees in the House of Representatives today.

Mr. ASHMORE. What other Commission or Commissioner has the same authority as the House of Representatives, or are governed by the same rules or regulations.

This is a commission, no one is going to know what this Commission, or Commissioner, is doing. The public has the right to know such things.

I think it goes beyond all reason to say it should be secret.

Mr. FOLEY. I think we should also point out a very important distinction, that if a witness is subpenaed and brought before a congressional committee the courts have ruled he cannot test that subpena in court until after he is cited for contempt of court.

But he could go in a district court and seek a restraining order against a Civil Rights Commission subpena.

Mr. AYCOCK. That has been done in Louisiana.

Mr. FOLEY. I know, that is why I point this out. There is a difference. One way the man can test his rights before he is cited for contempt, on the other hand he can't before he is cited for contempt.

Mr. ASHMORE. You would give the Commissioner unheard of power, "the Commission is the sole judge of all factors connected therewith," the Governor says, "whether or not one who is summoned before the Commissioner has the right to subpena adidtional witnesses rests entirely with the discretion of the Commission."

The CHAIRMAN. I say to the gentleman that the Civil Rights Commission now has the right to issue subpenas.

I want to ask, has the work of the Civil Rights Commission been orderly and reasonable in your State?

Have they conducted themselves with dignity and propriety? Have they arbitrarily acted?

Mr. AYCOCK. We had one court proceeding in connection with civil rights, and it has been orderly.

The CHAIRMAN. In other words, one serious complaint?

Mr. AYCOCK. That is correct.

Here we find a body which is set up for the purpose of securing evidence or investigating alleged violations of civil rights, which may conduct its proceedings behind closed doors, under circumstances such that no defendant in any proceeding might ascertain who testified, what they said or anything about it.

Even the files of the FBI have been declared by the Supreme Court to be open to defendants unless national security is involved. Can it be that Congress is now to set up a commission which may withhold all information even though it may constitute the very basis upon which some individual is being prosecuted?

This grant of investigative powers has no place in a free society, and we submit that it is contrary to the fundamentals of American government.

NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

This section of the act is particularly shocking in its implications. It gives to the President apparently unlimited power to control the activities of those who receive any benefits, directly or indirectly from the Federal Government. Governmental assistance may be withdrawn, if any discrimination because of race is found to exist, under "such conditions as the President may prescribe." Thus, Federal control may be extended to a terrifying degree. The farmer who participates in the agricultural program, the householder who makes an FHA loan, the veterans who has any insurance program, the construction industry in every public contract, manufacturers who have Government contracts, airlines which receive subsidies directly or indirectly, banks who participate in the Federal Deposit Insurance Corporation program all may be affected.

Every phase of the economic life of the country which in any way participates directly or indirectly in any financial assistance pursuant to any grant, loan, contract, insurance, guarantee, or otherwise may find that all participation and all benefits may be denied unless there is full compliance with someone's ideas (apparently the President), of what should be done in rendering service to persons of some particular race, color, religion, or national origin.

Would this mean that the President would have the right to tell a bank which participated in the Federal deposit insurance program that it must lend money to as many Negroes as whites, or that loans must be in the same proportion as to the number of applicants for loans from the respective races, under pain of loosing its Federal insurance? Would this mean that the farmer would be told how many Negroes and how many white employees he must have on his farm, or that the owner of a home which is financed through Federal funds would be restricted as to whom, or under what conditions he might sell or dispose of his property? These, of course, may be extreme examples, but the language of the act, without limitations, would certainly warrant such construction, and I submit that its enactment would constitute a dangerous delegation of authority for which there is no constitutional basis.

VII. EQUAL EMPLOYMENT OPPORTUNITIES

The bill provides that—

> the Commission shall have such powers to effectuate the purposes of this title as may be conferred upon it by the President.

There is no limit whatever on the power of the President and no limit to the authority which may be delegated. What is the extent of the power conferred? Could it be possible that this delegation of authority might mean that the President could give the Commissioner power to, in effect, take over the personnel department of any company which is operating under a Government contract and which he may consider is discriminating because of race, and set up its own method of selecting and placing employees?

It may well be that such power would not be exercised, but the authority is not limited. There is no constitutional warrant for such power, and I submit that provisions of the bill authorize an invasion

of the fundamental rights of employees to hire and fire as they see fit, and to conduct their own business. In the event this becomes law, would it be possible for the President, through the Commission, to require that employers employ a certain number of persons of a designated race regardless of their qualification or ability to perform the task? We have seen some criticism in the press suggesting that pressure has already been exercised, as a result of which the provisions of civil service have been bypassed in order to elevate, out of order, persons belonging to the colored race. The provisions of this section of the act would give the right to this Commission to require applicants for employment to be hired on account of race, without regard to the need for new employees, displacement of other employees by such employment, or the particular qualifications of the applicant in question for the job to be performed.

Could this control extend to a subcontractor who is furnishing materials and labor in connection with the construction of a home which is being financed through a Federal loan, or even, perhaps, a loan which was being made by a bank which participated in the Federal Deposit Insurance Corporation benefits? If such extensions are possible, and I submit that they are under the literal language of the statute, the act will far exceed any powers which the drafters of the United States Constitution ever envisioned as being vested in the executive authority of the Federal Government. Such an extension will be just another step in delegating to the Federal Government the right to control the daily lives and actions of individuals, and, I submit, that it is inimical to the welfare of our country, and constitutes an actual subversion of human rights and the dignity of man, under the guise of protecting and enforcing the rights of a minority group.

Mr. DOWDY. On the last two provisions, 6 and 7, apparently the Department is undertaking, under an Executive order, to do that very thing now without this civil rights bill being passed.

The Redevelopment Administrator under Area Redevelopment Administration, issued an order bringing this nondiscrimination policy and the FEPC into area redevelopment transactions without this law being enacted.

Apparently the Executive feels it has all the authority it needs under these two provisions already.

I don't agree.

Mr. AYCOCK. Of course, what makes this a great country in my opinion is our right to publicly agree or disagree, and I do not agree.

Mr. DOWDY. Thank you, sir.

Mr. AYCOCK. In conclusion, I therefore, respectfully submit to you, members of this committee, that by and large the bill which is under consideration constitutes an unconstitutional concentration of power in the Federal Government, such as cannot be justified under any theory of constitutional interpretation. The act not only clearly violates the Constitution by extending the powers of the Federal Government beyond those permitted, but grants to the executive department power and authority which will erode and perhaps destroy the system of checks and balances so carefully imposed upon our governmental structure. The act ignores the civil rights and civil liberties of homeowners, businessmen, professional men, and all persons other than the minorities who are sought to be protected.

Our Federal Government is a Government of enumerated powers, limited and decentralized, and this legislation, forgetful of the fundamental concepts of American constitutional government, seeks to further encroach upon the powers and rights of the individual States and to invade the fundamental rights of individual citizens, the maintenance of which is essential to the continuance of liberty under law.

If it is considered that there is need for affirmative action in the fields covered by this civil rights legislation which will, and must, seriously curtail the liberty and freedoms of the individual citizens, then it is submitted that the pepole of America have the right to express their opinion, and to make the final determination as to whether these rights should be conferred upon the Federal Government.

Such action can only be taken by the submission of a constitutional amendment embodying the contemplated proposals. Our first President in his farewell address effectively expressed the situation when he said:

> The spirit of encroachment tends to consolidate the powers of all the departments in one and thus to create, whatever the form of government, a real despotism * * * if in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way the Constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed.

The present legislation contains provisions which strike at fundamental rights of American citizens and sound the death knell of rights reserved to the States under the 10th amendment. If these rights and privileges are once lost, how will they be regained?

Careful, analytical, dispassionate consideration of the provisions of the bill before you, in my humble opinions, compels the conclusion that in it are found the seeds from which may grow those forces which are destructive of constitutional liberty in America.

Thank you.

Mr. WILLIS. Mr. Chairman, I would like to personally express my appreciation for the dispassionate and carefully considered views expressed by the lieutenant governor of Louisiana.

The truth of the business is, Mr. Chairman, that today we live in an age of slogans and polls, and this is true of civil rights. We hear today about conservatism, and liberalism, for instance. But those are relative terms that mean different things to different people.

I, for instance, try to avoid that. I consider myself to be a moderate. I try to progress, but at the same time be moderate in my politics. But one of the conditions of public office is to live in a fish bowl, and to be rated. So we all of us must be rated, by ADA, CIO, NEA, NAM, NAACP, CORE, NEA, PTA, and on and on.

You might take a bill, or five bills, one group will say, "Now, this is a very fine conservative bill. Joe Bloke voted for it, therefore, what a fine conservative he is."

Another group will say, "Well, now, these bills are rank, liberal bills. Joe Bloke voted for those bills, and he is a bum."

So I sometimes invoke Bobbie Burns' line, "Oh would some power the giftie gie us to see ourselves as others see us."

Here again, we are faced with a slogan, "Civil Rights"; this bill has been so baptized.

Frankly, I am in the position, at least I feel that way, of being for civil rights, yet forced to vote against civil rights legislation. Why? Because, as I say, it is one of these twists on words, you baptize the bill, and you are stuck with it.

Coming to several passages in the Governor's statement, the Constitution of the United States provides that the States have a right to determine the qualification of voters, both on the State level and for Members of Congress. The qualifications for Congress shall be the same as Members of the House of Representatives of the various States; that has been the rule thus far, it must be so. Because for 175 years that is the way it has been.

Here you have a proposed change. In one form or another, to whatever degree you want to interpret the bill to lead you to, we are intruding the Federal Government in this area, and it makes it pretty tough, as I say, for me. I believe in that, in the right to vote. I have never said on the floor of the House or in this committee, that I am against the right of the colored man to vote. I have said it on radio, on TV, on the floor, in this committee, I am for it.

Now, you have another constitutional provision that says in the matter of qualification of voters there shall be no discrimination.

I see the Governor recognizes that, that the States have a right to regulate "so long as the test does not involve discrimination, to regulate so long as the test does not discriminate against any voter."

So I think it should be left to the States, unless we want to amend the Constitution. If we don't amend the Constitution, I would be willing even to help sponsor to put on the severest justifiable penalties against States discriminating against the right to vote.

You have a requirement here of a sixth-grade education. I am for that principle. I don't know whether six is the right grade. I mean I am not against such a provision. Why? Well, my father never went to school. Such education as he gained himself would not certainly meet the sixth-grade education requirement. So we have a lesser requirement in Louisiana.

I am in favor of the right to everyone to vote without discrimination. But under the present shape of the Constitution, unless amended, I don't think this public accommodations is appropriate.

The public accommodations features: I don't see how you can secure one freedom by destroying others. I don't think that will work. Today we hear about the right of one minority group to sit in, lie down, and even to boycott, which heretofore has been pretty much of an ugly term.

Well, how about tomorrow? How about the other minority groups? I see my friend from Ohio looking at me. I remember a statement he made in executive session, I hope he doesn't mind, the truth of the business is that there is really no such thing as a majority in this country. Catholics are in a minority. One particular Protestant sect is not in the majority. So the beauty of this country is that it is made up of a conglomerate group of minorities, and we better learn to live with it.

Today we hear of a march on Washington of 100,000 persons of a particular minority. Here again, I am very much for the right of petition and for the right of freedom of speech. But even freedom of speech doesn't give you the right to slander your neighbor.

I think Justice Holmes said the right to freedom of speech gives you, as Voltaire said, "I don't agree with what you say, but I defend your right to say it," and ends in a fire in a crowded building.

How about tomorrow, if a 10-percent minority group, as I understand, 100,000, therefore by arithmetic, we will have a million of others?

Write a petition, fine. It all boils down apparently to the right to take your cause to the street. I prefer the old way of taking a cause to courts. I think it has been the right, I think it is the best way.

Governor, I am so glad you came to Washington, and testified here. You have had an opportunity to look these members over. I am not on this subcommittee, and I appreciate the indulgence of the chairman, but let me say, I am a great believer in blowing off steam. Let people from the grassroots let us know what is on their minds. That is why we have had these hearings for nearly 3 months, to give each an equal opportunity to be heard. But then, Governor, there comes a time, I don't know when, not too long, when members of the full committee, 35 lawyers, from various States, will meet here in executive session for days on end. There will come a time when we will come to grips with this thing and discuss it and reason it out, and the committee being such, and the composition of Congress being such, I don't know what the result will be. As usual, I am going to offer amendments, many of us will, if things go according to pattern. And if things go, again, according to pattern, some of them will be adopted. I am not prognosticating anything.

But I want you to know, Governor, we are going to do exactly what you have suggested in your closing statement: We are going to sit down and reason this thing out. I hope some of these amendments may be adopted—I don't know.

Then, composition of the committee and the Congress being what it is, the end product probably, if things work out according to pattern, will be either good or acceptable. I may be for or against it in the end. But, again, we are given the opportunity to reason this thing out. That is what we are going to do here, with the hope that this will go to the Senate. They have more, you know, more than we have.

I just want you to know that I appreciate your expression of your dispassionate view. And I want you to know we will do what you recommend, the best we can under very difficult circumstances.

Mr. AYCOCK. Mr. Chairman, I want to say what transpired here today certainly confirms what Congressman Waggonner told me, that I would certainly be accorded fair and impartial treatment and given every opportunity to express my views. I want you and the committee to know I do appreciate that.

As far as my Congressman from Louisiana, Congressman Willis, is concerned, I know Louisiana will be well represented on the committee.

The CHAIRMAN. As usual, we have words of wisdom from that Representative from Louisiana, our very good friend, as well.

There is an old story that is illustrative of our hearing both sides of this in Congress. There was an old judge in New York who had the reputation of trying more cases than any other judge in the circuit. One day someone asked how he could try so many cases, and he said, "I will tell you, I used to listen to the plaintiff's case, and then decide the case."

The questioner said, "Did you ever hear the defendant's case?"

And the judge said, "I used to listen to it, but it confused me, and I stopped hearing it."

You have presented what I might call the other side of the coin, and it is necessary for us, a judiciary committee, to know not only the reverse, but the obverse side of the coin.

I am in accord with some of what you have said this morning. With some I am not. But I want to say it is very difficult to differ with one so pleasing in personality and argument and temperament as you are. Your arguments were very well and forcefully presented. I want you to know you have earned our respect.

Mr. AYCOCK. Well, I appreciate that, sir.

The CHAIRMAN. Mr. Waggonner.

Mr. WAGGONER. Mr. Chairman, may I extend my appreciation to you and other members of the committee not only for the courtesy you have extended our Lieutenant Governor on this occasion, because you have confirmed to him what I said to him prior today, the fact that this was no showroom, that this would be a high level committee meeting, that it would be on the right plane. And certainly that is the case.

I myself had the privilege of appearing before your subcommittee, Mr. Chairman, on a day on which you personally could not be here. But I, too, was afforded that same courtesy, and I personally appreciate it.

I know that everything my colleague from Louisiana, Mr. Willis, has said to you, is the case.

I have said to you, Mr. Chairman, on previous occasions, that I personally did not feel there was a better lawyer in the U.S. Congress than Ed Willis. I still have that opinion, and I have no fear, as our Lieutenant Governor, Mr. Aycock has said to you today, that Louisiana will be represented in the full committee, and I know we are going to be well represented.

I appreciate very much the level on which these hearings have been conducted.

The CHAIRMAN. We have Mr. Clyde Fant, from Shreveport——

Mr. WAGGONNER. Mr. Chairman, Mr. Fant is unable to attend. His appearance time was canceled, and I did so notify the committee and ask that that time be allotted to someone else. He was unable, due to reasons completely beyond his control, to attend today.

Mr. CHAIRMAN. Thank you, very much.

Our next witness is Mr. Charles Bloch, very eminent lawyer of Macon, Ga., whose name is known way beyond his State; in fact it is nationwide.

In that connection I want to recognize our distinguished member from Georgia, Mr. Forrester.

Mr. FORRESTER. Mr. Chairman, I deeply appreciate the privilege of presenting a most distinguished and scholarly gentleman, one of the most distinguished citizens of our State. Most of the members of this committee are already familiar with him. They know of his erudite ability. They also know that he follows a pattern of a genuine lawyer. He comes before this committee not for the purpose of engaging in controversy or in making argument, but for the purpose of sitting down and talking with lawyers as lawyers should discuss matters, in the legal sense.

I cannot begin to enumerate to you the great honors our State has conferred on this gentleman, which he has so worthily worn. I can tell you he has been a member of our State board of regents controlling our school system in our State, and a member of the judicial council from our State, president of the Georgia Bar Association, and despite the fact that he has held other high honors he has not begun to hold the honors that the people of Georgia really want him to receive.

When I think of this gentleman I have to register opposition to some legislation which has been introduced to the effect that no man can be a member of the Supreme Court unless he has sat upon the Bench for a number of years. As a matter of fact, it may be a sad thought, to an extent, but as a matter of fact some of our most distinguished lawyers, and I think in this particular case, that this gentleman, had he ever adorned our Supreme Court of Georgia, or any other court, which he would certainly be eminently qualified for, it would be to a distinct disadvantage to him financially or otherwise, because of the tremendous law practice he has enjoyed over the years.

I might say that Louisiana is doing itself proud today. Because it just so happens this gentleman was born in Louisiana.

Mr. WILLIS. In my district.

Mr. FORRESTER. Displaying unusual and rare intelligence, he moved to Georgia when he was a child, and has remained there ever since.

I don't want to take up more of your time. I want you to be able to afford this gentleman as much time as you possibly can, in order that he may discuss this legislation.

I believe you agree with me there is no better constitutional lawyer in the land than this man. Certainly he is one of the greatest in our State, and I think in this Nation.

I am very proud to introduce as my friend and a citizen of my State the Honorable Charles J. Bloch, of Macon, Ga.

STATEMENT OF CHARLES J. BLOCH, ESQ., ATTORNEY AT LAW, MACON, GA.

Mr. BLOCH. Mr. Chairman, gentlemen of the committee, first let me express my thanks to my good friend Congressman Forrester for his fine introduction of me. In that connection I know I speak for all in Georgia when I express our thanks for his complete recovery from his recent illness, and the fact he is back among his colleagues again battling for what he believes is the good of this country.

I was particularly glad to be here today, to appear here, because I was born in Louisiana. I was brought to Georgia at a rather early age.

It happens my maternal grandfather was an officer in a Louisiana regiment of the Army of the Confederate States of America.

Mr. WILLIS. Who was he?

Mr. BLOCH. Aaron Blum, of Baton Rouge, La. All that appears on his tombstone in the graveyard in Baton Rouge is the name (Aaron Blum), dates of birth and death, second lieutenant, Company B, 4th Louisiana Infantry, Confederate States of America.

I know everyone in the South today is saddened by the passing of a great American, Judge Walter B. Jones, of Montgomery, Ala., who died yesterday. His father, Thomas Jones, was an aide on the staff

of Gen. John B. Gordon, of Georgia, and with General Gordon and General Lee at Appomattox was the Confederate officer who bore the flag of truce to General Grant at the time of surrender on April 9, 1865.

Major Jones afterward became Governor of Alabama. He became a Federal judge by appointment of President Theodore Roosevelt. And his son had been judge of the superior courts in Montgomery for years.

I make particular reference to him in this connection, because Judge Jones was fond of quoting from a speech his father made at the dedication of a cemetery in Montgomery in 1874, and I quote one sentence he was so fond of quoting, 9 years after Appomattox, "There is nothing now my countrymen that should keep us apart." Judge Jones did not anticipate the differences in legal views, shall we say, over which we would be battling 90 years later.

I am here as a lawyer to talk with you gentlemen who are lawyers, too. I have not a prepared statement. I would like to have had one, because I know it is far more convenient for you gentlemen for a witness to read from a prepared statement. But there are so many of these bills and they seem to change so fast, and so many viewpoints are expressed, that what you write today may not be applicable tomorrow.

I am not a public officeholder. I have held elective public office but once. In 1927 I was the representative for my county in the House of Representatives of Georgia with Richard B. Russell, Jr., then speaker of the house, later Governor of Georgia, and now, of course, one of the U.S. Senators from Georgia.

I am a lawyer, I hope, I have no aspirations to be anything else, even the position for which my good friend nominated me. I might be in a hopeless minority if I sat there.

As a lawyer I would like to express my opinion as to H.R. 7152. I have read your bill, Mr. McCulloch. It was sent to me along with 7152. I believe yours was prepared and introduced in January; 7152 came along in June, and more or less embodies many of the principles set forth in your bill. So it seemed most logical to take the one which is perhaps the summation of all of them and discuss it as we go along.

Mr. FOLEY. You also received Mr. Lindsay's bill, 6720, did you not?

Mr. BLOCH. Yes, sir. But it was earlier than what I call the composite bill, 7152. I do have it.

I will have to discuss section 1, particularly, off the cuff. I do have somewhat of a prepared statement which I have interlined, underscored, and so forth, as to title II. The other sections, particularly section 5, I won't go much into, unless you want me to, because it is so ably discussed by the Lieutenant Governor of Louisiana, who preceded me.

Title I, on voting rights: I think we have to commence any discussion of these voting rights provisions by a reference to at least three sections of the Constitution of the United States which I think are controlling. First is article I, section 2, paragraph 1, that electors for Members of the House of Representatives, the National House, shall have the qualifications requisite for electors of the most numerous branch of the State legislature. To me that is a clear implication, if not an express statement, that the Congress of the United States has nothing whatsoever to do with the fixing of qualifications of voters who elect you gentlemen to the House of Representatives.

The second provision, the 17th amendment to the Constitution, extends article I, section 2, paragraph 1 of the Constitution to the election of Senators.

The third one is with respect to presidential electors. It is distinctly provided in the Constitution that presidential electors shall be appointed in such manner as the State legislatures may direct.

Now, when you come to write, to prepare, H.R. 7152, I notice that now the voting rights section is made specific and solely applicable to Federal elections. Any Federal election is defined presently in title 42, section 751(e), I think, of the Civil Rights Act.

But without going into a great long discussion of it, I submit for your consideration the question as to whether the Congress of the United States has any more power to prescribe qualifications of voters in Federal elections, if you mean elections of Representatives and Senators and the President of the United States, than it has in State elections.

I am aware of the provision of the Constitution as to the time, place, and manner of election of Representatives (art. I, sec. 4, par. 1). The time, place, and manner shall be prescribed in each State by the legislature thereof, but the Congress may, by law, make or alter such regulations. But I submit to you that that provision doesn't permit the Congress to do what you seek to do here.

All of that is more or less of a repetition of a debate which has been going on, more recently certainly since 1957, when I had the honor of first appearing here, in February 1957, on this subject.

Then we had the literacy bill over in the Senate, on the Senate side, in 1960. All of this literacy test business, or illiteracy test was gone into there. So really we come down to more or less of a discussion of the merits of the literacy test. And we come down first to a discussion of how this title 1 seeks to change the present law in other respects.

Now, it so happens that one of the first cases that was tried under the Civil Rights Act of 1957, as amended by the Civil Rights Act of 1960, was a case that arose in Terrell County, Ga., in which I was counsel for the registrars.

Mr. FOLEY. In fact, you made the announcement of your victory in the district court, right there, in this case, while you were testifying in 1960, is that not so?

Mr. BLOCH. Well, it was shortlived.

You are right. The message came to me while I was testifying.

There was a decision of Judge Hoyt Davis, which held the Civil Rights Act of 1957 unconstitutional in certain respects, and that was directly appealed to the Supreme Court of the United States, which unanimously reversed Judge Davis.

The importance of that here is that the case then went back for trial and was tried in the summer, June 1960. It was tried after the Civil Rights Act of 1957 had been amended. After that provision had been put into the Civil Rights Act the provision which provided that a district judge was enabled to find a pattern or practice of discrimination, and if he found in a given case that there was a "pattern or practice," is the language of the statutes, of discrimination against voters on account of violation of the 14th or 15th amendments, that he should appoint Federal referees. That case was tried before Judge Bootle.

It was extensively tried, and I will say that my adversary was as worthy an adversary as a man ever had in a case. He left nothing undone that could legally have been done, in the trial of that case before Judge Bootle. The judge so expressed himself at the conclusion of the trial.

It resulted in an injunction, and the placing on the voters' list, after a trial of a week, of four voters.

After that, the Government filed a petition with Judge Bootle asking for the appointment of Federal referees in Terrell County to supervise the registration and the voting there.

Now, all that prolog is important, I think, because it so well illustrates that you gentlemen of Congress are being asked to do something that takes law away from the judiciary and puts it in the executive branch of the Government.

I say that because in passing on that application by the Government for the appointment of Federal referees Judge Bootle wrote an opinion, which I hope all of you gentlemen will consider in your deliberations over the bill that is pending before you. The case is *United States of America* v. *Raines, et al.*, and the opinion is reported in the 203 Federal Supplement at page 147, decided in the early part of 1961. In it Judge Bootle refused to appoint Federal referees. It might be well, too, to note Judge Bootle's prior decision, granting the injunction, granted, I believe, in September 1960, and the later decision of the following January, neither one of them was appealed, and they form a rather comprehensive guide for people in Georgia or any other Southern State who are really trying to apply the law and the Constitution of the United States.

Judge Bootle said in the latter decision—

> In order to preserve a healthy federalism, no more findings and decrees should be made in this area of conflict between Federal law and State action than are necessary (p. 151).

Now, I submit to you gentlemen, in order to preserve a "healthy federalism" no more legislation in this area should be enacted than is necessary to protect constitutional rights. And I submit that this proposed legislation goes further than is necessary in that respect. The courts have ample authority now to do all that is necessary.

What more should the Government need than what it has in the Civil Rights Act of 1957, as amended by the Civil Rights Act of 1960?

Mr. FOLEY. May I interrupt you there, Mr. Bloch, to point out that since the enactment of the 1960 act creating the voting referee question there has never yet been appointment of a referee by any court.

Mr. BLOCH. Well, because there has been no finding of a pattern or practice of discrimination by a judge.

Mr. FOLEY. In one case where the court took action was in Louisiana where Negroes names had been stricken from the rolls by the registrar, and the judge restored them—he did it himself.

Mr. BLOCH. Was it appealed to the circuit court of appeals?

Mr. FOLEY. I don't believe it was appealed at all.

Mr. BLOCH. I would say from my knowledge of the circuit court of appeals——

Mr. FOLEY. I think it would have been sustained.

Mr. BLOCH. If a district judge failed to find a practice of discrimination when the evidence warranted or demanded such a finding, that district judge's decision won't last much longer than Judge Davis' decision lasted.

So I think it would be well argued since 1960 there has been no finding of a pattern or practice of discrimination, because none existed in any case brought under the act.

Mr. FOLEY. That is the reason for the question, Mr. Bloch.

Mr. BLOCH. In other words, what you are trying to do, what Congress is being asked to do by the Attorney General, is to substitute for the Federal judge's discretion in the field of equity a mathematical formula. That is what Congress is being asked to do.

Mr. FOLEY. That is a rebuttable presumption based on the 15 percent.

Mr. BLOCH. It doesn't seem rebuttable. It doesn't say so.

Mr. FOLEY. I assure you it is rebuttable, but if we say its conclusive it might run into a very dangerous constitutional question.

Mr. WILLIS. It now occurs to me the state of jurisprudence being as you have stated with reference to referees, and so on, do you share my feeling that in these bills, particularly the primary one that you are now addresing yourself to, that Congress is going pretty far afield in that portion of the bill which has to do with findings of fact in this and that area? Do you follow me?

This bill goes into "Congress finds," "the practice is," "the custom is," the "goings-on are these" and aren't we in a way getting away from the real obligation of the judicial branch of the Government to find facts before a judgment is made?

This bill disturbs me a great deal in that area.

Mr. BLOCH. I see exactly what you mean. I think last week the Governor of Georgia, appearing before I believe a Senate committee, made a very fine statement with respect to that. Congress is being asked to pull itself up by its bootstraps, so to speak, by so-called findings of fact that are put into this bill by the drafters of it. I suppose it certainly had the blessing of the Department of Justice whether it was drafted there or not.

Presently with respect to title II, I was going to allude to some of those so-called findings of fact.

Mr. WILLIS. All right.

Mr. BLOCH. But presently it fits in with your question that Judge Bootle says in the *Raines* case that: "Courts of equity have always had broad powers of discretion."

Of course, that is axiomatic and was applied by the Supreme Court in the second *Brown* case in 361 U.S. page 288.

But in this area, the Department of Justice, or whoever drafted this bill, Congress is being asked to supplant the Court's jurisdiction in equity by a mathematical formula. I have reference to the provision on page 5 of the bill—title I, section 101, page 5, 18th line.

Here Congress is asked to wipe out the privilege that a judge has of exercising the judicial function and finding a pattern of practice, and substituting substantially this:

Whenever in any proceeding instituted pursuant to subsection (c), the complaint requests a finding of a pattern or practice pursuant to subsection (e) and

such complaint is signed by the Attorney General and alleges that in the affected area fewer than 15 percent of the total number of voting age persons of the same race as the persons alleged in the complaint to have been discriminated against—

that in that event certain orders shall be issued and eventually there shall be Federal referees appointed.

On a bare showing of 15 percent of the total number of voting age persons of the color race, which is what this means——

Mr. WILLIS. And based on an allegation?

Mr. BLOCH. Based on an allegation. Now, counsel states that is not a conclusive presumption. But I certainly hope the bill would be amended in that respect.

As it reads now, we don't know whether it is a conclusive presumption or not. If it is, it is certainly unconstitutional I think.

That is one thing to which I wanted to direct your attention.

Mr. FOLEY. Do you think it is mandatory that "it shall be entitled to an order?"

You and I, as lawyers, know "shall" doesn't always mean it is mandatory.

Mr. BLOCH. That is what Judge Bootle has held (203 F. Supp. 150). He said that, but able attorneys for the Government, Mr. Brooks, and Mr. St. John Barrett, and they are very good attorneys, and they contended "shall" meant just that, "shall."

The Judge decided—he supported the contention that "shall" in that situation meant "may" and he held that he was not compelled to appoint referees, that "shall" mean "may," and he refused to do it on a showing that we were trying to comply with the law.

That was 2 years and a half ago. I hope they are still complying with it. I have heard no complaints recently.

Mr. MCCULLOCH. I agree with our distinguished witness and with counsel that this is a very important question and is closely related to the matter that I mentioned when the Lieutenant Governor of Louisiana was testifying.

This bill, or section of the bill, as the witness ably points out, provides that the Attorney General, upon filing a petition or complaint may through a simple allegation be entitled to an order qualifying individuals to vote. How long will it take if it is within a few weeks of the election, to determine whether or not there is a pattern or practice that affects 15 percent of the total number of people in an area?

I get back to repeating the fact that this may lead to leaving the outcome of an election in uncertain status for weeks, if not months, in an election involving the President of the United States.

Mr. BLOCH. That is right.

Mr. WILLIS. May I make another comment at this point? I address myself to the members who have sat through these hearings. The bill in many instances, though it doesn't contain technical "whereas" clauses that this committee, as the Department of Justice knows, frowns on.

It still imports a finding of fact in many instances. Is this not generally true?

Mr. MCCULLOCH. My answer would be "Yes."

Mr. WILLIS. Strictly as a matter of information and for the record, I have an impression—I don't have the files. That whereas this bill came down with these factfindings, very little, if any, effort

was made to support those allegations in this bill with proof before this committee.

Is that true or not?

In other words, in each instance where the bill purports to find a fact, and in that situation therefore we have an allegation in the bill, has the Department of Justice or anyone come down here and supported each allegation of fact with proof?

If not, shall we simply bind ourselves to those facts without proof of them, and in turn bind the courts to those facts without proof submitted to us? Is the record clear on the proof of those allegations?

Mr. McCULLOCH. There is some proof in the record, as I recall. There have been extensive quotations from the findings of the Civil Rights Commission that in certain sections of the country certain facts do exist, and the statements are unqualified statements.

As I recall there was one statement that in over 200 counties of the United States a very small percentage were registered to vote. These are certain findings of fact.

However, if I may have another moment to reply, I am sure the gentleman's statement is completely correct that we accept with reluctance declarations in legislation, in this committee, which have any tendency to be binding upon the courts or administrators.

This part of the bill, at least so far as I am concerned, is going to be studied with great care and it will be necessary that there be dependable evidence in such recitations as are there.

As a matter of fact, I do like such recitations even though the facts may be there in a given instance, in any field. I am not talking about this field of law, but any field.

Mr. WILLIS. I appreciate that statement. I am not restricting myself to this field with reference to simple acceptance of allegation of fact in any proposal. In some counties there exists a situation with certain percentages of registration and voting, or nonregistration and nonvoting—taking that to be true, for the purpose of my question, we would still be faced with a situation where, based on some general allegation with respect to some counties we would take that to be a nationwide situation for program purposes in the administration of this bill in more ways than one. Isn't that true?

I am concerned with that.

Mr. McCULLOCH. It is true because a certain factual situation exists in certain portions of the United States to a greater or lesser degree, whereas in certain sections of the United States there is certainly no discrimination by reason of race, color, or nationality.

Mr. WILLIS. Well, let me pursue one more thing and we will proceed. Let's take as a fact that in the more distant past, take the situation from the point of view of the proponents of this view was worse than it is today, and the more current you become, and that is obvious, the less the facts are accurate.

So, if there has been progress in the past, and if we accept those facts with reference to named counties and we put it in the bill, aren't we disregarding in the future in the bill that progress is being made, and findings of the courts on the law in this bill based upon unproven allegations of fact——

Mr. KASTENMEIER. If the gentleman would yield—what constitutes a fact? I suppose some could consider these purely allegations as

temporary, transitory. It is purely subjective as to whether one construes figures to be fact or not fact.

Mr. WILLIS. I agree, but this is part of our judicial system. Part of winning a lawsuit is proving the facts in each case. That is our system.

Mr. BLOCH. I think what you are arguing is particularly pointed out—I am getting a little out of my logical approach that I meant to use, but on the bottom of page 12 of the bill under title II—and I had not quite gotten to title II, subparagraph (h)—

> The discriminatory practices described above are in all cases encouraged, fostered or tolerated in some degree by the governmental authorities of the States in which they occur, which licensor protects the businesses involved by means of laws and ordinances, and the activities of their executive and judicial officers. Such discriminatory practices, particularly when their cumulative effect throughout the Nation is considered, take on the character of action by the States and therefore fall within the ambit of the equal protection clause of the 14th amendment to the Constitution of the United States.

Mr. WILLIS. If the court is faced by that, isn't it tied down, if this act means anything, if it is part of the law?

Mr. BLOCH. It will be said that Congress finds this to be a fact and we can't go behind it. Look at how ridiculous it is. You might have a hotel in Rhode Island or Maine, which with the "encouragement," "fostering," the language of the bill, of the government of one of those States discriminated against a person not on account of his race at all, but on account of his religion, the hotel refused to admit a person as a guest on account of his religion. Now, go down to the second sentence in (h)—

> when multiplied throughout the Nation, individual discrimination, multiplied several times, becomes State action.

Now, that is the sort of legislation you are asked to pass, that if you have a purely personal action, if that is multiplied 10 or 20 or 30 times, the personal action becomes State action. That is the equation.

Mr. ASHMORE. The author of the bill realized he would have States involved before he could bring it under the 14th amendment, in other words.

Mr. BLOCH. He had to get within the ambit of the 14th amendment. That was before the 13th amendment was injected.

Mr. ASHMORE. Whether he has facts to justify it or not.

Mr. BLOCH. He seeks to get within the ambit of the protection of the clauses of the 14th amendment by multiplying personal action by 25 or 30 or whatever it is, and making it State action.

Mr. ASHMORE. And there is another area, certainly overlooked by the authors of the bill, the mere fact that a low percentage of people of a certain race, or whatever it might be, are registered, or a low-percentage vote, does not necessarily mean discrimination.

Mr. BLOCH. Not at all.

Mr. ASHMORE. If there is any basis for this legislation, it must be based on discrimination under the Constitution.

Mr. BLOCH. It might mean a great many things.

The CHAIRMAN. But it only is a low-percentage vote—what is the reason for the low percentage of the number of Georgia counties indicated in the report of the U.S. Commission on Civil Rights—only a very small percentage of eligible Negro counties to vote in a county have registered?

Yesterday we had testimony to the effect the reason for that was apathy on the part of the colored people.

Now, do you subscribe to that conclusion?

Mr. BLOCH. I think it has a great many reasons, Mr. Chairman. Apathy I think is one of them, though there are a good many campaigns being waged. If we could test it by the *Terrell County* case that we have discussed there, and that is the one with which I am most familiar——

The CHAIRMAN. In some other counties of Georgia there is a very, very substantial percentage of Negroes voting, something as high as 53 percent——

Mr. BLOCH. What do you mean by "eligible" Negro?

The CHAIRMAN. I presume those who have been able to see whatever the laws are in Georgia making them eligible to vote, and the situation in Georgia varies considerably. Macon County, the percentage of Negroes registered who are eligible voters is as high as 53 percent, whereas in Dawson County it is only 0.05 percent, one-twentieth of 1 percent; in Forsyth County it is only one-twentieth of 1 percent.

Mr. BLOCH. What does it show in Bibb County?

Mr. FOLEY. Bibb is not listed in there, Mr. Bloch.

Mr. BLOCH. What does it show in Fulton?

Mr. FOLEY. 41.3 percent.

The CHAIRMAN. No, that is the white. It is 32.1 percent.

Mr. BLOCH. In neither one of those counties, Fulton is Atlanta, Bibb is my hometown——

The CHAIRMAN. But you wouldn't say when 53 percent of the eligible Negro population of a county registered, you wouldn't call that apathy. So why would it be called apathy when it is only one-twentieth of 1 percent?

Mr. BLOCH. I would call it perhaps ignorance, that they are not able to pass the voting tests.

The CHAIRMAN. Well, isn't the State more or less responsible for the literacy or ignorance of its inhabitants?

Mr. BLOCH. Now, we get into the realm of anthropology, sociology, and so forth. The State may be, maybe, 5 percent responsible, but there are people also of the white race, as well as the colored, that are perhaps simply not able to take an education.

The CHAIRMAN. There was testimony here about fear of economic retaliation, very strong testimony.

Mr. BLOCH. That is——

The CHAIRMAN. I am only giving you what the testimony showed and what the record shows that the Civil Rights Commission has prepared.

Mr. BLOCH. Well, I won't debate with the Civil Rights Commission, but my experience has been that what the Civil Rights Commission finds have not always been what I have found to be the facts in a given area.

Mr. ASHMORE. Isn't another reason for apathy or low percentage of voting, according to race, is that historically they have not participated in voting; they are not accustomed to it, and now they are becoming more accustomed to it, and more of them are taking their place in that

field. But, because their father or grandfather didn't, they have never voted. And the same is true of a lot of white people in this country.

Mr. BLOCH. Taking the *Rains* case we discussed, while the chairman was out, and Mr. Foley is thoroughly familiar with the history of that case—when Judge Bootle, in his injunctive order—in his injunctive order, in his first opinion on that case, of which you have the citation, laid down the rules which must be followed by the boards of registrars of Terrell County, those rules were laid down—which I drew—as to what the registrars were going to do. They were going to hear every one that came in, regardless of color, administer the same tests to all, white or colored, and what any one person said or wrote was taken down stenographically, and it was recorded on a recording machine, so that nobody could be falsely accused of trying to intimidate anybody, and so nobody could be accused of not giving everybody the same questions.

So I know that it was intended in that county every colored person who sought to register should be accorded a hearing. What the percentage now registered is, I don't know, but the Negro has been given every opportunity, so far as I know, and I think I would have heard of any breach of these provisions we made.

The CHAIRMAN. Reading from page 164 of the U.S. Commission on Civil Rights Reports, significantly we have the following information, and it is reported that a Negro maid was fired the day she registered. A Negro craftsman was forced to vacate his ship 1 week after registering.

A part-time Negro employee who was one of the five lost his job shortly thereafter. When the primary election day arrived, only 1 of the 50 registered Negroes cast his ballot. A significant aspect of economic retaliation involves Negro teachers who not only should be qualified to vote, but might be expected to be a source of leadership for the Negro community in general.

In several of the 17 nonvoting counties teachers were prevented from providing such leadership where they depend even more frequently than do other Negroes on the white power structure for their job.

In 6 of 69 counties, white school officials were said to have warned Negro teachers not to try to register or agitate for their own rights or those of others on pain of losing their jobs.

In Mississippi, for example, teachers are required to list all the organizations to which they belong, including NAACP, and so forth. I could read a lot more, but it is clearly indicative of the fact that there is economic retaliation in those counties.

Mr. BLOCH. The chairman is authorized, of course, to accept those statements as factual. I do not. I am not familiar with any counties except Bibb and Terrell.

Mr. WILLIS. Mr. Chairman, may I say, and then I will quit, because I don't want to burden the record, but I find inclination on both sides of this issue to accept facts that the other side would repudiate.

Let me give you a specific illustration.

Recently I held hearings in Los Angeles as chairman of the Un-American Activities Committee, and I say this on no implication of rigging these hearings, motion was made, all kinds of allegations

were made, that I was disqualified as a Member of Congress and chairman of the committee, because only 4 percent of the people in my district voted, none of those being colored, all that kind of stuff. Just for curiosity, which I did not put in my record, but I have it in my office, I wired my secretary of state to give me the facts in my district.

I have enough troubles to represent my district without spilling over into any other congressional district.

And in my district the facts are that I represent in round figures 390,000 people. Of those 178,000 are white and over 21 years of age, which is the voting age.

Of that number 70 percent registered and voted.

In my district there are 55,000 colored people over 21 years of age, and of that number 50 percent registered and voted.

Now, these are the figures. And I am proud to say since I have been here for eight consecutive terms that both sides vote for me.

I wish I could have told them if they wanted to make an issue of it come to my district and ask the colored folks to vote against me and we would fight it out.

As I have said, I would sponsor a bill if we provide it within the Constitution as it is today, giving the rights to the States to set out the rules of the game with respect to qualification on one hand, and apply the full power of the Federal Government against discrimination on the other hand, and you don't think under the Constitution we should give the Federal Government the right to accept facts here and facts there and bind this community with unproved, in many instances, statements, as we have developed, and then bind the court in each case to find and determine the facts and practices.

As I say, I feel I am for civil rights, and I am forced to vote against civil rights legislation. So what does that make me?

I don't know. Except I think the people would probably go along with me. They have elected me for eight terms.

Mr. BLOCH. As an illustration of what you are talking about, we had a case in my county maybe just a year ago, and I have been out on these cases and have seen what actually happens, and we had a case down there where some colored people brought suit against the Bibb County Democratic Executive Committee to compel the executive committee, which conducted the primaries, to let the white people, the colored people and the white people, vote at the same polling places.

Up to that time the polling places had been segregated.

Judge Bootle had just decided the case of *Anderson* v. *City of Albany*, in which he held that the segregation of voters at polling places violated the 14th amendment.

So there was no use to go through the trial of the case again, except that in Bibb County we wanted some time to rearrange the precincts.

Now, five or six of the complainants in that case testified they objected to segregation at polling places, and I asked every one of them if they had any trouble at all in my county in registering and voting, if there was any discrimination against them at all on that in my county, and every one of them said there was none.

But you won't find any mention of that kind of thing in the reports of the Civil Rights Commission.

Mr. McCULLOCH. I would like, Mr. Chairman, to interrupt the witness to say that I am greatly pleased that the witness took the time and gave his account of the rules and regulations by which literacy tests are applied in Bibb County.

If able people in every county in the United States were as dedicated to the elective franchise as you have been, Mr. Bloch, and if there were standard operating procedures which were religiously and conscientiously followed, I don't believe there would be much argument about interference with voting rights anyplace.

Mr. BLOCH. Thank you, Mr. McCulloch.

But don't let anybody get the idea that I think Bibb County is unique. I think Bibb County is an example of what is going on in the majority of places in the South.

But my point is that you gentlemen up here are sitting far away and must rely on a conduit to convey to you, and do not always get what the chairman has referred to, most aptly, as both sides of the coin.

The CHAIRMAN. You know, Mr. Bloch, the complexion of the personalities and characters of the members of the Civil Rights Commission, don't you?

Mr. BLOCH. I know some of them. I know Dean Storey, and Dean Griswold.

The CHAIRMAN. Aren't they men of highest probity and character?

Mr. BLOCH. As far as I know they are.

Dean Story does not have the opportunity to make personal investigation. He, and others, have to rely on persons who maybe don't want them to get both sides.

The CHAIRMAN. Don't people bring you reports that, also, may not be true?

Mr. BLOCH. Yes, sir. That is why I tried before I came before you to get firsthand knowledge that I can convey to you of my own knowledge and not from hearsay.

What I am telling you about these two counties, Bibb and Terrell, I am not relying on what anybody told me. What I have said is what I know myself. Very frequently people bring you information that is not true.

Good administrators should be able to separate the wheat from the chaff.

The CHAIRMAN. Have you complained to any of the authorities as to the conclusions or opinions voiced by the Civil Rights Commission?

Have you made any complaints as a responsible lawyer, former president of the bar association of your State, to the authorities as to the fact that these conclusions were false, or anything like that?

Mr. BLOCH. No, sir, I have not made any statement that the conclusions were false, because I don't know that they are false.

What I say is that what they have in that record may be perfectly true, but that they are not fairly representative of the whole situation.

What is in that report may be entirely factual as to a giver community.

The CHAIRMAN. But these facts as to the number of Negroes registered are a number of public record. They can't falsify these public records.

This is not a question of subordinates bringing information to the Civil Rights Commission. Those are records borne out by the facts that appear in the archives and records of your own State.

Mr. BLOCH. Mr. Chairman, let's take your State. Take the county in which New York is located—

Mr. FOLEY. Five counties.

Mr. BLOCH. Well, take one of them, take Manhattan.

How many eligible Puerto Ricans are registered to vote in that county?

The CHAIRMAN. Nowhere near the number that should have been registered, because we have a statute which provides that they cannot register to vote unless they speak and understand the English language.

That is in our law and it is faulty. We are gravely in error, and I, at least, admit that error, for my State.

Mr. BLOCH. So if a Puerto Rican is eligible, he is not classified as eligible, because he cannot speak the English language.

The CHAIRMAN. But if there are any irregularities I would be the first to admit it, for my State. There used to be a great many. In Brooklyn they used to vote names from tombstones. But that has gone by. If I find anything like that I would admit the wrong and try to right it. I would not come before a congressional committee and try to defend that practice.

Mr. BLOCH. I am not trying to defend it.

What I say is there may be in a county in Georgia 5,000 colored people above the age of 18, now that is the figure that the Commission takes as eligible voters, 5,000 above the age of 18, in a given county.

Now, how many of these 5,000 have the requisite ability under the constitution and laws of Georgia, fairly and impartially applied——

The CHAIRMAN. Do you have a literacy test there?

Mr. BLOCH. Yes, sir. I talked about that when the chairman was out of the room.

The CHAIRMAN. Of course, I don't want to go into that phase. But there is plenty of evidence in the Civil Rights Commission reports as to the abuses of literacy tests not only in your State but other States, that prevent Negroes from being registered.

How do we prevent that?

Mr. BLOCH. In Terrell County where the complaint was made that literacy tests were unfairly applied, in Federal court it was tested and four names were placed on the list, as a result, which I assume were put in to guarantee the fair application of the literacy test.

The CHAIRMAN. Your literacy tests in Georgia are as follows:

Must be able to read aloud or write correctly in English any paragraph of the Constitution of the United States or of Georgia.

The registrar shall mark on the registration card whether or not the applicant can so read or write and whether the inability to do so is due to physical handicap.

If applicant cannot sign his name he shall make his mark and register and the registrar shall sign applicant's name.

You have apparently the requirement they must not only read the Constitution, be able to read it aloud, and be able to write correctly in English, any paragraph of the Constitution of the United States, or Georgia.

Apparently the way that is administered has given rise to a great deal of comment adverse to the interests of Georgia—adverse, rather, to the fairness.

They say there are abuses in the administration of that literacy test.

Mr. BLOCH. Yet—that was the complaint in the *Terrell County* case, complaint was made that he must read any provision of the Constitution, and the complaint was that when white applicants came in they give them one sentence to read, and to the colored applicant they gave a long involved paragraph.

The ruling in that case by the Federal judge, and the one that I think is being followed, is that the same paragraph must be given to every segment of voters.

Mr. MCCULLOCH. Let me ask this: since you helped draft this standard operating procedure which has eliminated discrimination in the literacy test what has been the increase, if any, in Negro registered voters, since that time?

Mr. BLOCH. I can't answer that question.

I would be glad to find out.

I think it is certainly pertinent.

Mr. MCCULLOCH. Yes. I think so.

Do you know how many counties in Georgia now use similar fair standard operating procedures as you drafted, and which were approved in Bibb County?

Mr. BLOCH. I think I recall it.

Mr. ASHMORE. In further response to the good chairman, it should be emphasized again that we shouldn't forget that the basis for these bills, if there is a basis for them, must be discrimination. I am against discrimination for any reason, all people should be treated alike under same or similar circumstances. But where there has been discrimination found, and it has been found in some instances, for instance, a few days ago a judge ruled there was discrimination in the State of Alabama, and the court ruled that certain people's names who had been discriminated against should be put on the registration rolls. Therefore the Federal court, in all instances where it is brought to their attention and proof submitted of discrimination, the Federal court has taken care of it, provided that the discrimination be stopped and the voters' names put on the books.

There is plenty of remedy under the law as we have it today. Would you agree?

Mr. BLOCH. Well, I would say first to Mr. McCulloch, last summer (1962) I had a phone call from an Assistant Attorney General of the United States, while I was in Chicago, en route to the coast, saying there had been complaints filed with him about the results of the use of the system in Terrell County, and I had to tell him I had nothing further to do with that case, that the case was over and I had not been retained generally to handle it, and upon my return I would be very glad to get him what information I could.

I was gone a month or 6 weeks and found on my return a suit had been filed down there. I was not of counsel in that suit and I do not know the results of that case. I will find out just what the allegations and results were in the suit filed with respect to Terrell County about August or September 1962.

There is one other phase of it there, of this title I. That is this provision at the bottom of page 4:

> If, in any such proceeding, literacy is a relevant fact, it shall be presumed that any person who has not been adjudged an incompetent, and who has completed the sixth grade in a public school, or in a private school accredited by any State or territory or the District of Columbia, where instruction is carried on predominantly in the English language, possesses sufficient literacy, comprehension, and intelligence to vote in any Federal election as defined in subsection (f) of this section.

Assuming for the sake of the argument, which I don't admit, that Congress has the constitutional power to pass any such legislation, and omitting any discussion as to whether a person who has completed the sixth grade—whether a 12- or 13-year-old child, as that would be in our State, whether such a child has sufficient literacy to determine whether he would vote for me or anyone else for Congress, I submit we do not get very far with legislation——

The CHAIRMAN. You know, Mr. Bloch, that in many States there is no literacy test whatsoever. In the bulk of the States in this country, in other words, there is no literacy-test requirement.

Mr. BLOCH. Might I suggest the 10th amendment indicates if the other 20 want to do it, they should do it, but it shouldn't be forced on the other 20 by Congress. If 30 States want to do it, that is perfectly all right. That is the State right, and the State has the right to adopt a provision of that sort. But I submit if Arizona, Hawaii, New Mexico, want to do that, there is no reason we in Georgia should have to do it.

The CHAIRMAN. All we have to do here is to create a presumption. You can rebut the presumption and say the person was not literate and therefore was unqualified. It says "presumption."

Mr. BLOCH. I don't know whether it is conclusive or rebuttable. But assume it is rebuttable, the way I would deal with it, and I have written this down to be sure I get it accurately, all a State would have to do to be very sure that no student completes the sixth grade unless he does possess sufficient literacy, comprehension, and intelligence to know what he is doing when he exercises the right of suffrage, would be two things: For each State, if that law becomes prevalent throughout the country, each State should require a student to study American history and civics thoroughly, before he completes the sixth grade, and perhaps the way to do that would be to make the present voter's literacy test, the test Mr. Foley just showed to you, the Georgia literacy test, a part of the sixth grade curriculum or course of study.

I realize of course that that might subject our schools to Federal referees to supervise the teachers. But certainly the States would still have the right to prescribe curriculums for the first six grades.

I think it would certainly be fair, if a sixth-grade education is going to be the test, without any prescription of what Congress means by sixth-grade education, that the State would have the right to see to it that a student didn't get out of the sixth grade until he could pass the test as laid down there.

The CHAIRMAN. I think, Mr. Bloch, this would be a good time to recess for lunch.

Would it be convenient for you to come back at 2 o'clock?

Mr. BLOCH. Yes, sir. It would be agreeable to me. You have been very kind to me. I would like to take about half an hour more on title II.

(Whereupon, at 1 p.m., the subcommittee recessed, to reconvene at 2 p.m.)

AFTERNOON SESSION

The CHAIRMAN. We will resume the testimony by our distinguished fellow attorney, Mr. Bloch, of Georgia.

Mr. Bloch.

Mr. BLOCH. I was about to note, Mr. Chairman, that our time was necessarily limited. I was about to pass on from section 1, title I, rather, to title II, but I wanted to call attention to the fact that the present subsection (f)——

Mr. FOLEY. Talking of 42 U.S.C. 1971?

Mr. BLOCH. That is right.

Mr. FOLEY Now you are talking about subsection (e) as amended on page 5, line 8 through 1 of the next page, the new subsection (f)?

Mr BLOCH. That is right. I don't have the present subsection (e) here. It says whenever in any proceeding instituted pursuant to subsection (c) the court finds that any person is deprived, and so forth—

the court shall upon the request of the Attorney General, and after each party has been given notice and the opportunity to be heard, make a finding whether such deprivation was or is pursuant to a pattern and practice.

The present bill proposes to add a subsection (f), and designate that subsection "(f)" as "(g)." The proposed subsection (f) will read:

(f) Whenever in any proceeding instituted pursuant to subsection (c) the complaint requests a finding of a pattern or practice pursuant to subsection (e), and such complaint, or a motion filed within twenty days after the effective date of this Act in the case of any proceeding which is pending before a district court on such effective date, (1) is signed by the Attorney General (or in his absence the Acting Attorney General), and (2) alleges that in the affected area fewer than 15 per centum of the total number of voting age persons of the same race as the persons alleged in the complaint to have been discriminated against are registered (or otherwise recorded as qualified to vote), any person resident within the affected area who is of the same race as the persons alleged to have been discriminated against shall be entitled, upon his application therefor, to an order declaring him qualified to vote, upon proof that at any election or elections (1) he is qualified under State law to vote, and (2) he has since the filing of the proceeding under subsection (c) been (A) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (B) found not qualified to vote by any person acting under color of law. Such order shall be effective as to any Federal or State election held within the longest period for which such applicant could have been registered or otherwise qualified under State law at which the applicant's qualifications would under State law entitle him to vote: *Provided*, That in the event it is determined upon final disposition of the proceeding, including any review, that no pattern or practice of deprivation of any right secured by subsection (a) exists, the order shall thereafter no longer qualify the applicant to vote in any subsequent election.

I interpolate, as Mr. McCulloch pointed out, a man may have voted and decided the election and still be later held not qualified.

The CHAIRMAN. Wouldn't it be an application for a recount?

Mr. BLOCH. It might not be decided until too late.

The CHAIRMAN. We have had cases where fraud was discovered after election, sometimes fraud discovered before, and there is no

determination by the court until after election, and if the fraud is discovered there is an order for a recount, and in some cases a new election is ordered.

Mr. McCULLOCH. That is generally the law in the State of Ohio. Usually those cases involve individual, separate, distinct voting practices, or in the case of New York, and it would seldom if ever affect who was to be the President of the United States.

The Attorney General dwelled at great length before this committee upon the need for some of this legislation because the action of the Federal courts were, in some instances, long delayed, and he cited two or three instances where a case or case, in voting matters, have been pending since 1960 or 1961.

Now, do you think in these troubled times of the world we are going to be properly in a position to have the question of who is President await months or even years?

The CHAIRMAN. That is of course a very extreme case. If, on the other hand, we don't have some measure of this first and you have recourse to the courts, unfortunately, we find in some comunities, not too far distant from your own, Brother Bloch, that the judges have been dragging their feet, and I say that advisedly, deciding some of these civil rights cases.

I have in mind one case of a judge who held a desegregation case 7 years, and it is not yet decided.

We have innumerable cases where judges have held these cases over 2 years.

Now, if the colored man has to wait for relief until the court acts in these cases——

Mr. McCULLOCH. I would like again to comment upon the possibility of this deplorable situation coming about. This very careful committee has in the past always used the test of that which is possible, not necessarily probable. And this is a possibility, that I mentioned.

And if I can be critical, and I mean it constructively, on line 14, it is only after the court finds this that he is no longer a qualified voter. Lines 14 and 15, on page 6, "the order shall thereafter no longer qualify the applicant." It doesn't say his vote shall be disqualified ab initio.

Mr. BLOCH. I see it. It doesn't relate back, at all.

Mr. McCULLOCH. That is right.

Mr. BLOCH. To me as I read it, and I have not studied this as much as I would have liked to before I came before this committee, but there was another—I wanted Mr. Foley particularly to hear this suggestion, and the chairman, too—there was another suggestion that I had as to that section, that we might look into, and that is, it seems to me to be very vague as to by whom the application shall be filed, and what rights the opponents have when the application is filed.

Suppose for the sake of the argument we assume, if it happens in Macon, that the application must be filed with a Federal judge of the middle district of Georgia. Does he under this proposed new section—does the opposition have the same right you gave to the opposition in the act of 1960?

I am sure the chairman and other members of the committee will recall we had quite a discussion before the 1960 act was passed as to

whether or not this was an ex parte proceeding. You will remember as a result perhaps of that discussion and similar discussions, the act was amended to provide that the court should upon request of the Attorney General and after each party has been given notice and the opportunity to be heard, make a finding whether such deprivation was or is pursuant to a pattern or practice.

Now I lay down the query as to whether or not that same method of procedure is intended in the new format, in the case where the mathematical formula is to be used. Will the opposition have——

Mr. COPENHAVER. I asked the Attorney General that question, whether the defendant in the case would have the right to challenge the allegation of 15 percent. He said it was his belief that they would not under the existing act, that the defendant woul not at that time have a right to challenge the allegation of the 15-percent figure.

Mr. BLOCH. Certainly, when you get into an election, which as Mr. McCulloch pointed out, may be decided, despite your recounts and all that sort of thing, I don't think we would want to run into a situation such as that which obtained in a Midwestern State after the last election, where they had to have the supreme court of the State decide who was the Governor on the night before he was to take office.

Mr. MCCULLOCH. And that supreme court decision was not handed down until many months following the election in November.

The CHAIRMAN. Mr. Bloch, I get the thrust of your argument, namely, if the Attorney General comes forth with a statement on his own that 15 percent or more are disqualified, that that is equivalent to a pattern, that is apparently something that must be accepted, nobody can challenge it. I admit that is going pretty far.

On the other hand, what are we going to do? You may not agree, but assume the facts are true, that many Negroes have been disqualified and want to go into court, having been disqualified under the 1960 act and want to go to court and are involved in a long proceeding; the other side is going to be vigilant and is going to use the knowledge and expertise of renowned counsel to resist the local Negro's application. By the time the election comes around the case is still undecided. So that the remedy given under the 1960 statue will have been deemed abortive. What are you going to do under those circumstances if you want to render some relief? How would you address yourself to it? You would say, I know, don't have it, at all. But suppose there were such a situation, what would you do?

Mr. BLOCH. Assuming the necessity for such law, and the legality?

The CHAIRMAN. Yes.

Mr. BLOCH. I think you have all the law you need right now.

The CHAIRMAN. The administration feels that is inadequate and has not been an answer to the evils that they say exist.

Mr. BLOCH. That "they say" exist. Let me tell you what I suggest. I think we have laws enough.

I noticed in the paper in the last 2 or 3 days, since I left home, that a suit had been filed in Birmingham, Ala., in the last 2 or 3 days—wasn't it, Mr. Foley?—alleging that 2,000 Negroes—let's see what happens to that suit under the present law. You have able judges down there. You have three as able judges as I ever knew, now, in Birmingham, Ala., who administer the law as they see it.

Mr. McCULLOCH. Mr. Chairman, I would like to make a comment before we leave this particular point.

Mr. WILLIS. But let him complete.

Mr. McCULLOCH. Certainly.

Mr. BLOCH. If a pattern of practice of discrimination exists in Jefferson County, Ala., it will be found by one of those judges. If it doesn't exist, there ought not to be any mathematical formula substituted for the judge's discretion in a court of equity.

Mr. McCULLOCH. Now I would like to say that it is regrettable that existing statutory law especially since 1960 has not been used as an instrument against alleged evils in so many places. There have been no more than two dozen suits, as I recall it, filed in all that time, if that many.

Furthermore, in addition to that legislation which would be the instrument against these evils, this Congress created some 85 new Federal judgeships, which should give new judicial power to proceed without any unnecessary delay in the determination of these cases.

Mr. FOLEY. For the record, Mr. Bloch——

The CHAIRMAN. Of course, I want to say there have been quite a number of cases brought by the Department of Justice, and the Department of Justice has limited means, personnelwise and moneywise, and they can't be all over the lot. They are doing the best they can, as I see it. I would that they had the ability personnelwise and moneywise to bring more of these cases under the 1960 act, but that is not in the cards.

Mr. BLOCH. Under 1970(e), United States Code Annotated, note how many cases were cited in it, under which a pattern of practice has been sought. I looked, and the only one I found was the only one I already knew about, before Judge Bootle.

Mr. FOLEY. Wasn't there one in Louisiana, but the judge did it himself?

Mr. BLOCH. There was one in the district court, I believe, in Louisiana.

The CHAIRMAN. As I remember it, you opposed this 1960 provision, as to voting?

Mr. BLOCH. Yes; I opposed it.

The CHAIRMAN. And you oppose the one now?

Mr. BLOCH. I do. But we have one now, I wonder why they want to change it. We had enough before 1960, I feel, and certainly we have enough now. What I most strongly inveigh against is the substitution of a mathematical formula for a judge's discretion.

Mr. FOLEY. Before we leave this, I want to get one thing straight for the record.

Today under most State laws, or under Federal law, you can get a temporary restraining order, can't you, on a mere allegation, where you have the threat of immediate injury?

Mr. BLOCH. Yes. It doesn't last but 10 days.

Mr. FOLEY. That is really an ex parte proceeding.

Mr. BLOCH. It is an ex parte proceeding. The judge may grant it, he don't have to, may grant it under rule 65, but he has to give his reasons for granting it ex parte.

Mr. FOLEY. If we changed that word "shall" to "may" in here, it might make a difference, in your opinion?

Mr. BLOCH. No; I don't think you need it at all. Assuming you are going to pass it, any improvement would be worthwhile, of course.

Mr. FOLEY. Mr. Bloch, you go down on page 5, to line 24, where it says "as the persons alleged to have been discriminated against shall be entitled," strike "shall" and substitute "may."

Mr. BLOCH. And then put in "after notice and opportunity to be heard" to the other side.

Mr. FOLEY. In other words, take the language of the 1960 amendment and insert it in here?

Mr. BLOCH. That would certainly improve it. From my viewpoint. But you would still have left the 15 percent factor, which I say is all wrong, that a court of equity should not be compelled to grant an injunction upon a mathematical showing without going into any reason why that 85 percent has not voted, cannot vote.

Mr. Chairman, I did not intend at all to draw invidious comparisons when I asked you about Puerto Rico, the Puerto Ricans. But I wanted to illustrate this, which I think is most important. You use the phrase "eligible voters." Now a Puerto Rican in New York, regardless of what you all think about it, the fact remains a Puerto Rican is not an eligible voter. That may be changed by the State of New York.

Yet, you see in here, that 15 percent of the total number of voting age persons alleged in the complaint could have been discriminated, in other words, you are treating 100 percent as being eligible.

The CHAIRMAN. We would not object to a revision like this, or a provision, if 15 percent or more of our Puerto Ricans are deliberately discriminated against, I certainly wouldn't object to Federal registrars coming in.

Mr. BLOCH. Suppose the Puerto Rican can speak English, but suppose he can't read or write or understand the difference between the two candidates aspiring to public office? If he had no knowledge at all, would you consider him an eligible voter?

The CHAIRMAN. All I can say, as a matter of fact in New York if we err, we err on the other side, we allow them, illiterate or not, to vote. We have no hesitancy about allowing them to vote.

Mr. BLOCH. Well, I don't want to get into that. After we get through, if I could do what you gentlemen do on the floor—if I could revise and extend my remarks——

The CHAIRMAN. Oh, certainly.

Mr. BLOCH. As to title II, section 201(a) consists of so-called findings that we discussed this morning, whether these findings are findings of fact, relevant or irrelevant, or merely expressions of opinion or conclusions of the pleader it seems to me to be immaterial at this juncture, except I was struck with one of them. Title II, on page 2.

Mr. WILLIS. What line?

Mr. BLOCH. Line 14.

Business organizations which seek to avoid subjecting their employees to such discrimination and to avoid the strife resulting therefrom resulting are restricted in the choice of location for their offices and plants. Such discrimination thus reduces the mobility of the national labor force and prevents the most effective allocation of national resources, including the interstate movement of industries, particularly in some of the areas of the Nation most in need of industrial and commercial expansion and development.

I was struck with this and the apparent desire of the drafter of the bill to aid in moving industries into the South from New England and the North and East, complaining about discrimination in the South preventing industries from moving in there.

So I don't reckon I ought to be fussing about that part of it. But it did impress me when I read it as maybe helping the South to get industries.

But the real issue is, as to title II: Is title II of the bill constitutional under the Constitution of the United States as presently construed in decisions of the Supreme Court of the United States?

Section 201(a) to be valid must satisfy one of three tests:

I first said two, you will see in a minute why I now say three.

One, it must be appropriate legislation under section 5 of the 14th amendment, or, two, it must validly and constitutionally regulate commerce among the several States under article 1, section A, paragraph 3 of the Constitution, and, three, since I have been reading the newspapers in the last week, I have added, it must be appropriate legislation under section 2 of the 13th amendment.

THE CHAIRMAN. Mr. Bloch, may I ask you this:

You read a paragraph on page 12, line 14, and following, about business organizations, and so forth, and I take it that you are fearful that businesses might move, industry might move from the South to the North?

If that is so, I think it is the other way around. We in the North are complaining bitterly about the transfer of locations of plants from the North to the South.

Primarily because labor is cheaper down in the South, and union restrictions, if there are any unions, are not so severe in the South as they are in the North. So it is the other way around, as far as industry and commerce are concerned.

A good many of the industries in the North are going South.

Mr. BLOCH. Maybe I though it referred to the South, because I recall when Franklin D. Roosevelt was President, he referred to the South as being the Nation's economic problem No. 1. And we have improved a whole lot since then, but I still thought maybe that is what the drafter of the bill was talking about.

Mr. WILLIS. Mr. Chairman, along that line—and Mr. Bloch is about to discuss the constitutional connotations of title III, and I want to follow that, but while we are now on page 12, paragraph G, I go back to the question I asked this morning, and this is it:

Here you have in paragraph G serious allegations of fact.

Congress is finding, or at least the Attorney General alleges those to be the facts. And I again ask, with reference to these three sentences, did the Attorney General or anyone from downtown, or any witness come here and prove those things?

Does that meet any burden of proof that those things have been set out on the record, or do we accept them as such?

The CHAIRMAN. There have been witnesses who touched on these things generally, not specifically, but generally they have indicated what you might call for lack of a better term "climate," that a climate of discrimination exists on various levels of American life.

Mr. WILLIS. Was there proof that "business organizations are frequently hampered in obtaining the services of skilled workers and per-

sons in professions who are likely to encounter discrimination based on race"?

The CHAIRMAN. They touched on the periphery, did not touch it in depth.

Mr. WILLIS. The second sentence is:

Business organizations which seek to avoid subjecting their employees to such discrimination and to avoid the strife resulting therefrom are restricted in the choice of location for their offices and plants.

Did anyone testify to that?

The CHAIRMAN. I don't recall that.

Mr. WILLIS. The third sentence is:

Such discrimination thus reduces the mobility of the national labor force and prevents the most effective allocation of national resources—

and so on.

The CHAIRMAN. That might flow from the other sentence.

Mr. WILLIS. But there is no evidence. It flows from that, but did anyone testify on that?

If the first two are true, the third would flow. But there being no evidence on 1 and 2, then No. 3 is a faulty conclusion.

The CHAIRMAN. I would say the only evidence was very general, nothing specific.

Mr. WILLIS. Yes.

Mr. BLOCH. I would ask what is the necessity of Congress making these sort of findings at all?

The CHAIRMAN. We have done that in a number of bills.

Mr. BLOCH. I know.

The CHAIRMAN. I don't know what the practice is. On balance, perhaps, we do it too much. I don't know.

Mr. BLOCH. As I recall it, it started back during the thirties in the "New Deal" legislation, to show that Congress had a specific evil before it which it was seeking to remedy, and to prevent the courts from having to search for what evil was sought to be remedied.

The CHAIRMAN. As I say, you could easily find a number of statutes which have those generalizations.

Mr. BLOCH. Oh, yes, I say there are very many of them.

But if they have the purpose of justifying Congress in enacting legislation, ought not Congress to be very, very careful in making any findings unless the Congress is absolutely convinced beyond a reasonable doubt that the findings which it makes are true?

The CHAIRMAN. I can assure you, Mr. Bloch, we will undoubtedly filter these phrases through the minds of—as was said this morning—35 good lawyers, and we will come up with something worthwhile.

Mr. BLOCH. All these prefaces are important, I think, in the discussion of title II.

There has been cited to you, I know, time and time again the *Civil Rights* cases in the 109 U.S.

I was anxious to direct your attention to a case that preceded those, the case of *United Ctates* v. *Harris*, in 106 U.S., page 629.

Mr. WILLIS. What was the year of that decision?

Mr. BLOCH. Let's see, the *Civil Rights* cases were 1883. The *Harris* case would be about 1882.

For this act to be appropriate legislation under section 5 of the 14th amendment it must appear that it prevents a State from denying persons within its jurisdiction the equal protection of the laws.

Those whose acts are sought to be regulated are listed in section 202(a) (1) (23) of title II.

All private persons, individual or corporate, no one of them is an arm of the State. In *United States* v. *Harris*, section 5519 of the Revised Statutes was being considered by the Court. This section was framed to protect from invasion by private persons the equal privileges and under the laws of all persons and classes of persons.

The Court speaking through Justice Woods said of the 14th amendment—and right there, I would say something about Justice Woods' background.

Justice Woods was appointed to the Supreme Court of the United States from Georgia. But Justice Woods was a native of Ohio. He was appointed to the old Circuit Court of the United States after the War Between the States, he had been a general in the Northern Army during the War Between the States, and had moved South, or stayed South after the war, and became a circuit judge by appointment by General Grant.

While he was on the circuit bench he decided one of the first cases under the "separate but equal" doctrine, *Bertonneau* v. *The School Board of New Orleans.*

After that a vacancy occurred on the Supreme Court of the United States and he was appointed to the Bench by President Hayes, also of Ohio.

Now, it was that Justice who handed down this opinion for the Supreme Court of the United States in the *Harris* case, just about 12 years after the adoption of the 14th amendment.

> The language of the amendment does not leave this subject in doubt. When the State has been guilty of no violation of its provisions; when it has not made or enforced any law abridging the privileges or immunities of citizens of the United States; when no one of its departments has deprived any person of life, liberty, or property without due process of law, or denied to any person within its jurisdiction the equal protection of the laws; when, on the contrary, the laws of the State, as enacted by its legislative and construed by its judicial and administered by its executive departments, recognize and protect the rights of all persons, the amendment imposes no duty and confers no power upon Congress.

In so holding the Court followed *United States* v. *Cruikshank*, 1 Woods 308; 92 U.S. 542; *Virginia* v. *Rives*, 100 U.S. 313. In the last-named case, the court categorically said:

> These provisions of the 14th amendment have reference to State action exclusively, and not to any action of private individuals.

Those cases, *Cruikshank*, *Harris* and *Rives*, were the foundation of the most frequently cited case, the *Civil Rights* cases, in 109 U.S. at page 3. They constitute the law of the land as declared by our Supreme Court since the adoption of the 14th amendment.

Now, assuming that to be the law of the land, what is there in this section, title II, to change the established law of the land?

The CHAIRMAN. Do you think the Court, as now constituted, would reaffirm those old civil rights cases?

Don't you think that the underpinnings of that old *Civil Rights* case probably has been swept away by an ever-broadening concept of State

action and by the ascendancy of the public interest over property rights?

Mr. BLOCH. I can't answer that question. I don't know what the present Court would do. I have not the slightest idea.

The CHAIRMAN. The court overruled in the *Brown* desegregation case *Plessy* v. *Ferguson*——

Mr. BLOCH. But in the South we are told we must obey *Brown* v. *Topeka*.

It is the law of the land. If that is so, why shouldn't Congress and the Court obey the law of the land in these cases?

If we have to obey the law of the land as decided in 347 U.S. why should not every man sworn to uphold the Constitution of the United States obey the law of the land and not say, "I don't have to follow those because the Court, as presently constituted, will change things?"

I think what is sauce for the goose is sauce for the gander. I saw not long ago where 46 distinguished lawyers signed a letter directed to Governor Wallace——

The CHAIRMAN. But when the Supreme Court has overruled a number of its previous decisions, don't you think—in the *Baker* case they overruled the—in the reapportionment case, Plessy against Ferguson, they overruled in the *Brown* desegregation case, they overruled Plessy against Ferguson, we have a number of cases where the Court itself has changed its opinion because of changed conditions, so wouldn't you say the court itself, not as petitioner Findlay Doom said, that the Supreme Court follows election returns, but they do follow trends and changes that occur.

Apparently that is a conclusion, which I personally drew from three important precedent shattering decisions; and does not that give rise to the thought that they may again change, in connection with the decisions decided back in 1883, with respect to public places of accommodation.

Mr. BLOCH. The Constitution of the United States has not been changed since 1883. The personnel of the Court may be, and the population may be increasingly mobile, as the language of the bill has it—

But it occurs to me, Mr. Chairman, that when I held up my right hand and was admitted to the bar, and I swore to uphold and defend the Constitution of the United States, what I am swearing to uphold is the Constitution of the United States as consistently declared by the Supreme Court, and that I have no right to assume that the Court, as presently constituted, might change the declared law of the land by reason of changed conditions when there has not been any change in the Constitution of the United States.

Mr. WILLIS. Mr. Chairman, may I suggest at this point that the witness is completely consistent in his testimony before this committee?

Because in his previous appearance he pitched his argument with respect to the *Brown* decisions, and the related decisions, I said he disagreed, but he wove his arguments within those decisions, and includes conclusions not out of disrespect for them. And I say he has been consistent in the views he expresses.

The CHAIRMAN. Oh, there is no doubt about that.

I should say the gentleman has been eloquently consistent.

Mr. BLOCH. My position in that respect, Mr. Willis is amply demonstrated in a case in which I am now counsel, known locally as the *Savannah School* case, in the Southern District of Georgia. Two other lawyers and I represent the intervenors in that case. And we have said distinctly that we are not asking Judge Scarlett or any other district judge or circuit courts of appeals to ignore *Brown* v. *Topeka*, and its companion cases, that we are not asking the lower court judges to set aside and say I will not follow *Brown* v. *Topeka*.

In that case Judge Scarlett says *Brown* v. *Topeka* was decided on its own peculiar facts, and that the Court there derived a conclusion of law from findings of fact.

And what we want the opportunity to do and have the opportunity to do, is to show those facts were wrong.

The CHAIRMAN. There were a number of cases preceding the *Brown* desegregation case, and not speaking as a lawyer, I remember reading of a colloquy between General Beauregard and Gen. Robert E. Lee, on the subject of consistency, and General Beauregard said it may be unpatriotic at times to follow the past and do now what would be consistent with the past.

Mr. BLOCH. Well, General Beauregard was wrong, although he was from Louisiana.

The CHAIRMAN. You can't get away from Louisiana.

Mr. BLOCH. Because if that sort of belief is the law of the land, we might just as well throw the Constitution out of the window, if the guiding star and guiding light when you take an oath to uphold and defend the Constitution of the United States—if you are going to be guided by what you think the Court might decide in the future, then we don't have any law and the oath is a vain and useless thing.

If one sworn to uphold and defend the Constitution of the United States came to consider whether this bill was in violation of constitutional principles as repeatedly declared by the Superme Court what is there in this section which would justify a legislator or a judge in ignoring the established constitutional principles.

Certainly there is nothing in any of the findings which would, if it could, convert purely personal action into State action.

These findings are in section 201(h) of the bill denominated "discriminatory practices."

If they are such, they are not those of the State. If they had been there are decisions of our courts if not statutes, which can be used to halt them.

There is an effort in section 201(h) to convert these individual practices into State action. The attempted conversion rests on two bases:

One base is that the practices are in all cases encouraged, fostered, or tolerated in some degree by the governmental auhorities of State in which they occur which license or protect the businesses involved by means of laws and ordinances and the activities of their executive and judicial officers.

I emphasize the word "officers." Its use causes me to doubt the truth of the finding. I have heard there are hotels in Maine, Rhode Island and New Hampshire which discriminate against minority groups aside from racial groups. I doubted that if such discriminatory practices exist that they are fostered, encouraged, or tolerated by the governmental authorities of those States.

But even if they were, even if one who happened to be a governmental authority encouraged discrimination that would not constitute State action.

Mr. WILLIS. May I say at this point, Mr. Chairman, with reference to this dissertation, that the Supreme Court as now constituted would reverse the previous pronouncements that the witness has referred to, I am reminded of what Robespierre is alleged to have said when he heard the mob outside and said, "I must rush out and see in what direction they are going, because I am going to lead them."

Now, seriously, who is leading whom here?

Let's philosophize a little bit. I am not being critical, but is seems to be a trend.

You have people undertaking to say, "We decide that certain State laws and ordinances are unconstitutional. We are not going to lose time to go to the courts about it. We are going to sit, we are going to lie down, we are going to do as we please, because the courts are too slow. We have determined that those laws are unconstitutional."

Well, maybe they are, as the Court is now constituted. Then, we as Members of Congress, now, must we follow the same pattern and say, "Well, you are right, now we are leaders, we anticipate that as the Court is constituted these previous decisions are not going to be the law of the land."

So what is this? Is this a civil rights bill or civil disobedience bill?

The CHAIRMAN. I still think this is a civil rights bill. And I think the concept of the Supreme Court must, in my opinion, be a fluid one It can't be hard and fast, rigid congealed, never subject to change. I would not want to see that.

It does not mean the Supreme Court is going to change its principles from one day to another. Perhaps they do change their opinions from one generation to another, because of the many changes that have occurred between generations.

The Supreme Court has changed its mind many times. There was the *Dred Scott* decision. Many things happen that cause changes. Consistency sometimes can do a lot of harm.

I have probably said this before, but it bears repetition: Consistency is sometimes like a stagnant pool. It breeds reptiles of the mind.

Mr. WILLIS. I should not have tried to engage in philosophizing with the chairman.

Mr. BLOCH. I had in mind the part of the chairman's bill that talks about discrimination being State practice, and what you are asked to enact now as a finding of fact is this: If I go to a hotel up in upper New York State or in New Hampshire, in Maine, or in Rhode Island, and the proprietor of that hotel says: "I don't want you here because I don't take people of your religion as guests," you are asked, gentlemen, to say that that is State action.

Mr. WILLIS. If he does that he violates the law of Rhode Island, New Hampshire, or New York.

Mr. BLOCH. All right. Take a State which does not have a State law at all, and I suppose there is one. Take Georgia.

Mr. FOLEY. Rhode Island enacted their law in 1956 and New Hampshire did it in 1961, and I think New York did it around 1940, or something.

Mr. BLOCH. Yes. They exercised the rights of the sovereign State to change their minds, under the 10th amendment. In a previous discussion here I called attention to the fact that in one of the cases the separate but equal doctrine, the *Gallagher* case, from New York, and some other case from New York, and a gentleman on the committee at that time, now a New York State court judge, said, "We have taken that back."

So I asked, "Who took it back?"

"The State of New York." That is all we want to do today, is to run our own affairs. If it is a violation of the law of Maine, New Hampshire, or Rhode Island, or New York, for that to exist, it is so because the legislature of that State thinks it should not be done.

The CHAIRMAN. That is probably why we will have two strings to our bow. If the court would say, for example, that is an individual action, not a State action, therefore it does not come within the 14th amendment, we would still have the commerce clause.

Mr. BLOCH. We are going to come to that, if we have time. I have something about the commerce clause later on in here. If we don't get through I will be glad to submit it in writing.

Mr. WILLIS. May I make a statement, and ask the witness if he would look this up in the next few days and let me know?

Let's go back now, to page 5, paragraph F, lines 10, on through. That is the part where the question was raised on whether the word "shall" should be changed to "may" and whether we should put that provision similar to the one in the 1960 act with reference to notice, hearing, and so on.

I call your attention to the concluding sentence, well, I call your attention to page 7, line 17, and line 18.

Mr. BLOCH. I have that marked.

Mr. WILLIS. That sentence provides:

The procedure for processing applications under this subsection and for the entry of orders shall be the same as that provided for in the fourth and fifth paragraphs of subsection E.

My question is this: With that language would the notice required be included by the statute—notice required by the statute of 1960 be required by the inclusion of this sentence?

I would like the gentleman to answer that if he can.

Mr. BLOCH. I am able to answer that now as well as I ever can, because I have it marked in my copy of the bill.

I underscored the word "procedure," the procedure for processing applications under this subsection, and for the entry of orders "shall be the same as that provided for in the fourth and fifth paragraphs of subsection E."

That is confined strictly to the procedure for processing and entry of orders, and I do not think is at all directed to the duty of the judge.

Mr. WILLIS. So the proposed proving amendments that we talked about would, as a matter of draftsmanship, still be necessary, in your opinion?

Mr. BLOCH. I think so.

In the discussion about New Hampshire and private action being converted into State action, I am not unmindful of *Lombard* v. *United States*, the New Orleans case recently decided, 31 United States

Law Week 4446. But even that does not convert personal action into State action on so broad a scale.

The other base is that such discriminatory practices, particularly when their cumulative effect throughout the Nation is considered, take on the character of action by the States, and therefore fall within the ambit of the equal protection clause of the 14th amendment to the Constitution of the United States.

The argument there made is that personal actions many times multiplied become State actions. If a great many hotelkeepers throughout the Nation discriminate against those of a religious or racial group the actions of the many become actions by States. What States, I wonder? That finding may be good psychology or sociology. That I do not know. I do know it is not good law, and I dare say there is not a lawyer in Congress who would be of the opinion that the equation "individual action in many States equals State actions" is valid.

I would be glad to give you in a written communication many more authorities that I have on that subject. This bill is not appropriate legislation under the 14th amendment.

I know the chairman must leave, so I will try to give his as much as I can on the question the Chair just asked, as to interstate commerce.

The bill does not validly and constitutionally regulate commerce among the several States under article I, section 8, paragraph 3 of the Constitution.

For the bill to be valid under the commerce clause both the persons discriminated against and those discriminating would have to be engaged in commerce.

All that I have read about this bill, and I try to read all that I can in the papers and periodicals about it, and in all I have read about the hearings before this committee, I have not seen that point discussed. It may have been.

For the bill to be valid under the commerce clause, both the person discriminated against, and those discriminating would have to be engaged in commerce.

Now, that is not just me talking. I cite the *First Employer's Liability* case, 207 U.S. page 463, also two cases in the Fair Labor Standards Act, *Walling* v. *The Jacksonville Paper Company*, 3717 U.S. 564; *Overstreet* v. *The North Shore Corporation*, 318 U.S. 127; *McLeod* v. *Threlkeld*. This bill is more grossly defective——

Mr. WILLIS. Well, you made a statement.

Will you talk to that a little, what you mean by "both elements must be present"?

Mr. BLOCH. I will. The *First Employers Liability* case, 207 U.S. Congress enacted the First Employer's Liability Act, pertaining to railroads, in 1906.

The Supreme Court of the United States in 207 U.S. at page 463 held that that act was unconstitutional because while it applied to railroads engaged in interstate commerce, it was applicable also to employees, whether or not they were engaged in interstate commerce.

That is it, boiled down.

And it has been cited in many, many of the cases under the First Labor Standards Act.

Mr. WILLIS. Has that been carried forward in discussions under the Fair Labor Standards Act?

Mr. BLOCH. You mean has that statute been corrected?

Mr. WILLIS. No; is the jurisprudence under the Fair Labor Standards Act the same as the one under the statute the gentleman just referred to?

Mr. BLOCH. That case has been cited, but more to be distinguished than to be followed.

Mr. FOLEY. Mr. Bloch, for the record, the question you are raising now, that both the discriminated against person and the discriminator must both engage in interstate commerce was actually faced in *Baldwin* v. *Morgan*, 287 Fed. 2d 750, decided in 1961, a case presenting such a situation; namely, the question of whether any regulation which the ICC may have prescribed may lawfully be made to the effect that transportation of an interstate passenger who is traveling in the same vehicle at the same time as interstate, and the Circuit Court of the Fifth Circuit held it was discrimination under the 14th amendment and the Civil Rights Act, to require a Negro interstate passenger to prove he was an interstate passenger before he was permitted to use the intrastate waiting room.

Mr. BLOCH. Circuit Court of Appeals decision of the Fifth Circuit.[1] Did the Supreme Court of the United States ever say that? If so, I have not been able to find it.

Mr. FOLEY. Apparently no one took it up, so it is still law.

Mr. BLOCH. I am mighty glad to hear you say we are going to follow circuit court of appeals decisions as the law.

Mr. FOLEY. How about *Boynton* v. *Virginia*, which was the Supreme Court speaking? This was a restaurant.

Mr. BLOCH. It was a restaurant engaged in interstate commerce, and Boynton was an interstate traveler on the bus and the restaurant facility in the *Boynton* case was a part of——

Mr. FOLEY. *Boynton* v. *Virginia:* "The services and transportation to which this part applies includes all vehicles operated by, for, in, or in the interest of the public, irrespective of contract or ownership together with all facilities and property operated or controlled by any such carrier and carriers and used in the transportation of passengers or property in interstate or foreign commerce or in the performance of any service in connection therewith."

Mr. BLOCH. Both of them, Boynton and the restaurant, were in interstate commerce.[2]

Mr. FOLEY. The restaurant was merely servicing an interstate carrier.

Mr. BLOCH. How about the *Wilmington* case?

Mr. FOLEY. He happened to lease from the State a lunchroom.

Mr. BLOCH. So you had State action.

Mr. FOLEY. It was a carrier that had a parking facility. There was no commerce clause involved in the *Wilmington* case.

Mr. BLOCH. What about *Slack* v. *Atlantic White Towers System, Inc.*?

Mr. FOLEY. The *Wilmington* case was State action.

Mr. BLOCH. How about *Slack* v. *Atlantic White Towers System, Inc.*? How about *Williams* v. *Howard Johnson Restaurant* (268 F. 2d 845)?

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[1] Mr. BLOCH. I have read this case more closely since the hearing of Aug. 2, 1963. It does not deal with the commerce clause.

[2] See *Boyton* v. *Virginia*, 364 U.S. 454.

Mr. FOLEY. That wasn't a Supreme Court case either.

Mr. BLOCH. Neither were the ones you cited.

The CHAIRMAN. How about this case, Mr. Bloch, I don't recall the citation. It was held that under the commerce laws Congress has the power to regulate the color of the margarine that goes on a restaurant table. Furthermore, in the *Wickard* case, 317 U.S. page 111, the Supreme Court's decision affecting interstate commerce was highlighted by this decision and held that Congress has the power to regulate the growing of wheat for consumption right on the farm.

In other words, the farmer uses the wheat himself right on his own farm, and the Supreme Court held that Congress could regulate that wheat, that that man grew for his own purposes. He was not in interstate commerce. He was standing, stationary.

Mr. BLOCH. He would have been obliged to have been engaged in interstate commerce or they wouldn't have had any right to regulate it.

The CHAIRMAN. I don't see that, sir.

Mr. BLOCH. I have a group of that sort of cases in here, a little later.

The CHAIRMAN. It was shown he was growing that wheat for his own purpose, own consumption.

Mr. BLOCH. And they held it was a part of interstate commerce?

The CHAIRMAN. Right. Held Congress should regulate the growing of that wheat under the commerce clause.

Mr. BLOCH. I am not familiar with that case.[3]

Mr. FOLEY. Going back to *Williams* v. *Howard Johnson Restaurant* (168 F. 2d 845), I think we should point out here there was no congressional implication by statute of the commerce clause. The mere question was, could the court reject the theory—it must be pointed out that in this case the court did not consider the power of Congress under the commerce clause because Congress had not enacted any statute.

Mr. BLOCH. They were considered under the 13th and 14th amendment.

Mr. FOLEY. But not under the commerce clause, and the power of Congress to regulate under that clause——

Mr. BLOCH. If they followed the law now established, they would have to hold that that restaurant was not engaged in interstate commerce.

Mr. FOLEY. Suppose Congress enacted a statute? The court would have to go back to the *Williams* case and reconsider it.

Mr. BLOCH. Congress can't constitutionally enact a statute converting intrastate commerce into interstate commerce in this respect unless you are going to upset every one of the original package cases.

The discriminators—and they are the ones alluded to in the bill, but they are not public establishments except as they deal with the public—are in reality private business, are the following (1) hotels, motels, (2) places of amusement, (3) retail shops, and the like.

What in the bill converts these purely local businesses into instruments of interstate commerce? Perhaps the idea is because guests of these private businesses may sometimes be from other States or traveling in interstate commerce that at all times these places are engaged in interstate commerce.

[3] I have since read it—the gist of it is at p. 127 of 317 U.S.

Perhaps too the legal basis, thought to be the cases under the Fair Labor Standard Act, such as *Kirshbaum* v. *Wallings*, *Fleming* v. *The Arsenal Building Corp.*, and *Montino* v. *The Michigan Window Cleaning Company*, they, too, are readily distinguishable.

That act, title 29, section 213(a)(2), exempts employees of retail or service establishments which have been held to be the local merchant, corner grocer, or filling station operator who sells to or serves the ultimate consumers who are at the end of or beyond the flow of goods in commerce which that act was intended to reach.

I am aware of *Roland Electric Company* v. *Walling*, 326 U.S. 657, 658, 666 and submit that this bill, and the facts in the bill your committee is now considering do not measure up to the facts and holdings in Roland Electric Co.

If Congress has the supposed power over hotels, motels, and lodging houses here sought to be asserted, then Congress has the right to regulate them in every respect even as to the rates they can charge for rooms. If you can say what guests they must take, then you can say what rates they must charge for their rooms or even can tell them what they can put on their bill of fare, and maybe not to serve things that are objectionable to certain people.

Mr. FOLEY. You mentioned the case Mr. Celler mentioned, 317 U.S. 11, decided in 1942 and the court said that this record leaves us in no doubt a Congress may properly have considered that wheat consumed on the farm where grown, if wholly outside the scheme of regulation, would have a substantial effect in defeating and obstructing its purpose to stimulate trade therein at increased prices.

Pages 128 and 129 of that decision——

Mr. BLOCH. That is the case I ask leave to—317 U.S. 111? I would like to look that case up and send you a memorandum.

With respect to 202–A–2, the idea seems to be because motion picture films, performing groups, athletic teams and the like, have moved in commerce to reach the motion picture house, theater, sports arena, stadium, exhibition hall or other place of amusement, the operators of those places are engaged in interstate commerce.

The idea too, seems to be that because a motion picture house in any city or town, large or small, shows a picture the film of which has moved in interstate commerce, that it is so engaged.

Now, cases which throw light on this area, that is the amusement section of the bill, are *Federal Baseball Club of Baltimore* v. *National League*——

Mr. FOLEY. How about the professional football case?

Mr. BLOCH. 259 U.S. 200; *Toolson* v. *New York Yankees, Inc.* (346 U.S. 356) *U.S.* v. *International Boxing Club* (348 U.S. 236); *United States* v. *Shubert* (348 U.S. 222).

Mr. FOLEY. The football case?

Mr. BLOCH. Yes, sir. That is *Radovich* v. *National Football League* (352 U.S. 445, 77 Supreme Court 390).

I cite those cases for the purpose of distinguishing most of them. A mere reading of these cases will demonstrate that it does not follow from the ruling in any of those cases that the Supreme Court has made, that when the North Augusta, S.C., High School football team travels across the Savannah River Bridge to play an Augusta, Ga., team there, that the operators of the stadium in which the game is played are so engaged.

Because Congress can prohibit the shipment of certain moving picture films (such as those of boxing bouts) in interstate commerce, it does not follow that all motion picture houses showing films which have moved in interstate commerce at some time or other and which have come to rest in the State where they are shown are engaged in interstate commerce.

I suggest that you compare the doctrine of *Weber* v. *Freed* (239 U.S. 325), and the numbers of cases set out in 11 American Jurisprudence under the title "Commerce," section 93, page 84; compare the holdings in those cases with what Congress is asked here to do.

Retail shops, drugstores and the like are sought to be controlled by Congress if (1) what they offer is provided to a substantial degree to interstate travelers, or (2) if a substantial portion of the goods held out by them has moved in interstate commerce, (3) if their activities or operations otherwise substantially affect interstate travel, or (4) if the place is an integral part of one of the other three elements.

Under item 1 a filling station on the side of a highway sells gasoline to a substantial number of interstate travelers, and he therefore becomes engaged in interstate commerce. He becomes so under (2), regardless of to whom he sells if the gasoline he sells has moved in interstate commerce. Up to this time, since 1827—I don't know what the present Supreme Court is going to hold, but since 1827, 140 years ago almost, it has been the law that sales of articles brought into a State are protected and governed by the interstate commerce clause only so long as they are in the original receptacles or containers in which they are brought into a State.

Mr. Chief Justice Marshall so held in *Brown* v. *Maryland* (12 Wheaton, p. 419). The doctrine has been the law of the land, therefore, for 136 years. See the numerous cases cited in 11 American Jurisprudence, Commerce, sec. 56, p. 51, notes 17 and 18; also sec. 61, p. 56).

I hold out this warning, in concluding this part of my statement: Perhaps all the States of the Union had best beware for, if the gasoline sold by a retail dealer to passing motorists remains in interstate commerce at the time of the sale, then perhaps no State can tax that sale.

If the selling of gasoline to motorists coming along the road renders that gasoline seller an instrument of interstate commerce, then why is not the blanket of protection against taxes still applicable to that gasoline he sells?

Now, there are many, many other cases under the original package doctrine.

Mr. FOLEY. On that point, take the decision of the U.S. Court of Appeals for the Fifth Circuit, ICC against the city of Jackson, where they ruled that it was not even necessary for a statute to authorize the Federal Government to bring a suit under these conditions; merely that signs were posted in terminals of buslines either on or off the property. The mere posting of a sign, waiting rooms for white only by order of police department, waiting room for colored only by order of the police department, and they struck it down without statutory authorization as being an applied power of the Federal Government.

It was merely the posting of a sign on or off the busline station.

Mr. BLOCH. The busline was engaged in interstate commerce; it was the discriminator, acting through the city of Jackson, and the traveler was an interstate traveler.

Mr. FOLEY. Under that decision the sign doesn't even have to be on the busline property, under that situation.

Mr. BLOCH. No. It doesn't have to be on the busline's property if it is used in connection with the instrument of interstate commerce.

Mr. FOLEY. That is indirectly.

Mr. BLOCH. It was there to keep interstate travelers off that interstate facility.

Mr. FOLEY. No, because it was also an intrastate facility.

Mr. BLOCH. It was there to keep an intrastate traveler off an interstate facility unless he complied with certain regulations, and you had discriminatory and discriminatee engaged in interstate commerce.

Under the package doctrine, if I may, I will supply you with a number of other cases I have in a rough memorandum I have prepared here. I did want to allude to the 13th amendment and demonstrate that it is not applicable, if absolutely necessary. I understood that within the last week the Attorney General and the dean of the Harvard Law School had suggested that the 13th amendment—that this might be appropriate legislation under the 13th amendment, which abolishes slavery.

The court in the case I alluded to, *United States* v. *Harris* (106 U.S. at pp. 641 and 642), discusses the *Reese* case (92 U.S. 214), and said—

> This decision is in point, and applying the principle established by it, it is clear that the legislation now under consideration cannot be sustained by reference to the 13th amendment to the Constitution.

There is another view which strengthens this conclusion. If Congress has constitutional authority under the 13th amendment to punish conspiracy between two persons to do an unlawful act, it can punish the act itself whether done by one or more persons.

A private person cannot make constitutions or laws nor can he with authority construe them, nor can he administer nor execute them.

The only way, therefore, in which one person can deprive another of equal protection of laws is by commission of an offense against the laws which protects the rights of persons as by theft, burglary, arson, assault or murder. If, therefore, we hold section 5519 is warranted by the 13th amendment, we should by virtue of that amendment accord to Congress the power to punish every crime by which the right of any person to life, liberty, property or reputation is invaded.

Thus, under a provision of the Constitution, which simply abolished slavery and involuntary servitude, we should, with few exceptions, invest Congress with power over the whole catalog of crimes. A construmtion of the amendment which leads to such a result is clearly unsound.

I cite the case of *Corey* v. *Carter*, decided in 1874 by the Supreme Court of Indiana (48 Indiana 347). *Ward* v. *Flood*, decided the same year (48 California 49; 30 Federal Cases, p. 1005, and then the more recent case of *Hodges* v. *United States* (203 U.S. at p. 1)).

Slack v. *Atlantic White Tower System, Inc.*, decided by the Circuit Court of Appeals of the Fourth Circuit in 1960.

Williams v. *Howard Johnson Restaurant* (268 Fed. 2d 845), the case of *Corrigan* v. *Buckley* (271, U.S. 323, language at p. 330).

That is the conclusion of what I have.

Mr. COPENHAVER. Directing your attention to the statement about both parties having to be in interstate commerce, I wanted to know if your attention has been called to the case of *Moore* v. *Mead's Fine Bread Co.*? The citation is 348 U.S. 114, a 1954 case.

The court ruled that an interstate operator whose local output, which sold bread in two States, cut prices in a single town, to drive a local competitor out of business constituted a case of an interstate commerce through which an intrastate operator seeking to drive a local intrastate business out of business, the court held that you had commerce there.

Concerning theaters, I cite the case of *United States* v *Crescent Amusement Company*, 323 U.S. 173, 1944. The requirements of the Sherman Act were satisfied by the interstate transportation of the film; though the agency that is showing the motion pictures is a local affair. The Court held that the course of business which involves a regular exchange of films in interstate commerce is adequate to bring the exhibitors within the reach of the Sherman Act although the film had come to rest within the State prior to the distribution to a local distributor.

Then there is the case of *Howell Chevrolet Company v. NLRB*, 346 U.S. 482, 1953, where the holding stated that although the Howell Motor Co. purchased all its cars and parts from assembly plants and warehouses within the State, there was still interstate commerce involved because you had interstate purchases by an interstate corporation.

I can cite other cases. There is another case that concerns a window washer.

Mr. BLOCH. I can't say that I am familiar with each case you have cited.

Mr. COPENHAVER. I find it hard to believe that today the Court would require both parties to be in interstate commerce. The Court, I think, has clearly indicated today that only one party has——

Mr. BLOCH. How about *McLeod* v. *Threlkeld*, 319 U.S. 491. What does that hold?

Mr. COPENHAVER. That was about 1940, wasn't it?

Mr. BLOCH. I am not sure. (Later—It was decided in 1943.) What does it decide? That is under the——

Mr. COPENHAVER. I am trying to say that since the line of decisions concerning the original container cases, the Court has broken away from that line of cases so that today you really have to have only a limited effect upon interstate commerce and need involve only one party in the case who is operating within interstate commerce.

Mr. BLOCH. Have you found any case which holds that a restaurant owner who brings bread in, buys bread that has moved from Alabama into Georgia in interstate commerce and has been sold by the bakery, the distributor in Columbus, Ga., say, to the restaurant owner, and there by the restaurant owner unwrapped and sliced, that that restaurant owner is by the use of that loaf of bread engaged in interstate commerce?

Mr. COPENHAVER. May I say at this particular moment I would have to search for a restaurant case, but I can cite you the case of a

local drugstore in the last year where the Supreme Court upheld a case involving local drugstores in California—a local drugstore in the sale of prescription drugs——

Mr. BLOCH. In the original package?

Mr. COPENHAVER. No, it was not the original package. In the drug industry you know a pharmacist breaks the original package, puts the contents into another package, and puts the label on for you.

I could find a restaurant case if you desire.

Mr. BLOCH. See if you can find one like that loaf of bread I am talking about.

Mr. COPENHAVER. I am confident that they do exist.

Mr. BLOCH. All these cases about baseball, and the football cases, under the Sherman Antitrust Act, deal with the peculiar language of that act, or depend upon the volume of business done, particularly Ratovich, which talks about the umbrella——

Mr. WILLIS. Let's talk about that a little bit. Under the decisions interpreting the Fair Labor Standards Act, minimum wage and hour laws, do you know whether the courts were influenced in reaching decisions that the defendant in the case was in interstate commerce by the fact of the volume of business provision in the statute?

For instance, the latest wage and hour law contains a provision that certainly chainstores come within the purview of the law, and then perhaps go a little downward regarding a local establishment, local establishments, and speaking in terms of those having certain dollar volumes of business, does that element come into any of these decisions?

Mr. BLOCH. I think it did, and then, of course, the original one of the *Fair Labor Standards Act* cases, as I recall it was, *United States* v. *Darby Lumber Company*, and in that case they reversed the child labor case.

In the *Darby Lumber Company* case and all the cases with which I am familiar—and I won't say certainly that I am familiar with all of them, and each must be examined under its own peculiar circumstances, but in the *Darby Lumber Company* case where the act was originally held constitutional, it was applied to one who was actually producing goods for movement in interstate commerce.

Mr. WILLIS. That is the original concept of the law.

Mr. BLOCH. Actually he was the manufacturer who was processing the goods for movement in interstate commerce and they held Congress had the right to regulate wages and hours of the employees of the producer because he didn't have to ship in interstate commerce if he didn't want to——

Mr. FOLEY. Right there, the latest case that I know of, on the reverse side of the coin you talk of production. *NLRB* v. *Reliance Fuel Coal*, 371 U.S. 244, decided January 1963. They upheld the jurisdiction of the NLRB over oil distributors who purchased within the State a substantial amount of fuel and related products from the Gulf Oil Corp.

Mr. BLOCH. I recall that. I read that yesterday. I can see that this point is not unanticipated. Perhaps the gentleman who drew the bill anticipated it.

Mr. FOLEY. I would say we anticipated it.

Mr. BLOCH. I would like to have the opportunity to do some briefing and furnish it. What I have done has been more or less on the spur of

the moment and is by no means as exhaustive as I would like it to be, particularly in the light of these voluminous briefs you have on the subject, because when you come to debate it on the floor of Congress, I know it will be thoroughly discussed and everybody will want the facts in all the cases.

I wonder if I could be excused? I have to catch a train.

Mr. KASTENMEIR. The committee is very happy to have had you here today and I for one appreciate your scholarly dissertation. I hope this committee and Congress sufficiently resolves the question by passing a sufficiently good piece of legislation so that you will not be required to come down every few years on a civil rights bill. But let me say for the committee we do thank you for your courtesy in coming here.

Mr. DOWDY. Section 6 and section 7 of the bill, apparently the Executive, by Executive order, has tried to make law of those sections already. I would like to have something in your brief about the legality or constitutionality of Executive orders to enact laws of this nature.

Mr. BLOCH. I have decided ideas on the subject of legislation by Executive order. I do not think the Constitution of the United States, when it granted—the first thing the Constitution does in article 1, section 1, I believe is to delegate all legislative powers to Congress. If the Founding Fathers meant what they said, I think they meant laws should be enacted by Congress and not promulgated by Executive order.

I would like to add that to my brief. I had material on section 6, but I thought the lieutenant governor of Louisiana this morning did an excellent job on that. I will put in what I had on that, and add to it, and also on the Executive order.

Mr. KASTENMEIER. Particularly on title VI.

Mr. DOWDY. Of course, I would like for this to wind this up too, but this subject is such a good political issue that I don't think it makes any difference what Congress passes, it will be back every Congress.

Mr. BLOCH. I rather think so.

Mr. KASTENMEIER. Thank you, Mr. Bloch.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, August 7, 1963.

CHARLES J. BLOCH, Esq.
Bloch, Hall, Grover & Hawkins, Macon, Ga.

DEAR MR. BLOCH: This will acknowledge receipt of your letter of August 5, 1963, in which you set forth a supplementary statement which you wish to be made a part of your oral testimony on civil rights.

Please rest assured that this statement will be be inserted in the record of the hearings on civil rights at the end of your testimony.

Sincerely yours,

EMANUEL CELLER, *Chairman.*

LAW OFFICES, BLOCH, HALL, GROOVER & HAWKINS,
Macon, Ga., August 5, 1963.

Re Civil Rights Act of 1963.

Hon. EMANUEL CELLER,
Chairman, Judiciary Committee,
House of Representatives, Washington, D.C.

MY DEAR MR. CHAIRMAN: Toward the conclusion of my testimony on August 2, I stated that I would supplement it in certain respects. I had hoped that this

supplement would be much more full than this, but as I am leaving August 9 for the annual meeting of the American Bar Association, I thought that I should get this off to you, at least.

I had in my notes the case of *Williams* v. *Howard Johnson's Restaurant*, 268 F. 2d 845, a decision of the Fourth Circuit Court of Appeals, written by Judge Soper with the concurrence of Chief Judge Sobeloff and Circuit Judge Haynsworth.

I had noted it chiefly because of the suggestion that has recently been made that the proposed legislation is justified by the 13th amendment.

With respect to that aspect, the fifth headnote is:

"A privately operated restaurant, as an instrument of local commerce, was at liberty to deal with such persons as it might select, and the commerce clause and the 13th and 14th amendments of the Federal Constitution did not operate to prevent its proprietor from excluding Negroes."

It is important, however, from another pertinent aspect.

The plaintiff there made a contention based on allegations that the restaurant was engaged in interstate commerce because it was located beside an interstate highway and served interstate travelers.

In dealing with that contention, the court at page 848 said:

"In every instance the conduct condemned was that of an organization directly engaged in interstate commerce and the line of authority would be persuasive in the determination of the present controversy if it could be said that the defendant restaurant was so engaged. We think, however, that the cases cited are not applicable because we do not find that a restaurant is engaged in interstate commerce merely because in the course of its business of furnishing accommodations to the general public it serves persons who are traveling from State to State. As an instrument of local commerce, the restaurant is not subject to the constitutional and statutory provisions discussed above and, thus, is at liberty to deal with such persons as it may select. Our conclusion is, therefore, that the judgment of the district court must be affirmed."

The bill seeks to adjudicate that a restaurant owner, filling stations, and the like, are instrumentalities of interstate commerce because they use or sell articles which have moved in interstate commerce.

In this respect, the established constitutional principle is that an operation is purely intrastate when it begins after the interstate movement of the article used or sold has ceased, and after the original package has been broken.

In addition to the cases cited (many more of which could be cited) see *Pacific States Box and Basket Co.* v. *White*, 296 U.S. at page 184; 56 S. Ct. 163 (per Justice Brandeis).

A strikingly apt case is *Elizabeth Hospital, Inc.* v. *Richardson et al.*, 269 F. 2d 167, holding that a hospital rendering services to some persons who came from outside of the State was not an engagement in interstate commerce.

"The fact that some of the plaintiffs' patients might travel in interstate commerce does not alter the local character of plaintiffs' hospital. *If the converse were true, every country store that obtains its goods from or serves customers residing outside the State would be selling in interstate commerce. Uniformly, the courts have held to the contrary.*" (Emphasis added; op. cit. p. 170, citing cases.)

Certiorari was denied on November 9, 1959 (361 U.S. 834; 80 S. Ct. 155).

Toward the end of my testimony on August 2, 1963, one of the gentlemen present questioned me as to several cases as to which I did not make accurate and complete notes. I did make a note: "371 U.S. 224." I find that this is the case of *National Labor Relations Board* v. *Reliance Fuel Corporation*, and that it is printed in volume 31, U.S. Law Week, pages 4051, et seq. A mere reading of it suffices to show that it is no precedent for the attempts made in the legislation here under consideration.

Again, I call attention to the fact that section 202(a) seeks to grant full and equal enjoyment of goods, services, facilities, privileges, advantages, and accommodations to all persons—not merely to persons traveling in interstate commerce.

During my testimony, there was some mention of the modern theory of the superiority of human rights over property rights. In that connection we might consider this statement of President Abraham Lincoln made March 21, 1864:

"Property is the fruit of labor; property is desirable; it is a positive good in the world. That some should be rich shows that others may become rich, and hence is just encouragement to industry and enterprise. Let not him who is houseless pull down the house of another, but let him work diligently, and build

one for himself, thus by example assuring that his own shall be safe from violence when built."

Sincerely,

CHARLES J. BLOCH.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, August 13, 1963.

CHARLES J. BLOCH, Esq.,
Bloch, Hall, Groover & Hawkins,
Macon, Ga.

DEAR MR. BLOCH: I wish to thank you for forwarding to me, with your letter of August 9, copy of a clipping from the Macon Telegraph entitled "A Voter Should Be Able To Read, Write English."

I have read this article with interest and will have it inserted into the record of the hearings on civil rights legislation.

Sincerely,

EMANUEL CELLER, *Chairman.*

BLOCH, HALL, GROOVER & HAWKINS,
Macon, Ga., August 9, 1963.

HON. EMANUEL CELLER,
Chairman, House of Representatives Office Building,
Washington, D.C.

MY DEAR MR. CHAIRMAN: Because of our colloquy during my testimony of August 2, I send you herewith a Thermofax copy of a column from the Macon Telegraph of August 8 which I thought might be interesting to you.

I do not know the authoress of the column. She is not a local resident. So please don't blame her views on Georgia—or credit them to Georgia.

Sincerely,

CHARLES J. BLOCH.

[From the Macon Telegraph, Aug. 8, 1963]

INEZ ROBB—A VOTER SHOULD BE ABLE TO READ, WRITE ENGLISH

The longer Mayor Robert Wagner and his cohorts rule New York the more wistfully many a citizen longs for the good old days of 5 or 6 years ago before Carmine DeSapio was given the gate.

The reign of Tammany Hall was supposed to have been broken when the "reform element in the Democratic Party" got rid of DeSapio, a man with a George Raft air of elegance and a similar addiction to dark glasses.

But the more things change in New York the more they remain Tammany Hall. There is this difference—at least DeSapio never had the unabashed political gall, or foresight, to campaign for the elimination of the English language literacy test for voters.

Now, however, with their eyes glued to the 1964 national elections and, beyond them, to the city mayoralty election a year later, Mayor Wagner, Paul Screvane, president of the city council, and Paul O'Dwyer, candidate for Democratic councilman-at-large in Manhattan, want to knock out the State's constitutional requirement that a voter be able to read and write basic English.

Out of deference to the great number of voters available among the hundreds of thousands of Spanish-speaking Puerto Rican immigrants to New York, the mayor et al. are fighting to make Spanish the coequal of English in the literacy tests.

In short, Mayor Wagner, who has his eyes on a seat in the U.S. Senate, Screvane, who has his eyes on the mayoralty seat that would be vacated by Wagner, and O'Dwyer, a willing party "runner," are slavering after the Spanish-speaking vote.

O'Dwyer, brother of New York's former and unlamented Mayor Bill O'Dwyer, with all the finesse of a Tweed ring hanger-on, has already predicted that the 1964 presidential election could be influenced by the enfranchisement of "several tens of thousands of Spanish-speaking Puerto Rican voters," if only they are permitted to take the literacy test in Spanish instead of English.

In the meantime, Wagner and his chums are mounting a political campaign in behalf of the Spanish literacy test that would make the oldtime Tammany swell

with pride. Screvane has outdone himself and his cohorts by screaming that the English language literacy test is "the perpetuation of discrimination" and the base "exercise of racist policies."

By golly, he has touched all bases in that outburst, and will be hard put to top himself in the future unless he can prove that the English language test is inimical to American mothers, southern womanhood, the Red Cross, and hot-buttered corn.

Ours is an English-language country, no matter how we mangle the Kings' version. What kind of nonsense is this that associates the English tongue with discrimination and racism? If English is so despicable, why has it taken these gallant crusaders for more votes so long to make the horrendous discovery?

What about the thousands of German-speaking voters around the Yorkville area of New York? Will it be less discriminatory and less racist if, in the future, they are required to take a literacy test in Spanish rather than English?

BLOCH, HALL, GROOVER & HAWKINS,
Macon, Ga., August 9, 1963.

Re civil rights bill.

Hon. EMANUEL CELLER,
Chairman, House of Representatives Office Building,
Washington, D.C.

DEAR MR. CHAIRMAN: I would like to supplement my testimony of August 2 by adding thereto the article which appears on page 15 of Time magazine of August 9, 1963, entitled, "How About Swahili?" A Thermofax copy of it is enclosed herewith.

Sincerely yours,

CHARLES J. BLOCH.

HOW ABOUT SWAHILI?

Reaching for the votes of the city's 600,000 Puerto Ricans has become a major preoccupation of New York politicians. Puerto Ricans already cast enough votes to tip a close citywide election, and probably a lot more of them could vote if they were not disqualified by the State's literacy requirement. Last week Democratic Mayor Robert Wagner proposed a way to get around this inconvenient barrier to bigger Puerto Rican turnouts at the polls. If literacy tests could not be abolished entirely, he said, it was "obviously right" that Puerto Ricans should be allowed to take theirs in Spanish.

What was really obvious, however, was that Wagner was talking like a politician, not like a responsible public official. In the United States a literacy test for voters has no meaning whatever unless it is a test of literacy in English. The laws are written in English, the governmental councils deliberate in English, and the newspapers and magazines that have substantial journalistic resources for searching out truth are published in English. Understandably, Wagner's suggestion aroused protests. Huffed the New York Times: "If Spanish-speaking persons are permitted to qualify in that language, what logic would justify denying similar exceptions for those who speak French, or Swahili?"

A literacy test in Spanish, moreover, would be a disservice to New York's Puerto Ricans themselves. Their advancement to their potential economic, social, and cultural levels as inhabitants of New York depends upon their becoming literate in English. A special literacy test, far from lifting the Puerto Ricans' language burden, would only help perpetuate it.

Acting Chairman KASTENMEIER. The next witness will be Rev. Albert Garner. Our colleague from Texas will introduce our next witness.

Mr. DOWDY. Mr. Chairman, it is a pleasure to me to introduce our next witness. He was formerly a constitutent of my district. Then he was over in the district of our colleague, Mr. Beckworth, until 4 or 5 years ago when he left east Texas, and went to Florida where he is now the president of the Florida Baptist Institute and Seminary at Lakeland, Fla., and constituent of our colleague, Mr. Jim Haley.

Dr. Garner wrote to me and I got his letter day before yesterday, and expressed an interest in appearing as a witness in this hearing.

I think it is pretty well known that east Texas, as well as a great deal of the South, is known as the Bible belt, and Dr. Garner is one of us. There have been some statements made which cast reflections—by other witnesses who at least indicated that they were ministers—statements made that cast reflection on the entire Christian faith, and Dr. Garner wished to come in especially in that connection and make up whatever other statements that he felt may have left this misapprehension that may have been left about the stand of the ministry.

I understand, of course, what the Supreme Court has said about Bible and prayer and those things, and maybe it shouldn't have been brought into a bill appearing before Congress, but it was injected by the other side of the coin that we have heard so much about this afternoon.

Dr. Garner wished to be heard on it. It is my pleasure to introduce to you Dr. Albert Garner, president of the Florida Baptist Institute and Seminary, Lakeland, Fla., and his assistant with him.

Thank you.

Acting Chairman KASTENMEIER. We thank our colleague, Mr. Dowdy, for introducing Mr. Garner. We are very pleased to have you with us, Dr. Garner.

Dr. GARNER. Thank you, Mr. Chairman.

STATEMENT OF DR. ALBERT GARNER, PRESIDENT, FLORIDA BAPTIST INSTITUTE AND SEMINARY, LAKELAND, FLA.

Dr. GARNER. Thank you. I am Albert Garner, president of the Florida Baptist Institute and Seminary of Lakeland, Fla., editor of the Baptist Anchor, our State religious paper, and I have served as a member of race and civil rights committees of the American Baptist Association for the past 9 years. This association of churches consists of some 3,100 congregations with almost a million members.

With me is the assistant to the president of the school, Charles Rex Newman.

I appreciate the privilege of appearing here to submit a memorandum and my testimony regarding the moral and religious implications of the proposed civil rights legislation upon the social pattern of life in our Nation.

First of all, on behalf of the Florida State Baptist Association of Churches, I submit the following resolution that was unanimously adopted in the annual State assembly in Jacksonville, Fla., July 19, 1963: That is attached on the last two pages, and I will read beginning on next to the last page:

RESOLUTION NO. 2 OF THE FLORIDA STATE BAPTIST ASSOCIATION, JACKSONVILLE, FLA., JULY 17, 1963

We, the Florida State Baptist Association of Churches, believe civil government is the best on earth. We would remind you that the people called Baptists have historically been law-abiding and law-honoring people, under whatever form of government they found themselves in the world. We take pride in the fact that our people called Baptists have never been charged with or indicted as insurrectionists against any government.

We believe that we have an inherent and divine obligation to our Government, as well as to our church, in matters relating to the social affairs of men. We believe in standing for our Government when we believe its decisions and actions to be right and when we believe them to be wrong.

We disapprove of riots and insurrections in any form. However, we believe that our people have a divine and moral obligation to their God and to their country to use their influence in "redress of grievance" to their government, and to seek to influence the remolding and reversal of orders, decrees, decisions, and laws of their government leaders when they believe them to be in moral error.

For 9 years we have observed, with grave concern, efforts in our Federal Government to effect a drastic change in the established social pattern of life in the United States in general and in the Southern States in particular.

Our sentiments are that the Negro should be afforded greater opportunities for achievement and encouraged to win respect for himself in public life. We have deep moral and religious convictions, however, that integration of the races is morally wrong and should be resisted.

It is our finding that segregation was the social pattern of life of the Old Testament Hebrew people, long followed with much glory to their history. This social pattern was given and administered by divine command.

It is also our finding that prior to this century neither the Hebrew religion, the Christian religion, nor any denomination of the Christian religion ever held that integration of the races into a close social pattern was necessary to obey God, to follow the teachings of Jesus Christ.

It is further our findings that the philosophy of close social integration of the races, prior to this century, has been basically held and promoted by anti-Christian religions, atheists, and infidels.

In the light of these findings, and in consideration of the evidence that our Nation became the greatest and most respected nation in the world under the patern of segregation in social life, and inasmuch as prior to this century segregation was accepted as a Christian philosophy by all Christian demominations, our people of the Florida State Baptist Association of Churches contend that moral principles never change. They believe that Federal efforts to force integration as a new social pattern of life is morally wrong, un-Christian, and in conflict with the word and will of God as well as historic Christianity.

Our people do not accept in silence back home and will not accept at the polls, "the segregation be damned attitude" they feel is now being pressed upon them by intimidation threats of Federal agencies.

That concludes the resolution passed by the Florida State Association.

Acting Chairman KASTENMEIER. That then is the resolution of the Florida State Baptist Association. In the beginning you make reference to the fact you are on the Committee of the American Baptist Association. I assume their position is considerably different from this resolution, is it not?

Dr. GARNER. It is not. It is practically identical. I will proceed in time to give their position with a little more testimony.

Acting Chairman KASTENMEIER. All right. Proceed.

Dr. GARNER. The practically one million Baptists of the American Baptists Association is not to be confused with the American Baptist Convention, primarily located in the North, though we have a larger constituency of members than the American Baptist Convention has. I will proceed now.

I was in the party of ministers who appeared before the President of the United States in the White House on June 17, 1963. We heard his request and appeal that the American clergy form, in effect, a biracial committee for the specific purpose of using their influence to bring pressure to bear upon American businessmen to integrate their businesses and to seek to influence our U.S. Congressmen to support his proposed civil rights legislation.

Mr. Chairman, I felt that the President's actions in seeking to use the American clergy and the churches as agencies of political action was inappropriate and in conflict with his previously announced position that he believed in the separation of church and state. I indicated my convictions at the meeting on that occasion.

During the past 10 months I have been on the campuses of some 15 colleges and universities, Bible institutes, and seminaries from our Nation's Capital to Sacramento, Calif., and have talked at length with students and teachers in these institutions, as well as to businessmen, common laborers, and people of all walks of life, regarding the proposed new social order for which the President appeals.

Mr. Chairman, our constituency of nearly 1 million people, comprising the American Baptist Association, holds the religious concept that "God is the Father of all men" only in the sense that all bear His image and are objects of His concern.

In matters that relate to the salvation of man, God is partial to no race. However, both the Old and the New Testaments indicate that segregation of the races in social, business, and religious life is of divine origin and was administered by divine decree accompanied by divine blessings. We hold that moral principles never change and that segregation of the races in social and religious life is still of divine order.

Further, we hold that human and civil rights are of divine origin and limited in their just exercise to certain divine restrictions. That human and civil rights have divinely appointed limitations and restrictions in social affairs of life has been held generally by both the Hebrew and Christian religions for more than 2,000 years prior to this century.

Gentlemen of the committee, involved in the proposed civil rights legislation, as it has been proposed, is a grave moral and religious principle that indicates a conflict of moral and social philosophies. The issues which appear to be involved in the proposals under consideration have serious moral and religious implications. They involve a moral clash of the historic Hebrew and Christian religious concepts on social and business affairs with atheistic and anti-Christian religious concepts.

For instance, both secular and religious history attest that:

(1) First, for more than 1,000 years, during the golden era of the Hebrew civilization, segregation of the Hebrew race in social, business, and religious life was practiced by divine decree and with much success.

(2) Second, prior to this century, for nearly 1,900 years, Christianity and every denomination of it held to the moral and religious position that segregation of the races was of divine order and such was accepted and promoted as a social, business, and religious pattern of life until recent years.

(3) Third, prior to this century, integration of the races as a social pattern of business and religious life was advocated by atheistic and anti-Christian religions and societies only. Our Nation and our society was not built on this philosophy.

In the light of these things, gentlemen, we observe with grave concern that the President's proposed civil rights legislation appears to be an embodiment of proposed social reforms based upon anti-Christian and atheistic social philosophies.

For instance, in the President's civil rights message of June 19, 1963, page 2, he stated:

"Race has no place in American life or law."

This is a flagrant affront to the social facts of life in this country. That destruction of races and the elimination of all separate racial

distinctions should be legislated out of recognition in the American way of life and law is an atheistic concept.

Upon the atheistic premise that "race has no place in American life or law" we decry the President's repeated expressions of approval of the rights of American citizens to join in mob demonstrations that breed tension and violence and trespass upon property rights of individuals. We fear that the President's sanction of these continued demonstrations of minorities with disregard for majorities may create a condition of insurrection in our country conducive to a police state.

We feel that the President of the United States is showing favoritism and partiality to minority groups in our Nation who hold to ideologies that are basically un-American and that consideration of adoption of any part of this proposed civil rights bill should be approached with much caution.

Mr. Chairman, I should like to register disagreement with the integration views of Dr. Carson Blake of the National Council of Churches, Rabbi Irwin Blank, and Father John Cronin who gave testimony before this committee on Wednesday, July 24, 1963, in which the gentlemen took the position that segregation of the races, which they termed "racism," in a derogatory manner, in social and business life was both immoral and blasphemy against God.

If such a statement were true, and if segregation which they refer to as "racism" in social, business, and religious life is immoral and blasphemy against God, our Founding Fathers and the fathers of these gentlemen were, by their own testimony, immoral men and blasphemers against God, because this position was held to be a Christian philosophy by all denominations of Christianity prior to this century, and I might add, I have had no question of the authenticity of this statement or this position wherever I have spoken nationally.

Mr. Chairman, I submit to you that the testimony given by these three gentlemen before this committee on July 24, 1963, is a classic example of apostate Christian and Hebrew concepts, designed to revolutionize and remold the social, economic, business, and religious life of America along the lines of a new social order of atheistic and anti-Christian religious views.

Acting Chairman KASTENMEIER. Mr. Garner, those are indeed harsh views of your fellow clerics.

Dr. GARNER. Mr. Chairman and gentlemen, I concede that. I regret to have to use these sharp terms. It is a sharp philosophy that has infiltrated Christian thought and leadership.

Mr. FOLEY. Have you seen the statements by religious bodies who are referred to in that statement you refer to?

Dr. GARNER. I have. I have reviewed them thoroughly.

Mr. FOLEY. Did you attend the American Baptist Convention on May 16, 1963?

Dr. GARNER. I am not a member of that convention. I did not attend.

Mr. FOLEY. Have you read that statement?

Dr. GARNER. I have read it. I did receive it, as an editor of a paper.

Mr. FOLEY. And the American Baptist Home Mission Society statement of March 1960, which is part of the record?

Dr. GARNER. I have.

Mr. Chairman, it is those various views that have been advocated that I come here, as a representative of historic Christian concept, to challenge on the floor of this Congress—congressional committee. May I proceed?

Acting Chairman KASTENMEIER. You may proceed.

Dr. GARNER. We also register our disapproval of ministers in joining street demonstrations that tend to promote mob violence, trespass upon, and sabotage of private properties. We consider such conduct under ministrial garb to be a form of circus-clowning demagogery below the dignity of the gospel ministry, to be viewed with suspicion, and testimony of such ministers should be cautiously trusted.

We would not deprecate the right of these ministerial gentlemen to express their religious sentiments before this committee, but we do deplore their doing so under the cloak and claim of representing the biblical and historical Hebrew and Christian position. Because the evidence of secular and religious history certifies that the social integration philosophy, which they espouse, is one that was never held widely by either Hebrew or Christian religions prior to this century, nor do we believe their expressions are the basic moral and religious convictions of the majority of American citizens and Christian laymen today.

It is the general feeling of our people of the American Baptist Association, both in the North and in the South that our President and Congressmen should use their influence to uphold the Constitution and its provisions of human, civil, and property rights as they relate to free enterprise and competitive business.

We hold that individual human, civil, and property rights involve the freedom of choice for the employer in a private business to discriminate in selecting whom he shall serve and employ, when he shall serve or employ, and under what conditions he shall serve and employ, as surely as the customer or employee shall determine whom he shall patronize or serve, when he shall patronize or serve, and under what conditions he shall patronize or serve a business or employer.

This is a basic human and civil right embodied in and historically followed as a constitutional policy in social and business conduct under the free enterprise and competitive business system.

We believe the proposed civil rights bill is in flagrant conflict with this concept and that proposals for additional powers for the Attorney General to prosecute and intimidate in connection with the education-integration element of the bill tends toward gestapo tactics of a police state.

Mr. FOLEY. You don't use "prosecute" in the sense of criminal prosecution?

Dr. GARNER. In the sense of prosecute, a court trial?

Mr. FOLEY. But it is not a jury trial. It is merely civil, not a criminal procedure.

Dr. GARNER. It is our position that the granting of additional prosecutive powers to the Attorney General constitutes tendency toward police state and is against a Christian concept and concept of free enterprise in competitive business for both the employer and the employee.

May I proceed, Mr. Chairman?

Acting Chairman KASTENMEIER. You may proceed.

Dr. GARNER. We fear that such a bill, if enacted, would be used by the administration in threats and reprisals against businesses and cities throughout the Nation and that the bill expresses prejudicial favoritism and partiality for minorities at the expense and danger of the loss of freedom for all citizens. This program would, we believe, obstruct business expansions, shackle free enterprise, and intimidate many owners of private property while affording advantage and partiality for a minority.

We also feel that such legislation would create racial tensions and hate in religious life that would bring havoc in our churches.

Mr. FOLEY. The reference there is to religion as distinguished from racial also, Reverend, discrimination on a religious basis as well as on a racial basis.

Dr. GARNER. Would you repeat your position?

Mr. FOLEY. I think it should be noted that this bill bans discrimination on a religious basis as well as on a racial basis. Do you object to that?

Dr. GARNER. Absolutely we object to it. We believe every congregation has the divine, moral, and should have the civil, right to select its own membership.

Mr. FOLEY. Do you think the Federal Government's power ought to be used to stop discrimination on a religious basis?

Dr. GARNER. I do not think the Government has any right to interfere in a religious selection of its activities.

Mr. FOLEY. But you believe the Constitution guarantees a person religious freedom? Is that a constitutional right?

Dr. GARNER. It is a constitutional right.

Mr. FOLEY. To worship as you see fit or I see fit?

Dr. GARNER. May I answer?

Mr. FOLEY. Yes, that is what I want.

Dr. GARNER. To worship as one sees fit—worship involves more than one person. It involves more than one person.

Mr. FOLEY. You mean I can't worship individually by myself without affiliation with a religious sect?

Dr. GARNER. I would not deny that. That would not involve the right of individuals within a congregation.

Mr. FOLEY. I am talking about the individual's right, because it is an individual right. No religious sect has any rights.

Dr. GARNER. The statement makes no reference to the point you seem to raise. The statement is that we feel such legislation would create racial tensions and hate in religious life. That is, the promotion such as the President solicited from us ministers, to enlist our congregations to join in these demonstrations, to bring to bear influence upon businesses, on businessmen in our own churches; we feel such would bring havoc in our churches.

I would also interpolate here that I believe the three gentlemen who appeared on July 24 stated that only 15 percent of the congregations of America now have any degree of integration in them. And that is the congregations they represent.

Recognizing that 85 percent or more of the religious congregations of America today practice segregation of the races, we feel that the enactment of such legislation as this would bring havoc in our churches and in our religious activities.

May I conclude my statement now?

Acting Chairman KASTENMEIER. Please conclude it.

Dr. GARNER. It is my conviction that there is a moral degeneracy and apostate religious deviation from a high moral social pattern of American life toward racial infidelity. In the light of basic historic Christian concepts, it is my prayer that you gentlemen will weigh well this review and evaluation of the conflicting philosophies underlying the problems of the present racial crisis.

Mr. FOLEY. You did not attend the National Conference on Religion and Race held in January of this year in Chicago, did you?

Dr. GARNER. I did not. I was not invited.

Mr. FOLEY. According to the statement to which you refer of the three men who appeared here this conference, quoting, "Nearly 700 delegates from 67 major religious beliefs, Protestant, Roman Catholic, Eastern Orthodox and Jews, united in endorsement to an appeal to the conscience of the American people," which they appended to the statement.

Dr. GARNER. May I state that there exists in this Nation a deep-seated religious and moral conviction in the masses of the laymen that this philosophy of racial integration that has infiltrated Christian thought in this century for the first time, and that is advocated by those who seized predominant power in the religious bodies in America is in error.

I would state that the infiltration of this thought seemed to come into our seminaries immediately following World War I when the granting of exchange scholarships between American universities and the universities of Germany, Wiesbaden, and Heidelberg gave free exchange of students, and the ministers from these denominations went abroad, together with university students in the academic field, and returned having accepted the philosophies of Nietzscheism and the philosophies of atheistic evolution, and out of these philosophies religious textbooks began to appear in seminaries across the land, introducing these new interpretations of Christian though and concept that were basic to the change and productive of a change in the entire social philosophy upon which laws are now attempted to be enacted.

Mr. FOLEY. When I studied philosophy and theology in college in the thirties I was taught the very things that are being taught today of the dignity of the human being and his moral rights and values.

Dr. GARNER. May I inquire, were you taught that any denomination of Christianity prior to this century ever held to the position or philosophy that integration of the races in social, religious, and business life was necessary to obey God or carry out the commands of Christ?

Mr. FOLEY. I was taught that I had a moral obligation to respect the dignity of the human being and the rights that flow from that dignity, because they were created by a Supreme Being, and from that creation he gained his rights and if I denied him exercise of those rights and proofs I denied a moral obligation that I could be held accoutable for.

Dr. GARNER. Today "segregationist" is a red herring term to smear anyone who tends to continue holding to the philosophy that segregation in moral and social and religious life was an original pattern divinely ordered and followed by Christianity.

Mr. FOLEY. I was never taught that.

Dr. GARNER. But I am testifying, and my witness is, that the present testimony of the ministers who came before you is based upon a deviating and apostate philosophy from that held by Christendom for 19 centuries.

Acting Chairman KASTENMEIER. You are describing what has been commonly termed "Fundamentalism"?

Dr. GARNER. That is true. Fundamentalism in the light of the Holy Scriptures.

Acting Chairman KASTENMEIER. I want to get back to the original differences. The American Baptist Association you described earlier as not the same as the American Baptist Convention. You do describe the American Baptist Association as being both in the North and the South. I take it, though, that basically it is a Southern Baptist organization?

Dr. GARNER. The South and the West. We are heavy in California, also, in some 27 States in the Union, predominantly in the South and Southwest.

Acting Chairman KASTENMEIER. Were you designated to appear here today by the American Baptist Association?

Dr. GARNER. I was not. I was a member of their racial committee. The memorandum I submitted to the President stating this almost identical position was unanimously adopted by the American Baptist Association in annual session on June 20, 1963, following our meeting in the White House. And so I am submitting basically the same position adopted in that memorandum and sent here directly by the Florida State Baptist Association in the brief attached hereto.

Acting Chairman KASTENMEIER. Let me say personally I am sorry you view the President's action as infringing upon the separation of church and state. I don't believe it is any more infringement than having you and other ministers of the gospel here before our committees.

Dr. GARNER. May I interrupt and state it was my sentiment, and the sentiment approved by our people, that the President's request to ministers to organize into what he termed a biracial committee, and declining, which appeared to be by partial intent, to invite members of the American Council of Christian Churches—I understand they have been very bitter toward the administration, and they constitute 2 million—they did not invite any representative of the American Council of Christian Churches to that meeting.

It was my feeling that asking us ministers to organize into a biracial committee, suggesting we go home and ask the ministers in our community to organize into biracial committees, to use our pulpits as sounding boards to encourage demonstrations, when the Department of Justice, as Bob Kennedy—they stated they planned to come into a little more than 300 more cities, primarily into the Confederacy area, of 10,000 population or more, and ask us ministers to get our populations to go down and bring influence to bear upon businesses to integrate, we felt this was an attempt to use the clergy and the churches in an improper manner. And any terms of offense that I may have used in hasty preparation for this I have regrets for—but not for the position I have stated here.

Acting Chairman KASTENMEIER. Certainly you would be perfectly free not to follow the President's advice, and in your own case you militantly resisted his advice.

Dr. GARNER. That is right. I thought it was improper to ask the churches to help promote the program.

Mr. COPENHAVER. I wonder how you would feel, Doctor, if the President called a group of ministers to the White House and said, "Look, it is my belief that there is a strong Fascist or Communist movement in the country, seeking to undermine social and moral values, and therefore I urge you to go back to your community and talk with your congregations and with the people of your community to make them aware of this situation." Or, perhaps there has been a national disaster, and the Government is seeking to use Federal agricultural products, and calls on the ministers of the country to come in and work out with him a plan to distribute these products to people in a comunity, through the churches.

How do you feel about that, in view of your statement on separation of church and State?

Dr. GARNER. You pose a threat of overthrow of the country by fascism or comunism——

Mr. COPENHAVER. What if the President believed there was a movement of say fascism encompassing the country?

Or say there was a national disaster?

As I understand it, your objection is not that the President sought to obtain integration in the country, but that you believe it is a violation of the principle of separation of church and state.

Dr. GARNER. It is my belief he encouraged, abetted and aided integration and was attempting to use the churches as agencies for both integration and promotion of civil rights legislation which he now has proposed.

Mr. COPENHAVER. Your basic concern then is not the separation of church and state, but the doctrine of trying to encourage racial integration?

Would that be a corect statement?

Dr. GARNER. I am concerned with both. I don't believe the church should be used as an agency to promote political actions at any time.

Mr. COPENHAVER. You would just be as hostile if he called you there concerning the distribution of food in a national disaster, or to encourage you to warn your congregation of a fascist movement, am I right?

Dr. GARNER. The theoretical questions you are posing, I do not see a parallel or relationship between the two.

The one—you are proposing in case of danger of communism, fascism, would I accept, to advise our congregations, hinder takeover.

We would do that. We are pledged to uphold our country when we believe it to be right, or wrong. Therefore, we are expressing our disapproval of his use of church powers to put over a civil rights program which has no relationship to the endangering and overthrowing of a country.

Mr. COPENHAVER. Therefore, your major resentment to what the President did was not because of violation of the doctrine of separation of church and state, but resentment of his effort to create racial integration?

Dr. GARNER. Both premises are involved.

Mr. COPENHAVER. And you are very much concerned about the separation of church and state?

Mr. GARNER. Very definitely.

Mr. COPENHAVER. Are your churches in the association tax exempt? Is the property of your churches tax exempt?

Dr. GARNER. They are.

Mr. COPENHAVER. Have your seminaries received Federal funds through the GI bill of rights?

Dr. GARNER. They do.

Mr. COPENHAVER. Isn't that a violation of the doctrine of separation?

Dr. GARNER. No, sir. Statements have been registered that for the common services, for the good of moral integrity and order, the services rendered by the churches and religious schools of the community—they justify and make and render more profit than the tax exemptions they are granted in this instance.

Mr. COPENHAVER. Concerning grants of Federal funds under the GI bill of rights, do you believe the Federal Government would have the right to state no funds shall be paid to any seminary which practices racial segregation?

Dr. GARNER. I absolutely do not think it would be right or constitutional.

Mr. COPENHAVER. You believe that the Government does not have that authority?

Dr. GARNER. I do not believe it has the right to discriminate against an institution that chooses to select its own students.

Mr. COPENHAVER. Finally, Doctor, in reading your statement, I have the definite feeling from your statement that anyone who believes in racial integration is anti-Christian, atheistic and morally degenerate.

Now, do you wish to leave this committee with that impression?

Dr. GARNER. I did not so state, nor do I wish to leave such impression.

The position I have taken is that the underlying philosophy in the drive for social reform and the forcing of integration in business and social life is a new philosophy that has infiltrated Christian thought. I do not question the other gentlemen, I do not charge them with being atheists and infidels as individuals, but I charge that the concept they are promoting has been historically that concept.

Mr. COPENHAVER. Do you wish to leave your statement as it is?

Dr. GARNER. I do. I choose to leave the statement as it is.

Mr. KASTENMEIER. Is that all?

Dr. Garner, we thank you for your appearance here today.

Dr. GARNER. Thank you so much for the privilege.

Mr. KASTENMEIER. At this point the Chair would like to make several announcements.

We not only conclude today's testimony, but conclude the testimony of hearings for civil rights of this subcommittee in this Congress.

The record will be left open for 10 days for additional statements to be submitted to the committee for inclusion.

Counsel is authorized to insert at the proper place in the record those statements and those records already in the possession of the committee.

Having been in hearings for nearly 3 months, having heard some 80 witnesses, and having produced a record which will be many hun-

dreds if not thousands of pages, all I can say at this point is that I hope this has not all been in vain.

I think the difficulty which the subcommittee, the full committee and the Congress is faced with is best illustrated by the last witness, suggesting that the broad spectrum of views on this very controversial subject makes it almost impossible to compromise.

The views of our citizens, North and South, and otherwise divided, are such that I am sure compromise of the subject is not a proper course.

Taking personal leave, I say I personally hope that this committee will write the strongest possible bill so that we can take a major step in our history toward resolving this problem.

I therefore now adjourn this committee hearing, subject to the call of the Chair.

(Whereupon, at 4:40 p.m. the subcommittee was adjourned, subject to call of the Chair.)

STATEMENTS SUBMITTED FOR THE RECORD

STATEMENT OF HON. JOSEPH P. ADDABBO, U.S. REPRESENTATIVE FROM THE STATE OF NEW YORK

Mr. Chairman and members of the subcommittee, I thank you for this opportunity to speak in support of my bills designed to insure to every American citizen all the rights guaranteed to him under our Constitution, regardless of race, color, or creed.

H.R. 1983 would make the Commission on Civil Rights a permanent agency in the executive branch of the Government. In my opinion, this is necessary. We need an agency to constantly work in this field to keep us apprised of what is being done and what needs to be done to guarantee to all the benefits of our American heritage.

H.R. 1984 would prohibit the application of unreasonable literacy requirements with respect to the right to vote.

One of the most basic rights of every citizen of the United States is his right to participate in free elections and cast his ballot in secret for the candidate of his choice. There is strong and indisputable evidence to show that many qualified citizens are denied this right on account of their race or color. It is our duty to enact legislation to guarantee to every competent citizen this basic right.

We are proud of our school system in the United States and the completion of six grades of schooling should and must be held as prima facie evidence of literacy. If a person has finished six grades and not been adjudged incompetent, he must not be subjected to any further test of literacy.

H.R. 1985 would provide additional means of securing and protecting the civil rights of persons within the jurisdiction of the United States. To do this, we would amend the Civil Rights Act of 1957 by adding part VI creating a Joint Congressional Committee on Civil Rights; part VII prohibiting discrimination or segregation in interstate transportation; and this bill would provide penalties for conspiracy against civil rights and interference with such rights.

H.R. 4553 provides for better assurance of the protection of citizens of the United States and other persons within the several States from mob violence and lynching, and for other purposes.

Present-day newspaper headlines here and abroad make abundantly clear the need for legislation in the field of civil rights. While it may seem that the paramount issues facing our Nation today are international, we must realize that problems on the homefront are interwoven with the international—mob violence, intimidation, and discrimination must be curbed wherever it occurs when the safety of the individual is at stake. We must make haste in putting our own house in order—law and order must be maintained if we are to prove to the world, particularly to the Iron Curtain countries and the uncommitted nations, that the United States is a nation where freedom truly exists and the rights of each individual are respected and protected. The Emancipation Proclamation was signed 100 years ago—it behooves us today to enact into law that which is necessary to absolutely guarantee the basic rights of our Constitution to every American citizen.

I would not presume to try to tell this committee how it should proceed in its deliberations in this field, but it has occurred to me that it migh be well to conduct an investigation into this turbulent problem, now erupting in many cities, on the scene. I believe that much knowledge could be gained through such an investigation, knowledge which would be helpful to the committee and to the Congress as a whole.

Mr. Chairman, the executive branch is moving in this field with the tools at hand, Congress must give the executive the necessary laws to enable the President to meet the full responsibility which is ours as a nation. We must not shirk our responsibility.

Again, my thanks to the subcommittee for this opportunity to testify in behalf of necessary civil rights legislation, and I urge you to report these bills to the House with all deliberate speed.

25-144 O-63—pt. 3—46

INTERNATIONAL UNION,
ALLIED INDUSTRIAL WORKERS OF AMERICA,
Milwaukee, Wis., July 9, 1963.

Hon. JOHN W. MCCORMACK,
Speaker of the House of Representatives,
Washington, D.C.

DEAR SIR: I am enclosing a copy of the resolution adopted by the executive board of the International Union, Allied Industrial Workers of America, AFL–CIO, and a copy of the letter of transmittal to all our local unions.

The resolution not only reaffirms our traditional position, but commits our organization to the objective of an end to discrimination in any form.

This matter will be given further consideration at our forthcoming convention and we are confident that specific measures will be adopted to implement the sentiments expressed in this resolution.

Very truly yours,

GILBERT JEWELL,
International Secretary-Treasurer.

Enclosure.

JUNE 26, 1963.

To the officers and members of all local unions affiliated with the international union, Allied Industrial Workers of America, AFL–CIO, greetings:

I am enclosing for the attention of all members of the international union a resolution adopted unanimously by the international executive board on June 20, 1963.

This resolution deals with one of the foremost questions of our time and it is the sincere desire of the international executive board that the ideals expressed in the resolution be implemented by all local unions and members of the international union.

Fraternally yours,

GILBERT JEWELL,
International Secretary-Treasurer,

Whereas 1963 marks the 100th anniversary of the Emancipation Proclamation; and

Whereas 100 years after the signing of this historic document Negroes are still being denied their full rights as American citizens; and

Whereas there is no moral, political, social, economic, or religious justification for denial of rights because of race; and

Whereas the struggle for equal rights under the leadership of such outstanding men as Martin Luther King and Medgar Evers is a struggle for the rights of all men; and

Whereas the Allied Industrial Workers Union has always supported full rights for all men, regardless of race, creed or color; and

Whereas we can no longer tolerate the policy of gradualism which has led to so little progress toward first-class citizenship for Negroes and other minority groups: Now, therefore, be it

Resolved, That the Executive Board of the International Union, Allied Industrial Workers of America, AFL–CIO, calls on AIW members to reaffirm our traditional support for full rights of all citizens; and be it further

Resolved, That the AIW commit itself to the immediate end of segregation and discrimination in housing, in education, in entertainment, in eating places, in transportation, in employment, in voting, in every phase and every way in which this ugly cancer manifests in our society.

Adopted by International Executive Board, Allied Industrial Workers of America, AFL–CIO, June 20, 1963.

STATEMENT OF AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN (AFL–CIO) BY THOMAS J. LLOYD, PRESIDENT AND PATRICK E. GORMAN, SECRETARY-TREASURER, CONCERNING CIVIL RIGHTS LEGISLATION

Our names are Thomas J. Lloyd and Patrick E. Gorman. We are the president and secretary-treasurer, respectively, of the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL–CIO.

The AMCBW is a labor union with 375,000 members organized in about 500 local unions throughout the United States and Canada. The AMCBW and its

locals have contracts with thousands of employers in the meat, retail, poultry, egg, canning, leather, fish processing, and fur industries.

1. SOCIAL REVOLUTION IS SIMILAR TO 1930'S

The United States is currently undergoing a social revolution similar to the one of the 1930's. Negroes are demanding their rights, just as workers and farmers did 30 years ago. The social revolution which Negroes are undertaking will have as far reaching and as important results as did the one of the 1930's. Our Nation's social, economic, and political systems will undergo major changes.

And these changes will be good. The rights which Negroes are demanding, the first-class citizenship which they are calling for, are rightfully theirs. It is a tragedy and blot upon our Nation that they are only now getting them. It is a sad comment upon our political system that only through their protests, only through their demonstrations are Negroes finally making the gains which, according to the Constitution, they should have had all along.

To those who believe that justice and right are abstracts which do not mean very much, let us give a very practical reason why these changes are good. The United States is today a much healthier nation because of the reforms which were brought about by the social revolution of the 1930's. The various laws enacted in the New Deal, the industrial democracy brought about in many industries by the building of strong unions has made our political, economic, and social system stronger. The same effect will come from the reforms which will be brought about in the current social revolution. The United States cannot long remain with some citizens enjoying full rights and others only partial rights.

2. CIVIL RIGHTS CAUSE WILL BE SUCCESSFUL

There can be no doubt that the social revolution for equal rights will succeed. There are two factors which assure this outcome:

1. The civil rights forces are absolutely right in demanding full equality, full rights, and full citizenship.

2. The civil rights groups are so determined that they are willing to suffer—and perhaps even to die—to succeed in achieving the goal of equal rights and equal opportunities.

These factors make an unbeatable combination. All the jails, the electric cattle prodders, the police dogs, the police brutality, and the more sophisticated methods of suppression cannot overcome this combination.

In fact, each instance of brutality and indignity will only add new zeal and determination. The murder of Medgar Evers and the use of police dogs on children increased the strength and power of the civil rights movement far more than anything the movement's leaders could have done.

The legislation which this committee is considering is a vital part in achieving the changes which must come about. It is essential in saving the honor of this Nation, for if the Congress acts forthrightly, then we can redress some of the wrongs in the normal political pattern of this Nation. Our Nation will not have to undergo the shame of having the wrongs redressed in the streets.

Also, the legislation is vital in preventing an explosion. Men and women can suffer brutality, indignity, hypocrisy, and denials only for so long. Sooner or later they will lash out.

The workers of this Nation were well on the road toward such an explosion in the early 1930's. But the reforms of the New Deal channelized the explosive force. The violence and upheavals which rent society in so many European nations did not take place here.

This committee, its counterparts in the other body, and the Congress as a whole, have the power to decide whether again effective legislative efforts will be made to right the wrongs and whether the pent-up explosive forces can be constructively released.

3. RIGHTS AWAITED FOR 100 YEARS

There are those, in Congress and out, who argue that prejudice and discrimination are morally wrong, but that the Negroes are attempting to move too fast. "You can not change people overnight", we are told. "Reforms take time."

One can only wonder how fast is "too fast" and how long should reforms take? It is 100 years since the Emancipation Proclamation went into effect. It is 9 years since the school desegregation decision. The matter for amazement is not the Negroes' demand for immediate action, but the fact that they have been so fantastically patient until now.

This patience becomes even more astounding when one considers that Negroes fought and some died for freedom in two World Wars since the Emancipation Proclamation. But both before and after the wars, they were denied those freedoms they fought for. They returned home from the fighting to inferior Jim Crow schools, inferior Jim Crow housing, often a lack of voting rights and the worst kind of job discrimination.

Equally astounding has been the patience of the Negroes when for some 17 years they have contributed to the struggle of the free world against totalitarian communism. Again they shed their blood—this time in Korea. Again they were expected to return to second-class citizenship.

No piece of legislation guaranteeing Negro citizens full and complete equality can come too quickly. It is hardly impetuous to go the full road right now, for this Nation has 100 years of inadequate activity in this area to overcome.

4. STATES RIGHTS IS A FALSE ARGUMENT

The opponents of civil rights legislation argue again today, as they have in the past, that States rights will be harmed if the Congress passes the legislation now before you. The Founding Fathers of this Nation probably grimace with pain in their graves each time they hear this argument used against civil rights measures.

For the doctrine of States rights was a means, not an end, to the Founding Fathers. It was a means to protect the liberty and freedom of the people.

The founders of this Nation certainly did not see this doctrine as a means of denying rights to some of the people. They did not see it as a means for denying freedom to American citizens or to any other human beings. Nor did they mean States rights to be an end which could be twisted into allowing one group of citizens to exploit another group of citizens. The current usage of States rights arguments against civil rights legislation—as well as against economic reform leislation—is a perversion of the intentions of the Founding Fathers.

5. HUMAN RIGHTS SURPASS PROPERTY RIGHTS

Property rights, too, have been mauled and twisted into an argument against a section of the civil rights legislation—the public accommodations provisions. Considering the hostile arguments, one would almost believe that this section of the measure took some property away from business instead of simply requiring them to treat with dignity all human beings who want to be their customers. It is certainly a topsy-turvy world when some Congressmen are perfectly ready to deny human rights to safeguard what they believe to be property rights.

Mr. Chairman and gentlemen of the committee, it seems ridiculous to have to argue that human beings, men and women, come first and property second. We will certainly not offend the dignity of the committee by carrying this self-evident argument any further. We simply want to urge you to approve a strong public accommodation section which treats all businesses and all customers in the same manner.

6. MORE JOBS AND EQUAL TREATMENT ESSENTIAL

There is one matter which is not before this committee, but which is such an essential part of a realistic and meaningful civil rights program that it must be mentioned here. Our union firmly believes that employment is a central core in the current struggle for equal rights for all Americans.

First, the Congress must act to increase the number of jobs for all Americans. Unemployment and insecurity about future unemployment inflames racial feeling. The frustration about joblessness, whether held by whites or Negroes, makes current racial problems more explosive. It is no accident that Cambridge, Md., is both a seriously depressed area and a city where racial antagonisms are the most serious.

Second, Congress must adopt strong and meaningful legislation to provide equal work opportunities. It will be of little consequence to millions of Negroes, Spanish-speaking Americans or citizens of other minority groups if a public accommodations provision is enacted, but they cannot afford to patronize the restaurants, theaters, and movies. Fair employment practices are a vital and essential part of the civil rights program. The tremendous joblessness which exists among Negroes and other minority groups and the bitter discrimination

which exists both in hiring and promotions are the most harmful and most dangerous acts of bigotry which are being committed.

7. EFFECTIVE LEGISLATION NEEDED

The Amalgamated Meat Cutters & Butchers Workmen (AFL–CIO) firmly belives that strong and effective civil rights legislation is long overdue. We respectfully urge this committee and Congress to act quickly.

President George Meany of the AFL–CIO has appeared before this committee with a detailed examination of the civil rights legislation. We fully agree with Mr. Meany's testimony. We wish to endorse it and associate ourselves with it.

Of the bills before this committee, we believe H.R. 7152 is the most comprehensive and effective. We wish it were stronger in its voting rights section, allowed the Attorney General to act on his own without prior complaints in the education section, and made the Civil Rights Commission a permanent body.

In closing, we wish to emphasize again that speed in enacting strong and meaningful legislation is vital. A great many old wrongs must be righted.

STATEMENT OF AMERICAN LIBRARY ASSOCIATION, BY JAMES E. BRYAN, PRESIDENT, REGARDING CIVIL RIGHTS WITH PARTICULAR REFERENCE TO LIBRARIES

The American Library Association is a professional, nonprofit organization with more than 25,000 members from the 50 States and elsewhere. Membership in the association, which is voluntary, comprises not only librarians but also citizens serving on library governing bodies and lay persons actively interested in the development, extension, and improvement of library services throughout the Nation.

As president of the American Library Association, I should like to present the position of the association on the question of civil rights for all citizens with particular reference to libraries. In view of the history and previous actions of our organization, we are clearly in sympathy with civil rights.

The policy of the American Library Association in regard to access to libraries is embodied in its "library bill of rights," adopted by the council, the governing body of the association, on June 18, 1948, and amended February 1, 1961. Statement No. 5 reads as follows:

"The rights of an individual to the use of a library shall not be denied or abridged because of his race, religion, national origins, or political views."

We stand firmly behind this statement and are taking action toward making this a reality.

As evidence of the association's continued concern for civil rights, the council of the association approved and the association commissioned a study in depth of access to public libraries in the 50 States. This study by an objective survey firm will help the library profession and the Nation to understand the extent of the problem, give a valid basis for working toward improvement, and also point up the good work in this area that has already been accomplished by many libraries.

Desegregation of libraries started well before the 1954 Supreme Court decision in *Brown* v. *Board of Education of Topeka*, the case which set the legal precedent for the unconstitutionality of discrimination in public libraries and other public facilities. Library desegregation has proceeded considerably further than the desegregation of other major types of public facilities, such as schools, pools, and buses. The desegregation of libraries has been accomplished largely without protest movements or other disruptions of community life and far more frequently than is the case with other public facilities.

It must be remembered that the American Library Association, as a voluntary membership organization with no regulatory powers, has no authority to act in individual situations to safeguard the rights of library users. It cannot direct its member libraries or librarians, or the governing bodies of these institutions to take any specific actions or to desist from any practices. The association can and does use its persuasion, however, upon all members to meet fully the rights of all citizens in our society.

Further evidence of the association's longstanding policy to further civil rights is its official policy in regard to accommodations for its meetings, adopted by its council in 1936 and reaffirmed by its executive board in 1957. This 1936 policy

states: "In all rooms and halls assigned to the American Library Association hereafter for use in connection with its conference or otherwise under its control, all members shall be admitted upon terms of full equality." Our organization has faithfully adhered to this policy for almost three decades.

The American Library Association is in accord with the purposes of the pending legislation which will forward the cause of civil rights, including access to libraries. We would hope that such legislation would allow some flexibility on the part of the Federal administrator in withholding funds from particular projects where evidence of substantial progress clearly exists in the State as a whole under a well-defined plan.

Although libraries in all States regardless of region have accomplished and are accomplishing much in making their resources and facilities freely and readily available to all regardless of race, religion, or personal belief, the goal has not been fully achieved. We support, therefore, legislation on civil rights which will bring about this objective.

Access to Public Libraries

(Highlights of the Findings—Prepared for the 1963 Convention of the American Library Association)

Introduction

This is a summary of a study of access to public libraries conducted by International Research Associates, Inc., on behalf of the American Library Association. The full study is now in process of publication, and will be made available at the earliest possible date.

The study was conducted with the continuous guidance and assistance of the members of the American Library Association Advisory Committee, consisting of Harold Tucker, chief librarian, Queens Borough Public Library (chairman): Mrs. Augusta Baker, coordinator of Children's Services, the New York Public Library; Bernard Berelson, director, communications research programs, the population council; Jean E. Crabtree, head librarian, Gaden City Senior High School; John Hall Jacobs, director, Atlanta Public Library; Richard H. Logsdon, director of libraries, Columbia University; Archie L. McNeal, director of libraries, University of Miami Library; and Alphonse F. Trezza, executive secretary, Library Administration Division (ALA headquarters staff liaison).

The study was made possible by the financial support provided by: The H. W. Wilson Co., New York, R. R. Bowker Co., New York, The New World Foundation, New York, The Colorado Library Association, The Virginia Library Association, Dorothy Bendix, associate professor, Graduate School of Library Science, Drexel Institute of Technology, Philadelphia, Pa.

The primary objective of the study has been to broaden understanding of various types of limitations on free and equal access to the resources and services of public libraries. The major focus has been on restrictions to access based on race. Supplementing the study of racial restrictions are special studies of two other forms of limitations: first, the recent proliferation of restrictions on student use of libraries; and second, the shortage of foreign language materials in communities having a substantial proportion of persons with only a limited facility in the English language. Finally, the regional variations in the extent and adequacy of library resources and services are examined in relation to the standards of the American Library Association.

The study of limitations on access based on race focuses on the following areas: The extent and the pattern of racial segregation of public libraries; the rate of change toward desegregation; factors tending to promote and those tending to retard desegregation; the role of law in the segregation of public libraries; and the attitudes of librarians and library boards toward segregation.

The primary instrument of the study was a mail questionnaire sent to all of the library systems of the United States. Responses were received from 1,789 systems, or 22 percent of the total of 8,176 systems. The responses came in approximately equal proportion from all four of the major census regions of the country.

Supplementing the mail survey, experienced staff members and interviewers were sent to the South by INRA to interview those involved with segregation and desegregation of public libraries. They observed and conducted interviews in 12 States of the South, visiting 43 library systems and interviewing 154 respondents, including librarians (both while and Negro), members of library

boards, public officials, community leaders and members of interested community organizations.

In addition, a study was made of previous surveys, reports, articles, books, and legal materials dealing with library facilities and the question of segregation. The study of legal materials was supplemented by consultation with professors of constitutional law at leading universities and by a detailed memorandum on this topic by Prof. Thomas A. Smedley, director of the Race Relations Law Reporter of Vanderbilt University. This memorandaum is included as an appendix to the report.

Finally, a special study was made of the location and resources of branch libraries in 10 cities both in and outside of the South. Each branch was located on the census map of the city and an analysis was made of the variations in the location and resources of the branches according to the proportion of nonwhites in the population, and the levels of income, education and elementary school enrollment of the neighborhood.

The principal findings of this study with respect to its primary objective—the limitaions on access based on race—are summarized below. The complete findings on this topic and the findings with respect to the other topics of the study are given in the full report that will be published in the near future.

HIGHLIGHTS OF THE FINDINGS

Before stating the findings, it is important to clarify the two general types of discrimination that occur. The most severe form of deprivation occurs when the members of one racial group are completely excluded from enjoying the resources of a particular library, or, alternatively, when utilization of these resources is permitted only within certain limitations that are applied with particular force to that group. This may be called direct discrimination. A library system practices indirect discrimination when its branches are so located and the resources of these branches are so differentiated in terms of quantity and quality, that one group is more limited in its access to the library resources of the community than another.

The principal findings are as follows:

1. Direct discrimination is confined to the 16 States which are classified as constituting the South in the report, while indirect discrimination is found throughout the United States.

2. All forms of direct discrimination by a State, county or city public library are clearly in violation of the Federal Constitution. The remedy afforded by the law is a suit asking the court to direct the library to provide access to those affected. A separate suit must be filed with respect to each segregated library system.

3. State statutes requiring segregation of all public facilities and those specifically requiring segregation of public libraries are equally unconstitutional and cannot be asserted as justification for the continuation of segregation. In practice, many libraries in every State in the South have already been integrated, indicating that the statutes are not enforced against libraries by the States themselves.

4. Desegregation of libraries started well before the 1954 Supreme Court decision in *Brown* v. *Board of Education*, the case which reversed the "separate but equal" precedent in the field of education, and which provided the basis for later decisions extending the holding to other public facilities, including public libraries.

5. Library desegregation has proceeded considerably further than the desegregation of other major public facilities such as schools, swimming pools, and buses. In southern communities responding to the questionnaire, 66 percent of the pools, 54 percent of the schools, and 24 percent of the bus systems—but only 9 percent of the libraries—are still segregated. Far more frequently than has been the case with other public facilities, the desegregation of libraries has been accomplished without protest movements or disruptions of community life.

6. Library segregation is still widespread and severe in the five-State area of the Deep South, one of the three subregions of the South defined and analyzed in detail in the full report. Throughout the entire South, library segregation is far more prevalent in the smaller towns and rural areas than in the more densely populated communities.

7. The process of library integration, particularly in the case where there are overt pressures by the Negro community, involves many elements of the society, including the librarians themselves, the library boards, city officials, white and

Negro community leaders, civic and minority organizations, and to some extent the public at large.

8. The rate of library integration has been increased by the widespread belief of many professional librarians that it is their job to provide service equally to all members of the public. More practically, many librarians take the position that it is more in the interests of the library to integrate prior to the social disturbances that are occasioned by protest movements and law suits than to wait for the inevitable change. In many segregated libraries, the librarian who holds either or both of these views is often constrained in his actions by the contrary position held by members of the library board and/or city officials.

9. The rate of library integration is also affected by the generally low priority accorded to it by leaders of the Negro community, as compared to the fields of voting, housing, job opportunities, education, and other public facilities. This low priority is compounded by the difficulty of locating an adequate number of persons—particularly in the smaller communities—who are sufficiently interested in library integration to be willing to act as litigators and to take part in protest movements.

10. Should segregation of library services disappear overnight in the South, the problem would remain that both whites and Negroes would have available to them library resources that are far inferior to those found in each of the other major regions of the United States. In the measurements of expenditures per capita, size of staff, volumes per library, number of new titles bought in the past year, circulation per capita and volumes per capita, the South is uniformly far below all three other major regions of the United States. These findings are exemplified by the fact that the South contains 30 percent of the total United States population, but its libraries report expenditures that amount to only 15 percent of the national total.

AMERICAN NEWSPAPER GUILD,
Washington, D.C., August 6, 1963.

Hon. EMANUEL CELLER,
Chairman, Judiciary Committee of the House of Representatives, Congress of the United States, Washington, D.C.
Hon. WARREN G. MAGNUSON,
Chairman, Interstate Commerce Committee of the Senate of the United States, Washington, D.C.

GENTLEMEN: We respectfully submit, attached, a resolution concerning the President's civil rights legislative program as adopted by the 30th Annual Convention of the American Newspaper Guild, July 8–12, 1963, in Philadelphia, Pa.

For your further information, the American Newspaper Guild would like to associate itself with and endorse the testimony presented by George Meany on this subject given before the House Judiciary Committee on July 17, 1963, and the testimony submitted by Walter Reuther before the House Judiciary Committee on July 19, 1963.

Sincerely yours,

CHARLES A. PERLIK, Jr.,
Secretary-Treasurer.

RESOLUTION

Whereas the American Newspaper Guild is dedicated to equal justice for all the Nation's citizens; and

Whereas a century after their emancipation, the large number of Negro Americans find themselves in a condition of second-class citizenship little better than their former servitude; and

Whereas the progress toward full political and human rights has been so shamefully slow as to bring despair to these victims of social injustice; and

Whereas it has taken massive demonstrations by Negroes in the North and South to arouse the conscience of a nation to a long abuse that is morally indefensible; and

Whereas "gradualism and tokenism" have been discredited as means of alleviating the cumulative effects of prejudice and towering economic and educational barriers; and

Whereas thousands of victims of this blight on American society are embattled for full equality now; and

Whereas the President of the United States has given Congress a broad program of long-overdue civil rights legislation; and

Whereas the determination of Negroes to obtain their democratic rights continues in floodtide, as evidenced by plans for a march on Washington in August, and all indicators point to growing urgency for sweeping corrective action; and

Whereas some elements of Congress have threatened to thwart such legislation by filibuster or other means, which would aggravate a potentially explosive national problem: Therefore be it

Resolved, That this convention voice wholehearted support of President Kennedy's drive for civil rights legislation; be it further

Resolved, That the American Newspaper Guild vigorously opposes any filibuster or other move to thwart equal treatment in schools, jobs, and public accommodations; and be it further

Resolved, That the guild calls on Congress to recognize its obligation to the whole Nation by immediate and positive action on the President's civil rights proposals.

Adopted by the 30th Annual Convention of the American Newspaper Guild, July 8–12, 1963, Philadelphia, Pa.

THE AMERICAN PUBLIC HEALTH ASSOCIATION, INC.,
New York, N.Y., August 7, 1963.

Hon. EMANUEL CELLER,
Chairman, House Committee on the Judiciary,
New House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: I wish to present to you and to your committee the views of the American Public Health Association as they relate to one section of H.R. 7152, 88th Congress, presently being considered by your committee. The APHA is this Nation's largest organization which represents those persons engaged in the prevention of illness and disability. It is composed of over 13,000 members with an additional 25,000 members of State-affiliated public health societies. These members are almost exclusively persons whose full-time professional activities are with official and voluntary agencies at local, State, and Federal levels and who are dedicated to the betterment of the individual and community health. The objective of our members is reflected in the objective of the APHA "to protect and promote public and personal health"; and as these individual physicians, dentists, nurses, engineers, laboratory and social scientists, statisticians, nutritionists health educators, social workers, psychologists, and medical care and hospital administrators attempt to make their contribution in their several ways to the betterment of the public health, the APHA attempts to make its contribution to the total public health of our Nation. In the endeavor to gain the end of better health for all, our association seeks to accomplish by example and by statements of policy those actions and situations which will result in the professional growth of its individual members and all persons in public health and of the services and facilities so as to guarantee the best of health care.

Continuous attention is given by our association to change or innovations which will result in improvements in health care. As a part of this total effort, the governing council of the APHA, on November 16, 1955, approved a resolution entitled "Racial Integration in Health Facilities," a copy of which you will find attached. In this resolution, you will note, it is pointed out that the integration of health facilities and health personnel results in an increased quality and efficiency of care and economy in the operation of community health services and is favorable to greater development of professional skills and the fuller exchange of scientific knowledge. For these reasons, our association officially adopted a policy urging the full racial integration in health services and facilities. This position was reaffirmed by a resolution adopted the following year.

It would appear, therefore, that the position of our association is applicable to and consistent with the intent of title VI of H.R. 7152, 88th Congress. The number of health programs wherein Federal funds are utilized via grants, contracts, or loans is not inconsiderable; and because it would serve to implement at least to that extent the position of the APHA, our association supports title VI of H.R. 7152.

It would be appreciated if this letter and the attached copy of our resolution was made a part of the record of your hearings.

Sincerely yours,

BERWYN F. MATTISON, M.D.,
Executive Director.

RACIAL INTEGRATION IN HEALTH FACILITIES

Whereas the gratifying progress in racial integration within health facilities has demonstrated that integration is essential for highest quality, efficiency, and economy in the operation of these community services; and

Whereas the practice of full racial integration in staffing such facilities is favorable to the development of professional skills and the full exchange of scientific knowledge; and

Whereas shortages of such facilities and personnel make it imperative that inefficiencies and duplications be eliminated: Therefore be it

Resolved, That the American Public Health Association affirms its conviction of the desirability of full racial integration in health services and facilities; and be it further

Resolved, That the American Public Health Association recommends that its members and sections act to implement these principles in their own programs and communities.

Adopted by APHA's governing council at its annual meeting November 16, 1955.

STATEMENT OF HON. GEORGE W. ANDREWS, U.S. REPRESENTATIVE FROM THE STATE OF ALABAMA

Mr. Chairman, I appreciate the opportunity to come before this committee with an expression of my views.

My intention is to address myself to the President's civil rights proposals in general and specifically to the area of the 1963 act that will dangerously affect individual liberties and our republican form of government.

Mr. Chairman, I do not propose to make an exhaustive statement on the bill. But I would like to point out how the President, although with great sincerity and with well-meaning intentions I believe, is endangering the basic rights of all Americans by placing unprecedented power in the hands of the Attorney General.

Prior to the ill-directed mob violence in Birmingham, the President said there was no need for more civil rights legislation. Now he has reversed his position. He has asked for a bill that would bestow upon the Attorney General almost limitless power and authority to interfere with and enter into areas which are closely related to the private, daily lives of our people. This proposed law would adversely affect the bases of our society.

It would reach its talons like a vulture-falcon for the heart of our institutions, attacking and rending such parts as voting, public education, employment opportunities, public accommodations, and the administration of programs of Federal grants, loans, and guarantees to the individual as well as the several States.

I cannot believe that the President fully understands what he is proposing. I would prefer to believe that the many tasks of his Office have prevented him from becoming aware of the implications of his Civil Rights Act. For this reason, I would like to delve into the contents of this proposal, H.R. 7152, and focus attention on these dangerous implications.

The first part of the bill is concerned with voting rights and the registration and/or qualifications of electors. The complete absence of language in the Constitution which would give the Central Government the authority to determine the qualifications of electors is blatantly noticeable.

On the contrary, the Constitution states definitely that the right to determine the qualifications of electors rests with the individual States.

Despite this restriction, however, the proposed legislation would enable the Attorney General to file suits at Government expense to obtain the appointment of Federal voting referees who would have authority to propound, without regard to local law, that hundreds or thousands of individuals, not before authorized, are qualified to vote. Persons thus qualified would be enabled to vote even before the pending case had been tried.

Under this same provision, the Attorney Generaly solely on allegation could replace local and State registrars with Federal registrars. No pattern of discrimination need be proved. One man alone could say who can and who cannot vote. What could be more dangerous to the democratic process?

The Attorney General will have complete power. It is the Attorney General who will decide when such suits shall be brought. It is the Attorney General alone who will decide where a suit will be brought. It is the Attorney General who will decide for whom such suits will be brought.

The next part of the bill I will ask my colleagues to consider is title VI which gives the President, or any underling whom he wishes to appoint, the power to deny the several States or any one of them—insurance programs, funds, grants, aid, emergency assistance, or any other cooperation.

This is the language:

"SEC. 601. Notwithstanding any provision to the contrary in any law of the United States providing or authorizing direct or indirect financial assistance for or in connection with any program or activity by way of grant, contract, loan, insurance, guaranty, or otherwise. * * * All contracts made in connection with any such program or activity shall contain such conditions as the President may prescribe for the purpose of assuring that there shall be no discrimination in employment by any contractor or subcontractor on the ground of race, color, religion, or national origin."

Everything that came to the drafters' minds in the way of Federal programs is listed, but, lest anything was left out, forbid, the omnibus term "otherwise" is included as an afterthought. Hill-Burton funds, FHA insurance, FDIC, and savings and loan institutions are covered as well as highway funds, old-age assistance, and child welfare. No program is outside its scope.

The language of the bill states without confusion of intent that any type of Federal assistance can be denied to a State on a single charge of discrimination which may be determined such at the whim of the Attorney General.

The Constitution provides that Congress, and Congress alone, may levy taxes and appropriate funds. Title VI would be a direct affront to this restriction. Under this new law, Congress would still appropriate, surely, but the President would, in effect, seize the power to say whether or not the money would be spent on an approved project.

Title II of the bill deals with public accommodations, including theaters, motels, hotels, and restaurants along with the whole wide range of retail establishments. This is the most outlandish proposal of all.

Title II would bring down the curtain on the final act of the American drama portraying the downfall of the right of the individual owner of property to use his own earned goods in the manner which he chooses. It would completely nullify the right of the owner of a business, whether large or small, to select clientele. Under the false veil of promoting equality, it would give one person the right to force another (because the latter owned a business) to do business with him against his will.

Just who is covered by the proposed legislation? Over whom would the Attorney General be given the power to hold this bludgeon? Would there be any limitations whatsoever? Testimony has not yet answered these questions satisfactorily.

Under the commerce power, the constitutional clause on which title II leans, if it is reasonable to expand and stretch the commerce clause into the fields into which the bill carries them, there can be no limitation; for when the Congress takes one of the powers under these circumstances, it has opened Pandora's box to release all such power. If the Congress has one power under the clause—it has all power.

The Supreme Court has ruled that the commerce in question need not necessarily be interstate, but that if the activity even affects interstate commerce, it comes under this section of the Constitution.

And what, I might ask, is not affected by interstate commerce? Under this interpretation every barbershop, law firm, hotdog stand, automobile dealer, and medical clinic would be covered.

Did not the Supreme Court, using this theory, rule that a window cleaner in Detroit, Mich., was participating in interstate commerce?

Section 202(a) of title II reads:

"All persons shall be entitled, without discrimination or segregation on account of race, color, religion, or national origin, to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of the following public establishments:

"(1) any hotel, motel, or other public place engaged in furnishing lodging to transient guests; including guests from other States or traveling in interstate commerce;

"(2) any motion picture house, theater, sports arena, stadium, exhibition hall, or other public place of amusement or entertainment which customarily presents motion pictures, performing groups, athletic teams, exhibitions, or other sources of entertainment which move in interstate commerce; and

"(3) any retail shop, department store, market, drugstore, gasoline station, or other public place which keeps goods for sale, any restaurant, lunchroom, lunch counter, soda fountain, or other public place engaged in selling food for consumption on the premises, and any other establishment where goods, services, facilities, privileges, advantages, or accommodations are held out to the public for sale, use, rent, or hire, if—

"(*i*) the goods, services, facilities, privileges, advantages or accommodations offered by any such place or establishment are provided to a substantial degree to interstate travelers,

"(*ii*) a substantial portion of any goods held out to the public by any such place or establishment for sale, use, rent, or hire has moved in interstate commerce,

"(*iii*) the activities or operations of such place or establishment otherwise substantially affect interstate travel or the interstate movement of goods in commerce, or * * *.

The word "substantial" in the above clauses has been widely publicized, but we must not allow its popularity to blind us to its real implications. What can it mean?

If brought into effect, this section with the word "substantial" would turn the law in this case to a matter of value judgment. There would be no yardstick to gage what is and what is not pertaining to or affected by interstate commerce.

Part (b) of the same section is as follows:

"The provisions of this title shall not apply to a bona fide private club or other establishment not open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (a)."

I am again at a loss to determine what is meant here. What is the definition of a "bona fide private club"?

To put the question more graphically, would the following situation, taken from the testimony of Gov. George Wallace before the Senate Commerce Committee, be covered by the clause?

"A certain exclusive private club having a membership composed entirely of Italian-Americans has a rule allowing members to bring guests, many of whom travel in interstate commerce. The club also has another strict rule that guests must be limited solely to Italian-Americans. Under the provisions of this act may a member bring in a non-Italian-American traveling in interstate commerce despite the club rule forbidding it? Another example that arises would be the fact that my Masonic lodge has strict rules against bringing in non-Masons and/or Masons not of the same type organization as mine. I have taken many interstate traveling Masons to my lodge. Can a member bring a non-Mason or Mason of another type organization into my lodge if he is a guest traveling in interstate commerce?"

Mr. Chairman, I stated that I would not attempt to cover the entire Civil Rights Act, 1963, in this address, and I have not. I have left untouched a vast array of this proposed legislation's deadly assaults against individual liberties and States' rights.

The Attorney General is not only empowered to encroach on voting rights, private property, and Federal assistance. But he is handed a pitchfork with which he can prod, jostle, and overturn even such sacred institutions as education.

Section 204(a) even goes so far as to allow the Attorney General to file charges, "Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 203 * * *"

Is this not reminiscent of George Orwell's "Big brother is watching you." Is this not the beginning of thought control when you can be dragged into court for what you are thinking or thinking of doing?

If the bill in question is made law, the Federal Government will have placed within its grasp, an unprecedented concentration of power with the Attorney General being assigned the post of "Dictator in chief."

With these thoughts in mind, Mr. Chairman, I implore my colleagues to carefully examine this bill. It is my prayer that this committee will fully understand that the bill is not just for today and the present problem, but it will have a far-reaching effect upon our philosophy of governmental powers for the future.

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK,
COMMITTEE ON FEDERAL LEGISLATION,
August 19, 1963.

REPORT ON PROPOSED FEDERAL CIVIL RIGHTS LAWS RELATING TO PUBLIC ACCOMMODATIONS

INTRODUCTION

This report is addressed to certain bills presently before Congress to eliminate discrimination in public accommodations, and to establish causes of action by private individuals and the Attorney General to prevent such discrimination.

We have considered principally the provisions comprising title II of the proposed "Civil Rights Act of 1963," introduced by Senator Mansfield and others as S. 1731, 88th Congress, 1st session, and by Representative Celler as H.R. 7152, 88th Congress, 1st session. Senator Mansfield and others have also introduced substantially the same provisions as title II in a separate bill, S. 1732, the proposed "Interstate Public Accommodations Act of 1963."[1] Other bills dealing with this problem have been introduced by a substantial number of other Senators and Representatives, including S. 1591, introduced by Senators Dodd and Cooper and others, and H.R. 6720, introduced by Representatives Lindsay and by others in the same form. S. 1731 and H.R. 7152 were proposed by President Kennedy in a special message to Congress on June 19, 1963, which stated that the public accommodations provisions are designed "to guarantee all citizens equal access to the services and facilities of hotels, restaurants, places of amusement and retail establishments." (New York Times, June 20, 1963, p. 16, col. 4.)

Title II of S. 1731 invokes the powers of Congress under both the commerce clause and the 14th amendment of the Constitution, with chief reliance placed upon the commerce clause, and with the operative sections, as introduced, relying solely on the commerce clause. S. 1591 and H.R. 6720 are based upon the 14th amendment, and proposals have been made to amend title II to place greater operative reliance upon the 14th amendment.

Title II now provides that all persons shall be entitled "without discrimination or segregation on account of race, color, religion, or national origin, to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations" of enumerated kinds of "public establishments" if such establishments satisfy specified criteria with respect to activities or operations related to interstate commerce. The denial of or interference with the right to nondiscriminatory treatment is prohibited, and an aggrieved person, or the Attorney General for or in the name of the United States, may institute a civil action for injunctive relief in the Federal district courts.

In order for the Attorney General to institute suit, he must certify that he has received a written complaint from the aggrieved person and that in his judgment such person is unable to initiate and maintain appropriate legal proceedings because of lack of adequate financial means or effective representation or risk of economic or other injury. If local laws appear to forbid the discrimination complained of, the Attorney General is required to notify the appropriate State or local officials, and, upon their request, to afford them a reasonable time to act before he institutes an action. In the case of other complaints, the Attorney General is required, before instituting an action, to refer the matter to the Community Relations Service, contemplated by title IV of the bill, to attempt to secure compliance with the statute by voluntary procedures. Compliance with the provisions for action by local officials or the Community Relations Service is not required if the Attorney General certifies to the court that delay would adversely affect the interests of the United States or that compliance with such provisions would be fruitless.

SUMMARY

We support the proposed legislation and we believe it is validly founded on the commerce clause and also derives substantial constitutional support from the 14th amendment. We believe that Congress should reply on both constitutional provisions, since we regard the commerce clause and the 14th amendment as complementary and not competitive sources of congressional power.

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[1] Unless otherwise indicated the references to the "proposed legislation" in this report refers to title II of S. 1731, the full text of which is attached hereto as an appendix.

THE COMMERCE CLAUSE

Article I, section 8, clause 3, of the Constitution confers upon Congress the power "To regulate Commerce * * * among the several States * * *."

The commerce clause has repeatedly been held by the U.S. Supreme Court to empower Congress to reach and control activity which affects interstate commerce and to remove burdens on such commerce whether or not a particular activity or transaction embraced by the legislation is itself interstate in character. Even if an activity or transaction considered in isolation is both intrastate in character and insubstantial in its impact on interstate commerce, Congress may legislate with regard to the aggregate impact or burden on interstate commerce of all such activities or transactions. The power reaches not only activities which are purely "commercial" in nature, but, in furtherance of particular public policies, can be, and has been, used to reach noncommercial activities. In our opinion, under these principles, each fully supported by authority, the proposed public accommodations law would be a valid exercise of the power of Congress under the commerce clause.

Effect of discrimination on interstate commerce.—Title II contains proposed legislative findings that discriminatory acts (*a*) make unavailable to Negro interstate travelers goods and services which are available to others; (*b*) make adequate lodgings for Negro interstate travelers difficult to obtain and inconvenient to reach; (*c*) require Negro interstate travelers to detour to find adequate eating places; (*d*) restrict the audiences of interstate entertainment industries and thus burden interstate commerce; (*e*) have led to the withholding of patronage from retail establishments by those affected by such acts and inhibit and restrict the normal distribution of goods in the interstate market; (*f*) drive conventions away from cities where discriminatory practices prevail; and (*g*) reduce the mobility of the national labor force and deter the interstate movement of industries.

We believe that these findings that discrimination in public accommodations burdens and obstructs interstate commerce are manifestly reasonable for Congress to make. Such findings help to lay the proper foundation for legislation intended to deal with the problem as found to exist by Congress and will be given great weight when the constitutionality of the proposed legislation is under attack. See *Block* v. *Hirsh*, 256 U.S. 135, 154 (1921); *Borden's Co.* v. *Baldwin*, 293 U.S. 194, 209 (1934); *Communist Party* v. *Subversive Activities Control Board*, 367 U.S. 1, 94 (1961).

Precedents under commerce clause support proposed legislation.—The validity of the proposed legislation as an exercise of the commerce power is clear from the decisions of the U.S. Supreme Court in *N.L.R.B.* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1936), *United States* v. *Darby*, 312 U.S. 100 (1941) and numerous other cases.

In the *Jones & Laughlin* case, the Court sustained the constitutionality of the National Labor Relations Act under the commerce clause. The Court held that, irrespective of respondent's contention that its manufacturing activities represented a break in the "stream of commerce," Congress could legislate "to protect interstate commerce from the paralyzing consequences of industrial war." 301 U.S. at 41. The Court summarized the course of relevant authority as follows:

"The congressional authority to protect interstate commerce from burdens and obstructions is not limited to transactions which can be deemed to be an essential part of a 'flow' of interstate or foreign commerce. Burdens and obstructions may be due to injurious action springing from other sources. The fundamental principle is that the power to regulate commerce is the power to enact 'all appropriate legislation' for 'its protection and advancement' (*The Daniel Ball*, 10 Wall. 557, 564); to adopt measures 'to promote its growth and insure its safety' (*Mobile County* v. *Kimball*, 102 U.S. 691, 696, 697); 'to foster, protect, control and restrain.' *Second Employers' Liability Cases*, *supra* [223 U.S.] p. 47. See *Texas & N. O. R. Co.* v. *Railway Clerks*, *supra* [281 U.S. 548]. That power is plenary and may be exerted to protect interstate commerce 'no matter what the source of the dangers which threaten it.' *Second Employers' Liability Cases*, p. 51; *Schecter Corp* v. *United States*, *supra* [295 U.S. 495]. Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that com-

merce from burdens and obstructions, Congress cannot be denied the power to exercise that control. *Schecter Corp.* v. *United States, supra.* Undoubtedly the scope of this power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government. *Id.* The question is necessarily one of degree. As the Court said in *Chicago Board of Trade* v. *Olsen, supra* [262 U.S.] p. 37, repeating what had been said in *Stafford* v. *Wallace, supra* [258 U.S. 495]: 'Whatever amounts to more or less constant practice, and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause and it is primarily for Congress to consider and decide the fact of the danger and meet it.'" 301 U.S. at 36–37.

The Court noted that in *Chicago Board of Trade* v. *Olsen,* it had upheld the Grain Futures Act of 1922 "with respect to transactions on the Chicago Board of Trade, although these transactions were 'not in and of themselves interstate commerce.' Congress had found that they had become 'a constantly recurring burden and obstruction to that commerce.' *Chicago Board of Trade* v. *Olsen,* 262 U.S. 1, 32." 301 U.S. at 35–36.

In the *Jones & Laughlin* case, furthermore, the Court stressed the factor of experience in determining the scope of congressional power over interstate commerce:

"We have often said that interstate commerce itself is a practical conception. It is equally true that interferences with that commerce must be appraised by a judgment that does not ignore actual experience.

"Experience has abundantly demonstrated, that the recognition of the right of employees to self-organization and to have representatives of their own choosing for the purpose of collective bargaining is often an essential condition of industrial peace. Refusal to confer and negotiate has been one of the most prolific causes of strife. This is such an outstanding fact in the history of labor disturbances that it is a proper subject of judicial notice and requires no citation of instances." 301 U.S. at 41–42.

This emphasis on the relevance of practical experience has clear pertinence to the present question.

Similarly, in *United States* v. *Darby,* the Supreme Court sustained provisions of the Fair Labor Standards Act barring from shipment in interstate commerce goods produced by employees whose wages and hours of employment did not conform to the requirements of the statute, and prescribing adherence to such requirements with respect to all employees engaged in the production of goods for commerce. In upholding the prohibition on shipment of the proscribed goods in interstate commerce, the Court considered the nature of the commerce power:

"The motive and purpose of a regulation of interstate commerce are matters for the legislative judgment upon the exercise of which the Constitution places no restriction and over which the courts are given no control. *McCray* v. *United States,* 195 U.S. 27; *Sonzinsky* v. *United States,* 300 U.S. 506, 513 and cases cited. 'The judicial cannot prescribe to the legislative department of the Government limitations upon the exercise of its acknowledged power.' *Veazie Bank* v. *Fenno,* 8 Wall. 533. Whatever their motive and purpose, regulations of commerce which do not infringe some constitutional prohibition are within the plenary power conferred on Congress by the commerce clause." 312 U.S. at 115.

The power of Congress to forbid the production of goods for commerce unless the prescribed labor standards were met was likewise upheld, and the Court stated:

"The power of Congress over interstate commerce is not confined to the regulation of commerce among the States. It extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate interstate commerce. See *McCulloch* v. *Maryland,* 4 Wheat. 316, 421. Cf. *United States* v. *Ferger,* 250 U.S. 199.

" * * *

"But it does not follow that Congress may not by appropriate legislation regulate intrastate activities where they have a substantial effect on interstate

commerce. See *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board*, 303 U.S. 453, 466. A recent example is the National Labor Relations Act for the regulation of employer and employee relations in industries in which strikes, induced by unfair labor practices named in the act, tend to disturb or obstruct interstate commerce. See *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 38, 40; *National Labor Relations Board* v. *Fainblatt*, 306 U.S. 601, 604, and cases cited. But long before the adoption of the National Labor Relations Act this Court had many times held that the power of Congress to regulate interstate commerce extends to the regulation through legislative action of activities intrastate which have a substantial effect on the commerce or the exercise of the congressional power over it." 312 U.S. at 118–20.

The aggregate impact on commerce of goods produced under proscribed conditions was deemed controlling rather than the volume of any one shipper or producer:

"Congress, to attain its objective in the suppression of nationwide competition in interstate commerce by goods produced under substandard labor conditions, has made no distinction as to the volume or amount of shipments in the commerce or of production for commerce by any particular shipper or producer. It recgnized that in present day industry, competition by a small part may affect the whole and that the total effect of the competition of many small producers may be great. See H. Rept. No. 2182, 75th Cong. 1st Sess. p. 7. The legislation aimed at a whole embraces all its parts. Cf. *National Labor Relations Board* v *Fainblatt, supra*, 606." 312 U.S. at 123.

Again, in *Wickard* v. *Filburn*, 317 U.S. 111 (1942), the Court upheld the marketing penalties imposed for noncompliance with the wheat marketing quotas of the Agricultural Adjustment Act of 1938, even with respect to production not intended for commerce but wholly for consumption on the farm. The Court stated that "even if appellee's [the farmer's] activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce, and this irrespective of whether such effect is what might at some earlier time have been defined as 'direct' or 'indirect.'" 317 U.S. at 125.

The Court's consideration in that case of the power of Congress to stimulate commerce is likewise pertinent with respect to the proposed findings in title II:

"The stimulation of commerce is a use of the regulatory function quite as definitely as prohibitions or restrictions thereon. This record leaves us in no doubt that Congress may properly have considered that wheat consumed on the farm where grown, if wholly outside the scheme of regulation, would have a substantial effect in defeating and obstructing its purpose to stimulate trade therein at increased prices." 317 U.S. at 128–29.

The Court further held that the fact that "appellee's own contribution to the demand for wheat may be trivial by itself is not enough to remove him from the scope of Federal regulation where, as here, his contribution, taken together with that of many others similarly situated, is far from trivial." *Labor Board* v. *Fainblatt*, 306 U.S. 601, 606 *et seq.*" 317 U.S. at 127–28.

Each of these decisions is replete with citations to additional authority supporting the power of Congress to regulate activities which themselves may be deemed intrastate in character but which burden or obstruct interstate commerce, and subsequent decisions reinforce this doctrine. *E.g.*, *Mandeville Island Farms, Inc.* v. *American Crystal Sugar Co.*, 334 U.S. 219, 229–35 (1948); *United States* v. *Women's Sportswear Mfctr's Assn.*, 336 U.S. 460, 464 (1949); *United States* v. *South-Eastern Underwriters Assn.*, 322 U.S. 533, 539–53 (1944); *Polish Nat. Alliance* v. *N.L.R.B.*, 322 U.S. 643, 648 (1944). As tersely summarized in the *Women's Sportswear* case:

"If it is interstate commerce that feels the pinch, it does not matter how local the operation which applies the squeeze." 336 U.S. at 464.

As made clear by the *Darby* and *Wickard* v. *Filburn* decisions, Congress is not limited under the commerce clause by the size or impact on commerce of any particular enterprise subjected to regulation. It is the aggregate impact on commerce of the regulated activities which is determinative, irrespective of the extent of impact of any specific isolated activity. In *Wickard* v. *Filburn*, for example, the farmer planted only 23 acres and the amount of wheat at issue amounted to only 239 bushels. Similarly, in *Mabee* v. *White Plains Publishing Co.*, 327 U.S. 178 (1946), the Fair Labor Standards Act was applied to a news-

paper with a circulation of about 9,000 copies of which only 45 were mailed out of the State in which the newspaper was printed.[2]

Use of commerce clause to eliminate "social" evils.—It is abundantly clear that Federal public accommodations legislation can be validly founded on the commerce clause even if the proposed legislation be regarded as directed in large measure at a "social" evil which might be the subject of State regulation under the police power. In the first place, the "social" evil has clear economic consequences of which the proposed legislation takes account. Furthermore, as stated in *Darby:*

"It is no objection to the assertion of the power to regulate interstate commerce that its exercise is attended by the same incidents which attend the exercise of the police power of the States. *Seven Cases* v. *United States*, 239 U.S. 510, 513; *Hamilton* v. *Kentucky Distilleries & Warehouse Co.*, 251 U.S. 146, 156; *United States* v. *Carolene Products Co.*, 304 U.S. 144, 147; *United States* v. *Appalachian Electric Power Co.*, 311 U.S. 377." 312 U.S. at 114–15.

Indeed, the commerce power has been relied upon to reach a variety of non-economic activities deemed to violate public policy. Most pertinent are cases upholding the barring of racial discrimination by interstate carriers and related public facilities. *E.g., Georgia* v. *United States*, 371 U.S. 9 (1962); aff'g 201 F. Supp. 813 (N.D. Ga. 1961); *Boynton* v. *Virginia*, 364 U.S. 454 (1960); *Henderson* v. *United States*, 339 U.S. 816 (1950); *Mitchell* v. *United States*, 313 U.S. 80 (1941). The Interstate Commerce Commission has dealt with the subject on numerous occasions, both in specific proceedings and through a general order forbidding such discrimination. Docket No. MC–C–335, paragraphs 180a(1), 180a(2) (1961). Indeed, the Commission's decisions on matters of racial discrimination date back to such cases as *Heard* v. *Georgia R. Co.*, 1 I.C.C. 719 (1888), and *Council* v. *Western & A.R. Co.*, 1 I.C.C. 638 (1887), and extend to such recent decisions as *N.A.A.C.P.* v. *St. Louis S.F.R. Co.*, 297 I.C.C. 335, 347–8 (1955).

The Supreme Court has also consistently sustained under the commerce clause statutes having major social objectives. It has upheld legislation forbidding the interstate transportation of lottery tickets as an aid to local enforcement of gambling prohibitions. *Lottery Cases*, 188 U.S. 321 (1903). Regulation designed to insure pure food and drugs has been sustained. *Hipolite Egg Co.* v. *United States*, 220 U.S. 45 (1911). The banning of transportation of women in interstate commerce for purposes of prostitution has been upheld. *Hoke* v. *United States*, 227 U.S. 308 (1913). The prohibition of interstate transportation of women for immoral purposes has been upheld even where commercial prostitution is not involved. *Caminetti* v. *United States*, 242 U.S. 470 (1917). Thus, it is apparent that there is no pertinent distinction under the commerce clause between "economic" and "social" legislation.

Effect on commerce clause jurisdiction of 5th and 10th amendments.—The proposed legislation would violate neither the 5th nor 10th amendment to the Constitution. It is beyond challenge at this date that reasonable regulation to meet a public evil does not violate the due process clause. "The Constitution does not secure to anyone liberty to conduct his business in such fashion as to inflict injury upon the public at large, or upon any substantial group of the people." *Nebbia* v. *New York*, 291 U.S. 502, 538–39 (1934). See *N.L.R.B.* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 43–44 (1936); *Chicago Board of Trade* v. *Olsen*, 262 U.S. 1, 40–41 (1923).

In *Wickard* v. *Filburn*, the Court rejected the contention that the legislation involved violated the fifth amendment by limiting the use of private property:

"It is of the essence of regulation that it lays a restraining hand on the self-interest of the regulated and that advantages from the regulation commonly fall to others." 317 U.S. at 129.

President Kennedy's message to Congress referred to some 30 States, the District of Columbia and numerous cities "covering some two-thirds of this

[2] It has been suggested in some quarters that public accommodations having a gross annual income below a specified amount be excluded from the proposed legislation. We do not favor such an exclusion. The impact on commerce of relatively small businesses may well vary more with the location and community involved than the actual dollar volume. For example, there may be stops along interstate bus and automobile routes where only small lunch counters or motels are available. The applicability of title II would in all cases depend on the applicability of the statutory criteria which refer to activity or operations related to interstate commerce, and in an enforcement action by the Attorney General he would have to certify under sec. 204(a)(2)(ii) of title II that "the purposes of this title will be materially furthered by the filing of an action."

country and well over two-thirds of its people" which have already enacted "laws of varying effectiveness" against discrimination in places of public accommodation. New York Times, June 20, 1963, page 16, columns 3–4. It is clear that State and local antidiscrimination laws do not violate the due process clause of the 14th amendment. *Railway Mail Assoc.* v. *Corsi*, 326 U.S. 88 (1945) (New York law prohibiting racial discrimination by labor union upheld against due process clause challenge). See also *Bolden* v. *Grand Rapids Operating Corp.*, 239 Mich. 318, 214 N.W. 241 (1927); *Pickett* v. *Kuchan*, 323 Ill. 138, 153 N.E. 667 (1926); *People* v. *King*, 110 N.Y. 418, 18 N.E. 245 (1888) (cases involving public accommodations laws). Patently, Federal legislation based upon the commerce clause is no more subject to attack under the due process clause of the 5th amendment than are such State enactments under the 14th amendment. As observed by the Supreme Court in *United States* v. *Rock Royal Cooperative*, 307 U.S. 533, 569–70 (1939):

"The authority of the Federal Government over interstate commerce does not differ in extent or character from that retained by the States over intrastate commerce."

Any argument against the validity of the proposed legislation based upon the 10th amendment is similarly without merit, as shown in the *Darby* case:

"Our conclusion is unaffected by the 10th amendment which provides: 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.' The amendment states but a truism that all is retained which has not been surrendered. There is nothing in the history of its adoption to suggest that it was more than declaratory of the relationship between the National and State Governments as it had been established by the Constitution before the amendment or that its purpose was other than to allay fears that the new National Government might seek to exercise powers not granted, and that the States might not be able to exercise fully their reserved powers. * * *

"From the beginning and for many years the amendment has been construed as not depriving the National Government of authority to resort to all means for the exercise of a granted power which are appropriate and plainly adapted to the permitted end." 312 U.S. at 123–24.

We believe that the proposed legislation is well within the granted power of Congress and is a wholly appropriate means to deal with a national problem of great importance.

THE 14TH AMENDMENT

The equal protection clause in section 1 of the 14th amendment provides that "No State * * * shall deny to any person within its jurisdiction the equal protection of the laws." This prohibition may be enforced by Congress by appropriate legislation under the provisions of section 5 of the amendment.

The findings in title II of S. 1731 rely on the 14th amendment, as well as the commerce clause, in section 201 (h) and (i), which provide:

"(h) The discriminatory practices described above are in all cases encouraged, fostered, or tolerated in some degree by the governmental authorities of the States in which they occur, which license or protect the businesses involved by means of laws and ordinances and the activities of their executive and judicial officers. Such discriminatory practices, particularly when their cumulative effect throughout the Nation is considered, take on the character of action by the States and therefore fall within the ambit of the equal protection clause of the 14th amendment to the Constitution of the United States.

"(i) The burdens on and obstructions to commerce which are described above can best be removed by invoking the powers of Congress under the 14th amendment and the commerce clause of the Constitution of the United States to prohibit discrimination based on race, color, religion, or national origin in certain public establishments."

S. 1591 and H.R. 6720 are based exclusively on the 14th amendment. S. 1591 provides relief against discrimination in public accommodations "conducted under a State license," and H.R. 6720 provides relief against discrimination in businesses "authorized by a State."

Consideration of a 14th amendment basis for public accommodations legislation must begin with the *Civil Rights* cases, 109 U.S. 3 (1883). The Supreme Court there held that sections 1 and 2 of the Civil Rights Act of 1875, which purported to prohibit discrimination in "inns, public conveyances on land or water, theaters, and other places of public amusement," were unconstitutional because directed at individual rather than State action:

"It is State action of a particular character that is prohibited [by the 14th amendment]. Individual invasion of individual rights is not the subject matter of the amendment. It has a deeper and broader scope. It nullifies and makes void all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty or property without due process of law, or which denies to any of them the equal protection of the laws." 109 U.S. at 11.

It is hardly likely that the "State action" requirement of the *Civil Rights* cases will be overruled, particularly in view of such recent pronouncements by the Courts as in *Burton* v. *Wilmington Pkg. Auth.*, 365 U.S. 715, 722 (1961):

"It was clear, as it always has been since the *Civil Rights* cases, *supra*, that 'Individual invasion of individual rights is not the subject matter of the amendment' * * *".

The principle of the *Civil Rights* cases, however, does not prevent application of the proposed legislation to the areas of discriminatory activity which are already subject to the congressional power granted by the 14th amendment, namely, activity which is not purely "individual invasion of individual rights" but involves the State sufficiently to bring the amendment into play. Indeed, the majority of the Court in the *Civil Rights* cases addressed itself only to the lack of any requirement of State action under the 1875 act and did not consider what degree of State participation is required to support the applicability of the 14th amendment, stating:

"It is not necessary for us to state, if we could, what legislation would be proper for Congress to adopt. It is sufficient for us to examine whether the law in question is of that character.

"An inspection of the law shows that it makes no reference whatever to any supposed or apprehended violation of the 14th amendment on the part of the States." 109 U.S. at 13–14.

The concept of "State action" under the 14th amendment has undergone considerable expansion in recent years. Thus, the prohibitions of the 14th amendment extend to State judicial enforcement of racially restrictive covenants among private persons. *Shelley* v. *Kraemer*, 334 U.S. 1 (1948). The enforcement of State trespass statutes against Negroes for refusing to leave a lunch counter has been held to be barred by the 14th amendment where there is a local segregation ordinance. Even if the exclusion is based on the store manager's own decision, the equal protection clause is applicable because the existence of the ordinance is deemed to remove his decision from the sphere of private choice. *Peterson* v. *Greenville*, 373 U.S. 244 (1963). Where local officials in the absence of an ordinance publicly state that Negroes would not be permitted to seek desegregated lunch-counter service, the situation is considered the same from the standpoint of the 14th amendment as if there were such an ordinance. *Lombard* v. *Louisiana*, 373 U.S. 267 (1963). Lessees operating restaurants in a municipal airport and in an automobile parking building operated by a State agency have also been held subject to the 14th amendment. *Turner* v. *Memphis*, 369 U.S. 350 (1962); *Burton* v. *Wilmington Pkg. Auth.*, 365 U.S. 715 (1961). In these and other situations, the application of the 14th amendment is no longer in doubt, and such decisions suggest that there may well be further expansion of what constitutes "State action" under the amendment when other factual situations come before the Court.

The reliance upon the granting of a State license or authorization in S. 1591 and H.R. 6720 for 14th amendment coverage may rest in part upon a portion of the dissenting opinion of the first Mr. Justice Harlan in the *Civil Rights* cases. In the course of his discussion of discriminatory treatment in places of public amusement as a vestige of slavery which could be barred by Congress under the 13th amendment, he stated:

"The authority to establish and maintain them comes from the public. The colored race is a part of that public. The local government granting the license represents them as well as all other races within its jurisdiction. A license from the public to establish a place of public amusement, imports, in law, equality of right, at such places, among all the members of the public. This must be so unless it be—which I deny—that the common municipal government of all the people may, in the exertion of its powers, conferred for the benefit of all, discriminate or authorize discrimination against a particular race, solely because of its former condition of servitude." 109 U.S. at 41.

Similarly, in his discussion of the 14th amendment, he wrote:

"What I affirm is that no State, nor the officers of any State, nor any corporation or individual wielding power under State authority for the public benefit

or the public convenience, can, consistently either with the freedom established by the fundamental law, or with that equality of civil rights which now belongs to every citizen, discriminate against freemen or citizens, in those rights, because of their race, or because they once labored under the disabilities of slavery imposed upon them as a race." 109 U.S. at 59.

Mr. Justice Douglas substantially reiterated this position with respect to the 14th amendment in two recent concurring opinions. *Lombard* v. *Louisiana*, 373 U.S. 267, 274 (1963); *Garner* v. *Louisiana*, 368 U.S. 157, 184 (1961). In *Garner*, Mr. Justice Douglas also adverted to the pattern of segregation pursuant to Louisiana custom:

"Though there may have been no State law or municipal ordinance that *in terms* required segregation of the races in restaurants, it is plain that the proprietors in the instant cases were segregating blacks from whites pursuant to Louisiana's custom. Segregation is basic to the structure of Louisiana as a community; the custom that maintains it is at least as powerful as any law. If these proprietors also choose segregation, their preference does not make the action 'private', rather than 'State', action. If it did, a minuscule of private prejudice would convert State into private action. Moreover, where the segregation policy is the policy of a State, it matters not that the agency to enforce it is a private enterprise." 368 U.S. at 181 (emphasis in opinion).

In view of the *Lombard* decision, it would appear that the practice of segregating public accommodations in many communities to conform to the position taken by local officials would infringe the 14th amendment even in the absence of local laws requiring segregation. The combination of various circumstances, perhaps including elements of local licensing, regulation, official attitude and custom, might in other instances also support the application of the structures of the 14th amendment. Licensing also, however, has not thus far been judicially adopted as a basis for invoking the 14th amendment. Moreover, legislation referable to a licensing requirement alone could produce arbitrary variations between communities depending upon the nature and extent of local licensing laws and might exclude various types of public accommodations entirely if licensing of them is abolished or nonexistent in the locality. However, there is no necessity to have the reliance on the 14th amendment so limited.

Over 90 years ago Congress exercised its power under the 14th amendment to provide relief against deprivation of constitutional rights "under color of any statute, ordinance, regulation, custom, or usage of any State or Territory * * *" 42 U.S.C. § 1983 (originally sec. 1 of the Ku Klux Act of April 20, 1870). See *Monroe* v. *Pape*, 365 U.S. 167 (1961). Congress has also employed similar language in imposing criminal penalties for the deprivation of constitutional rights. 18 U.S.C. § 242. The Court in the *Civil Rights* cases adverted with apparent approval to the substantially similar version of this penal statute then in effect as illustrative of an act which was properly directed against "State action" under the 14th amendment. The Court said:

"This law is clearly corrective in its character, intended to counteract and furnish redress against State laws and proceedings, and customs having the force of law, which sanction the wrongful acts specified. In the Revised Statutes, it is true, a very important clause, to wit, the words 'any law, statute, ordinance, regulation or custom to the contrary notwithstanding,' which gave the declaratory section its point and effect, are omitted; but the penal part, by which the declaration is enforced, and which is really the effective part of the law, retains the reference to State laws, by making the penalty apply only to those who should subject parties to a deprivation of their rights under color of any statute, ordinance, custom, etc., of any State or territory: thus preserving the corrective character of the legislation." 109 U.S. at 16–17.

Title II of S. 1731 might be amended in similar terms, as has been suggested by some proponents of increased reliance on the 14th amendment, by providing for preventativee relief against discrimination in specified kinds of public establishments by any person acting under color of any law, statute, ordinance, regulation or custom or usage having the force of law, of any State or territory.[8]

USE OF MULTIPLE CONSTITUTIONAL SUPPORT

We believe that reliance on both the commerce clause and the 14th amendment in the proposed legislation would be highly advisable. The broadest cover-

[8] Such a provision in the proposed legislation would to some extent parallel the provisions of 42 U.S.C. § 1983, supra, but would give the Attorney General a cause of action not afforded by that section.

age and the most secure constitutional support can be derived from reliance upon all pertinent sources of power. Much legislation is expressly founded on more than one power of Congress, and the Supreme Court has relied on multiple constitutional support in upholding the validity of various statutes, e.g., *Board of Trustees* v. *United States*, 289 U.S. 48 (1933) (Tariff Act of 1922 upheld under power to raise revenues and power to regulate commerce with foreign nations); *Ashwander* v. *T.V.A.*, 297 U.S. 288 (1936) (Tennessee Valley Authority Act upheld on basis of war, commerce and navigation powers). See also *United States* v. *Manning*, 215 F. Supp. 272 (W.D. La. 1963) (voting registration provisions of Civil Rights Act of 1960 upheld under 14th and 15th amendments). Similarly, in the elimination of discriminatory treatment in public accommodations, the sources of congressional power provided by the commerce clause and the 14th amendment are fully compatible, and we believe that both should be invoked by Congress.

POLICY CONSIDERATIONS AND RECOMMENDATION

The course of recent events makes it plain that the demands of the Negro for just treatment are being insistently pressed and that, 100 years after the Emancipation Proclamation, the patience of the Negro with inequality and injustice it at an end. Legislation and judicial decisions have, in recent years, begun to afford redress in numerous respects, but discriminatory treatment in public accommodations open to others remains a continual affront.

We thoroughly endorse the moral and social objectives of the proposed legislation. It is a primary, ancient, and honorable function of the law to provide the instruments for the peaceful and just resolution of disputes among men. We believe that it is the responsibility of the bar to support the provision of adequate legal remedies to that end and to encourage the respect for legal processes which can only be fostered among the affected groups by providing vehicles of relief aaginst injustice. In our opinion the proposed legislation would fill the serious need for a means under law to redress a major grievance of the Negro. We approve the individual right of action provided by the bill, but in view of the frequent obstacles to suit by private litigants for relief against discriminatory treatment, we believe that an active, affirmative role by the Federal Government is necessary. Hence, we endorse the provisions in the proposed legislation which, while encouraging local initiative and responsibility, empower the Attorney General to institute enforcement actions.

We strongly recommend enactment of the proposed legislation.

Respectfully submitted.

Fred N. Fishman, chairman; Sidney H. Asch; Eastman Birkett; George H. Cain; Joseph Calderon; Donald J. Cohn; Louis A. Craco; Benjamin F. Crane; Nanette Dembitz; Arthur J. Dillon; Barry H. Garfinkel; Elliot H. Goodwin; Sedgwick W. Green; H. Melville Hicks, Jr.; Robert M. Kaufman; Ida Klaus; Leonard M. Leiman; George Minkin; Gerald E. Paley; Albert J. Rosenthal; Peter G. Schmidt; Henry I. Stimson.

APPENDIX

[S. 1731, 88th Cong., 1st sess.]

* * * * * * *

TITLE II—INJUNCTIVE RELIEF AGAINST DISCRIMINATION IN PUBLIC ACCOMMODATIONS

FINDINGS

SEC. 201. (a) The American people have become increasingly mobile during the last generation, and millions of American citizens travel each year from State to State by rail, air, bus, automobile, and other means. A substantial number of such travelers are members of minority racial and religious groups. These citizens, particularly Negroes, are subjected in many places to discrimiuation and segregation, and they are frequently unable to obtain the goods and services available to other interstate travelers.

(b) Negroes and members of other minority groups who travel interstate are frequently unable to obtain adequate lodging accommodations during their travels, with the result that they may be compelled to stay at hotels or motels of poor and inferior quality, travel great distances from their normal routes to find

adequate accommodations, or make detailed arrangements for lodging far in advance of scheduled interstate travel.

(c) Negroes and members of other minority groups who travel interstate are frequently unable to obtain food service at convenient places along their routes, with the result that many are dissuaded from traveling interstate, while others must travel considerable distances from their intended routes in order to obtain adequate food service.

(d) Goods, services, and persons in the amusement and entertainment industries commonly move in interstate commerce, and the entire American people benefit from the increased cultural and recreational opportunities afforded thereby. Practices of audience discrimination and segregation artifically restrict the number of persons to whom the interstate amusement and entertainment industries may offer their goods and services. The burdens imposed on interstate commerce by such practices and the obstructions to the free flow of commerce which result therefrom are serious and substantial.

(e) Retail establishments in all States of the Union purchase a wide variety and a large volume of goods from business concerns located in other States and in foreign nations. Discriminatory practices in such establishments, which in some instances have led to the withholding of patronage by those affected by such practices, inhibit and restrict the normal distribution of goods in the interstate market.

(f) Fraternal, religious, scientific, and other organizations engaged in interstate operations are frequently dissuaded from holding conventions in cities which they would otherwise select because the public facilities in such cities are either not open to all members of racial or religious minority groups or are available only on a segregated basis.

(g) Business organizations are frequently hampered in obtaining the services of skilled workers and persons in the professions who are likely to encounter discrimination based on race, creed, color, or national origin in restaurants, retail stores, and places of amusement in the area where their services are needed. Business organizations which seek to avoid subjecting their employees to such discrimination and to avoid the strife resulting therefrom are restricted in the choice of location for their offices and plants. Such discrimination thus reduces the mobility of the national labor force and prevents the most effective allocation of national resources, including the interstate movement of industries, particularly in some of the areas of the Nation most in need of industrial and commercial expansion and development.

(h) The discriminatory practices described above are in all cases encouraged, fostered, or tolerated in some degree by the governmental authorities of the States in which they occur, which license or protect the businesses involved by means of laws and ordinances and the activities of their executive and judicial officers. Such discriminatory practices, particularly when their cumulative effect throughout the Nation is considered, take on the character of action by the States and therefore fall within the ambit of the equal protection clause of the fourteenth amendment to the Constitution of the United States.

(i) The burdens on and obstructions to commerce which are described above can best be removed by invoking the powers of Congress under the fourteenth amendment and the commerce clause of the Constitution of the United States to prohibit discrimination based on race, color, religion or national origin in certain public establishments.

RIGHT TO NONDISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION

SEC. 202. (a) All persons shall be entitled, without discrimination or segregation on account of race, color, religion, or national origin, to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of the following public establishments:

(1) any hotel, motel, or other public place engaged in furnishing lodging to transient guests, including guests from other States or traveling in interstate commerce;

(2) any motion picture house, theater, sports arena, stadium, exhibition hall, or other public place of amusement or entertainment which customarily presents motion pictures, performing groups, athletic teams, exhibitions, or other sources of entertainment which move in interstate commerce; and

(3) any retail ship, department store, market, drugstore, gasoline station, or other public place which keeps goods for sale, any restaurant, lunchroom, lunch counter, soda fountain, or other public place engaged in selling

food for consumption on the premises, and any other establishment where goods, services, facilities, privileges, advantages, or accommodations are held out to the public for sale, use, rent, or hire, if—

(i) the goods, services, facilities, privileges, advantages, or accommodations offered by any such place or establishment are provided to a substantial degree to interstate travelers,

(ii) a substantial portion of any goods held out to the public by any such place or establishment for sale, use, rent, or hire has moved in interstate commerce,

(iii) the activities or operations of such place or establishment otherwise substantially affect interstate travel or the interstate movement of goods in commerce, or

(iv) such place or establishment is an integral part of an establishment included under this subsection.

For the purpose of this subsection, the term "integral part" means physically located on the premises occupied by an establishment, or located contiguous to such premises and owned, operated, or controlled, directly or indirectly, by or for the benefit of, or leased from the persons or business entities which own, operate, or control an establishment.

(b) The provisions of this title shall not apply to a bona fide private club or other establishment not open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (a).

PROHIBITION AGAINST DENIAL OF OR INTERFERENCE WITH THE RIGHT TO NONDISCRIMINATION

SEC. 203. No person, whether acting under color of law or otherwise, shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any person of any right or privilege secured by section 202, or (b) interfere or attempt to interfere with any right or privilege secured by section 202, or (c) intimidate, threaten, or coerce any person with a purpose of interfering with any right or privilege secured by section 202, or (d) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 202, or (e) incite or aid or abet any person to do any of the foregoing.

CIVIL ACTION FOR PREVENTIVE RELIEF

SEC. 204. (a) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 203, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted (1) by the person aggrieved, or (2) by the Attorney General for or in the name of the United States if he certifies that he has received a written complaint from the person aggrieved and that in his judgment (i) the person aggrieved is unable to initiate and maintain appropriate legal proceedings and (ii) the purposes of this title will be materially furthered by the filing of an action.

(b) In any action commenced pursuant to this title by the person aggrieved, he shall if he prevails be allowed a reasonable attorney's fee as part of the costs.

(c) A person shall be deemed unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person is unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or when there is reason to believe that the institution of such litigation by him would jeopardize the employment or economic standing of, or might result in injury or economic damage to, such person, his family, or his property.

(d) In case of any complaint received by the Attorney General alleging a violation of section 203 in any jurisdiction where State or local laws or regulations appear to him to forbid the act or practice involved, the Attorney General shall notify the appropriate State and local officials and, upon request, afford them a reasonable time to act under such State or local laws or regulations before he institutes an action. In the case of any other complaint alleging a violation of section 203, the Attorney General shall, before instituting an action, refer the matter to the Community Relations Service established by title IV of this Act, which shall endeavor to secure compliance by voluntary

procedures. No action shall be instituted by the Attorney General less than thirty days after such referral unless the Community Relations Service notifies him that its efforts have been unsuccessful. Compliance with the foregoing provisions of this subsection shall not be required if the Attorney General shall file with the court a certificate that the delay consequent upon compliance with such provisions in the particular case would adversely affect the interests of the United States, or that, in the particular case, compliance with such provisions would be fruitless.

JURISDICTION

SEC. 205. (a) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law.

(b) This title shall not preclude any individual or any State or local agency from pursuing any remedy that may be available under any Federal or State law, including any State statute or ordinance requiring nondiscrimination in public establishments or accommodations.

STATEMENT BY JAMES C. BEEBE, SECRETARY, COMMITTEE FOR POLITICAL ANALYSIS, BALTIMORE, MD.

To: Senate Judiciary Committee.
Senate Commerce Committee.
House Judiciary Committee.

We are confronted today with the problem of reconsidering our interpretation of what constitutes a "right" of man and of the corollary problem of conflicting rights.

In general, a "right" simply means that we are relatively free to assume the possession or the use of something or to take a certain action. What we must do then is clarify the meaning of this relative freedom. In view of the fact that man can contemplate the possible consequences of his actions there arises a form of constraint on freedom which we call moral restraint. Moral restraint is a self-imposed restriction upon action directed to the end of increasing the freedom of others.

Moral restraint enhances social harmony, i.e., to say it alleviates conflicts. It is this harmony together with the productivity of people, which in turn depends at least in part upon the existence of harmony, which provides for the progressive development of social structure. To the extent that action is moral, i.e., morally restrained, civil restraint is unnecessary and becomes necessary to protect, restore or produce social harmony only in the absence of moral action.

We thus see that the relative freedom associated with a "right" is that freedom resulting when the only imposed restraints are moral or are derived from moral constraints.

Of particular concern here are those civil rights supposedly guaranteed to all Americans by the constitution but denied to many, especially Negroes, because of the absence of moral restraint. The letter group and sympathizers through action in the form of nonviolent demonstration has repeatedly attempted to effect a recognition of the moral responsibility of all citizens. In the absence of perceptible change or at best very slow change toward such a recognition, their action, still nonviolent, has been directed to effecting legislation and constitutional reinterpretation to gain in practice what is supposedly theirs in principle.

Now it should be recognized that, in general, moral constraints or those derived therefrom lead to the production of harmony. Others, although intended to reduce conflict, in fact create conflict because they are impositions by persons or a group on other persons or groups whereas moral constraints are self-imposed.

To the extent that the action of the Negro and associated groups is directed to the achievement of the voluntary assumption of moral responsibility by the white community and/or the realization of his constitutional rights via interpretation and just enforcement we unanimously support that action; however, when said action is directed to effect the passage of proposed legislation we vigorously oppose it. We oppose it because: (1) It tends to lose its moral basis to the extent that the resulting legislation becomes an imposition on others; (2) one such imposition is foreseeable with reasonable certainty, i.e., the imposition on property rights.

The right to property is also guaranteed by the Constitution. This right implies that the owner can decide on the disposition of his property; however, said disposition should be moral. To deny services on the basis of color alone is not in accord with our notion of moral restraint; however, to force an owner to utilize his property in a manner not meeting his approval is subject to the same criticism and may deny him his constitutional right of property.

It is to be realized that rights do often conflict. Such conflict can be resolved by abolishing rights or a retention of those rights can be achieved by moral restraint. The practice of moral restraint by proprietor and patron alike should enhance the establishment of conditions conducive to the exercise of both civil and property rights.

We urge all men to recognize their moral responsibility in this issue and to avoid legislation which is to be justified by the expediency argument.

STATEMENT OF IRVING BRANT, VICTORIA, BRITISH COLUMBIA, CANADA

Discussion of the civil rights proposals laid before Congress by President Kennedy and incorporated into bills H.R. 7152 and others now before this committee, appears so far to be founded on the supposition that there are but two bases on which an important segment of the legislation can be sustained as constitutional. One is that the requirement of equal access of all citizens to various facilities now racially segregated comes within the scope of the power of Congress to regulate commerce among the several States. The other is that, in the evolution of legal thought that has taken place since 1883, the U.S. Supreme Court may affirm what it then denied in the *Civil Rights* cases—that the 14th amendment affords protection against a denial of equal rights by the discriminatory actions of private individuals owning or operating places of public resort and accommodations, regardless of whether or not they acted under the color of State law.

Certainly, in the intervening 80 years, there has been a great shift in public though and judicial decisions in both of these areas of constitutional law. The power of Congress to regulate commerce is held, today, to embrace a vast expanse of primarily local activity that was regarded as outside the Federal province as recently as 1936. The guarantees of due process and equal protection of the laws mean infinitely more today, to those who need protection, than they did in 1896, when *Plessy* v. *Ferguson* condemned the Negro population of the United States to the fiction of equality and the reality of ignominious degradation.

There seems little reason to doubt that the Federal judiciary would respect a declaration by Congress that, in this day when rapid transportation and nation-wide organization have almost wiped out State lines in commerce, there is appreciable interference with interstate commerce when many of those engaged in it or dependent on it are subjected to systematic denial of their rights and liberties in any portion of the country. By something of a paradox, the very Supreme Court opinion in which the antidiscrimination law of 1875 was stricken down contains a passage which under present conditions reads like an invitation to employ the commerce clause to achieve the results then aimed at. For after denying that the 14th amendment gives Congress the power to protect citizens against wrongs inflicted by fellow citizens, unless the State is officially implicated in the wrongful action, Chief Justice Waite wrote in consecutive paragraphs:

"This abrogation and denial of rights, for which the States alone were or could be responsible, was the great seminal and fundamental wrong which was intended to be remedied. And the remedy to be provided must necessarily be predicated upon that wrong. It must assume that in the cases provided for, the evil or wrong actually committed rests upon some State law or State authority for its exercise and perpetration.

"Of course (he went on), these remarks do not apply to those cases in which Congress is clothed with direct and plenary power of legislation over the whole subject, accompanied with an express or implied denial of such power to the States, as in the regulation of commerce with foreign powers, among the several States, and with the Indian tribes, the coining of money, the establishment of post offices and post roads, the declaring of war, etc. In these cases Congress has power to pass laws for regulating the subjects specified in every detail, and

the conduct and transactions of individuals in respect thereof." (*Civil Rights* cases, 109 U.S. at 18).

Along the alternative line—that of giving the 14th amendment the full protective meaning its framers intended it to have—the Supreme Court has advanced far indeed since it emasculated the "privileges and immunities" clause in the *Slaughter House* cases (1873), and struck down the Civil Rights Act of 1785. Those decisions still stand, but "due process" and "equal protection" have taken on real meanings. Yet in recent decisions holding racial segregation laws and ordinances to be in conflict with the 14th amendment, and outlawing private discrimination under the shadow of such laws the Court has not had to reach the ultimate question, which is this:

Would racial discrimination in eating houses, theaters, hotels, etc., still violate the amendment, and would a Federal law forbidding it be constitutional, if the States involved should repeal their segregation laws and ostensibly leave the choice of discrimination or nondiscrimination to the individual owners of the places of business, accommodation and entertainment that are faced with the demand for equal treatment?

That issue is certain to come before the Supreme Court in the near future if Congress fails to enact a law reaching the subject, and in that case it will come up without any legislative guidelines to assist the Court. Yet it is a matter of policy and law that ought to be dealt with in the first instance by statute. There is a high responsibility resting on Congress to take the initiative in shaping a crucial national policy that is primarily legislative in character. Congress has, of course, the physcal power to refuse to exert its power. It can refuse to legislate. The Supreme Court cannot refuse to adjudicate. And adjudication in new areas without legislative guidance means legislation by the judiciary. To thrust the whole issue of racial segregation onto the Federal courts is not only in conflict with constitutional principles: it is a course filled with danger to the standing of Congress, the prestige of the courts and the harmony of the Nation.

The objective of the needed legislation is clear. The question is one of form, and that presents a dual need: that the form be constitutional, and that it shall be most likely to receive acquiescence in the areas where it cannot be expected to receive majority approval in advance of its remedial effects.

It is evident, especially from the temperate but positive position taken by such dispassionate critics of the proposed legislation as Senator Erwin of North Carolina, that an act of Congress basing the civil rights bills on the commerce clause, and upheld by the Supreme Court on that ground alone, would have an aggravating effect on public opinion in many States and might even intensify the resistance to change. It is no less likely that a flat assertion of the power of Congress to decide who shall or shall not be admitted to private places of business and entertainment, without relation to State policy in that respect, would have a similar effect. Aside from this, the upholding of such a power by the Supreme Court would open an enormous area of criminal and civil law to Federal cognizance. For these reasons I wish to submit an alternative (though not necessarily a substitute) basis for action by Congress and affirmation by the courts.

The 14th amendment says (and I emphasize certain words):

"*No State* shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall *any State* deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

What is a "State"? In the current discussion of the meaning of the 14th amendment, as far as I have observed, the word "State" has been treated as if it were synonymous with "State government." That is not the legal meaning of "State," nor is it the constitutional meaning as applied to the States of the American Union. Here is the definition as it appears in Black's Law Dictionary (capitals added):

"*State.* A PEOPLE permanently occupying a fixed territory bound together by common-law habits and custom into one body politic exercising, through the medium of an organized government, independent sovereignty and control over all persons and things within its boundaries, capable of making war and peace and of entering into international relations with other communities of the globe."

Black's definition was taken verbatim from Moore's Digest of International Law (1906), which also appears in Hackworth's 1940 Digest of International Law, an official publication of the U.S. Department of State.

The definition given above is that of a State as an independent body politic, with full national sovereignty. "Black's Law Dictionary" goes on to say: "The several united States are 'foreign' to each other except as regards their relations as common members of the Union." In regard to that, it is only necessary to observe that any deviation from the international definition of a "State" must derogate from State sovereignty instead of reinforcing it.

The political and legal concept of the "State" as the people who compose it, rather than the State being itself a government, is not of recent origin. Burlamaqui in 1751 defined a "State" to be: "A multitude of people united together by a communion of interest, and by common laws, to which they submit with one accord."

Vattel, the French authority on the law of nations, put forth a definition in 1758 that was adopted as the opening sentence of Cooley's "Constitutional Limitations" more than a century later: "A State is a body politic, or society of men, united together for the purpose of promoting their mutual safety and advantage by the joint efforts of their combined strength."

A similar conception came from the U.S. Supreme Court in 1795 when Justice Iredell wrote in the seriatim opinions in *Penhallow* v. *Doane*, 3 Dallas at 92–93:

"A distinction was taken at the bar between a State, and the people of a State. It is a distinction I am not capable of comprehending. By a State forming a republic (speaking of it as a moral person), I do not mean the legislature of the State, the executive of the State or the judiciary, but all the citizens which compose that State, and are, if I may so express myself, integral parts of it; all together forming a body politic."

The meaning of "State" became a political issue after James Madison wrote, in the Virginia Resolutions of 1798, that the passage of the palpably unconstitutional Alien and Sedition Acts of that year warranted "the States, who are parties [to the Federal compact] * * * to interpose for arresting the progress of the evil." The resolutions were attacked by supporters of those acts as a nullifying declaration. Madison repudiated that interpretation in his famous "Report on the Resolutions of 1798," adopted by the Virginia General Assembly in 1800. Both at that time and when he entered the fight against South Carolina's attempt at nullification three decades later, Madison described legitimate State "interposition" as activities of the people composing the respective States, exerting their influence through public opinion and the authorized channels of election and constitutional amendment. It was a fundamental error, he declared, to suppose that State governments were parties to the constitutional compact, and no less erroneous to suppose that it was made by the American people in the aggregate. "[T]he undisputed fact is," Madison wrote in a helpful letter to Daniel Webster on March 15, 1833, "that the Constitution was made by the people, but as embodied into the several States who were parties to it, and, therefore, made by the States in their highest authoritative capacity." (Cf. Madison, "Outline [of a reply to Governor Giles]", September 1829, "Writings," IX, 351; Madison, letter in the North American Review, October 1830.)

With justified reliance on Vattel, whose authority was dominant in America at the time of the Constitutional Convention of 1787, Federal District Judge Hall of Los Angeles wrote in *United States* v. *Kusche*, 56 F. Supp. 201, 208, in 1944: "There was thus at that early date in the history of this country a sharp distinction between a 'State' and its government which has continued to the present day."

Now let us apply these accepted principles of constitutional law to the provisions of the 14th amendment. It says: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." That is a prohibition laid upon the people who compose the State. But, because the application is limited to "any law," it can be violated only by action of the State legislature, or by the executive or judicial officers of the State, through enforcement of statutory or common law, or under the color of law. The scope of the prohibition is the same as if it had been directed only against the government of the State, instead of against the State itself.

Next: "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the

equal protection of the laws." This too, under the universally accepted definition of "State," is a prohibition laid upon the people who compose the State. But there is nothing in this part of the amendment that limits its application to the legislature or to the State government as a whole. It is a blanket denial of power to the State—that is, to the whole people who make up the State—to deprive any person of life, liberty, or property, without due process, or to deny to any person the equal protection of the laws. These rights may not be denied by any means whatsoever.

It does not follow from this principle that the denial of liberty or equal protection, through the conduct of one person, is necessarily a denial by the State. There must be a definite pattern of action to make it the action of the people as a body politic. But "body politic" does not mean "government." The Moore-Hackworth-Black definition of a State is: "A people * * * bound together by common-law habits and custom into one body politic," exercising control "through the medium of an organized government." And Vattel defines the State as "a body politic or society of men." This society of men exercises control through the medium of an organized government only because there cannot be a sufficient degree of control without such an instrument of collective power. But suppose that "common-law habits and custom" were so strong and extensive that they sufficed for all the purposes of society. The "body politic or society of men" would then compose a fully functioning State without any government at all.

Now let us see what will happen if, as is being confidently predicted, the States that are endeavoring to preserve racial segregation shall proceed to repeal all their laws requiring or authorizing a separation of the races. The argument supporting it is that this will leave every hotelkeeper, restaurateur, theater, or store owner completely free to decide whether he will or will not admit Negroes to his place of business. Whatever is done—even though all do the same thing—will be done by the voluntary choice of the person who does it, in the management of his own private property. There will then be no denial by the State, consequently no violation of the 14th amendment.

Such is the asserted legal theory. But what is the actual expectation of those who suggest it? It is that there will be an unbroken continuance of racial segregation through the force of custom and the pressure of economic and social sanctions, if not by legal harassment. How will businessmen make these allegedly voluntary decisions, to let down or retain the racial bars in their privately owned establishments?

Let us visualize a meeting for that purpose, in some State where segregation laws have been abandoned for the purpose of lawfully retaining segregation by the free choice of the property owners. The Urban League, biracial, moderate and respected, has been informed that theater owner Joseph Jones dislikes the system of segregation which he enforces. A delegation from the Urban League calls on him and asks that Negroes be admitted to his theater. Mr. Jones refuses.

"But why?" he is asked. "You told a Negro, Jim Smith, that you hate the whole system of segregation."

"So I did," Owner Jones replies, "and so I do. I hate it as much as you do. But good God, gentlemen, what can I do? I want to stay in business. If I step across the line I'll go broke in a week. If the law forced me to admit everybody, nobody would hold it against me. I'd do it willingly and in a week's time everything would be accepted. But what will happen if I do it by my own decision? Most of my white patrons will stay away because they are mad and the rest will quit coming because they are scared. And you know what would happen as soon as the news got into the papers. Inside of an hour the building inspectors would be around to tell me I had to spend $20,000 on new electrical equipment or they'd lock up the building as unsafe. I'm sorry, but I can't fight the customs of the people."

There you have the "voluntary decision" of the property owner. Is it a businessman's personal decision on the way he wishes to manage his private property? Or is it part of a statewide pattern—the action of "the people, or body politic," who compose the State? If it is the action of the people, functioning through the force of custom, it is the action of the State, for the people are the State.

This brings us to the question: Does "custom" have a place in law that will make it comparable to legislative, executive, or judicial action, in fixing responsibility upon "the people or body politic" who enforce it without the aid of written law? That question almost answers itself in a country whose legal

system is an outgrowth of the common law of England. But let us turn once more to "Black's Law Dictionary" for a definition:

"Common law—As distinguished from law created by the enactment of legislatures, the common law comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs; and, in this sense, particularly the ancient unwritten law of England."

Since this description of the common law recognizes both custom standing by itself and custom judicially enforced, let us ascertain the definition of "custom" itself. "Black's Law Dictionary" defines it thus:

"A usage or practice of the people, which, by common adoption and acquiescence, and by long and unvarying habit, has become compulsory, and has acquired the force of a law with respect to the place or subject matter to which it relates."

That is the rule born of English law and recognized wherever the common law has been in whole or in part adopted, as it has been in nearly all of the States of our Union. What is the legal status of "custom" in Louisiana, which draws its jurisprudence from the Roman or civil law and happens to be one of the strongholds of racial segregation? Article 3 of the Civil Code of Louisiana reads as follows:

"Customs result from a long series of actions constantly repeated, which have, by such repetition, and by uninterrupted acquiescence, acquired the force of a tacit and common consent."

Although the development of compulsory custom through the centuries can almost be summed up in the term "common law," it may be useful to cast a glance backwards along the main avenue of descent.

Blackstone said it was agreed by all historians that Magna Charta (1215 A.D.) "was for the most part compiled from the ancient customs of the realm."

Jolliffe concluded that "until well into the 13th century the primitive conception of a society within the frame of an inherited law" had restrained king and council "to the recognition of custom" and participation in its enforcement.

In the 14th century, complaint was made in the Court of King's Bench that the charter of Cambridge University had been granted "in contravention of the law and custom hitherto obtaining in the king's realm."

Forming part of the common law, developing in similar fashion and still called by its ancient name, is the "Law and Custom of Parliament"—Lex et Consuetudo Parliamenti.

When, in defense of itself and the people, Parliament addressed its Petition of Right to Charles the First in 1628, the answer came: "The king willeth that right be done according to the laws and customs of the realm."

It was at that period that "the law and custom" of England, embodied in the common law, was carried across the Atlantic. Thereafter it held its form, except as it was modified (1) by colonial and State statutes and (2) by the development of customs peculiar to its new environment, but pervasive and persistent enough to acquire the force of law. Most conspicuously, these binding customs of the New World were sectional and centered in the institution of Negro slavery, reshaped after emancipation to form the modern system of racial segregation and discrimination against the colored population. The simple truth is that in a dozen States of the Union a new system of common law has been built up since 1863, enforced as the law and custom of the State and partially converted into statutory law until that process was halted by Supreme Court decisions of the last three decades, based on the 14th amendment.

Now, to circumvent the Constitution, it is proposed to repeal the discriminatory statutes. If that is done, it will amount in fact to a mere reversion to unwritten law and custom—to what might be called the common law of the South if discrimination were purely sectional, which it is not. It is immaterial whether due process and equal protection of the laws are denied by statute or by established custom. In either case the denial is by the State, because the denial is by the people of the State and the people are the State.

To demonstrate the force of State custom, it is necessary only to observe the reliance placed upon custom by the offending States themselves. Look, for instance, at one of the shortest Supreme Court opinions on segregation, the per curiam holding in *Taylor* v. *Louisiana*, 370 U.S. 154, decided June 4, 1962. In Shreveport, La., six Negroes were convicted of violating Louisiana's breach-of-the-peace statute by entering a bus station waiting room customarily reserved

for white persons. They refused to leave and were jailed for breach of the peace. Said the Supreme Court in reversing the convictions:.

"The record shows that the petitioners were quiet, orderly, and polite. * * * Here, as in *Garner* v. *Louisiana*, 368 U.S. 157, the only evidence to support the charge was that petitioners were violating a custom that segregated people in waiting rooms according to their race, a practice not allowed in interstate transportation facilities by reason of Federal law."

Because these cases involved the violation of a Federal statute based on the commerce clause, under circumstances clearly involving interstate activities, the Court had no need to reach the question whether enforcement of a State custom of segregation amounts in itself to State action in violation of the 14th amendment. When that question is reached, either in some case unsupported by a specific Federal statute or in a test of Federal legislation yet to be enacted, the power of the Federal Government to intervene under the 14th amendment will find striking support in a place where it might least be expected—in the memorable decision of the Supreme Court in *Plessy* v. *Ferguson*. In diametrical opposition to the prevailing thought of the present day, the Court set up the established customs of racial segregation as the foundation of their legality. The action involved the compulsory separation of the races in railway trains. The legality of this requirement, the Court concluded, resolved itself into a question of reasonableness and with regard to this there must be a large discretion on the part of the State legislature. Said the Court:

"In determining the question of reasonableness it [the legislature] is at liberty to act with reference to the established usages, customs, and traditions of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order. Gaged by this standard, we cannot say that a law which authorizes or even requires the separation of the two races in public conveyances is unreasonable, or more obnoxious to the 14th amendment than the acts of Congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of State legislatures."

In putting its decision on that basis, the 1896 Court said in effect that the established usages, customs, and traditions of the people measured both the power of the State and the scope of the 14th amendment. The amendment was overborne, not primarily by State constitutions and statutes, but by the established usages, customs, and traditions of the people.

Thus, in *Plessy* v. *Ferguson*, the State consisted of the people of the State, but the people were the white people alone. It was their usages and customs that were to determine the law, their comfort that was to be promoted. By the very words of the 14th amendment this was a perversion of its constitutional purpose, which was to protect the freed slaves and their descendants from discrimination. To put it in the best possible light, it was a naive rather than a deliberate violation of the constitutional requirement that all persons should enjoy the equal protection of the laws. Yet the greater likelihood is that the decision was regarded as a stroke of wisdom, to bow to established custom as the law supreme.

Times have changed. The whole category of usages, customs, and traditions approved by the Court in 1896 has been stamped unconstitutional, to the extent that they rest on what has so far been identified as State action. Bringing these quoted words of *Plessy* v. *Ferguson* into the shrinking but still critical area that has not yet succumbed to changing attitudes, and recognizing that the people of the State are the State, this is the choice that confronts the counry:

Shall the 14th amendment continue to be overborne by established usages, customs, and traditions that condemn millions of American citizens to a position of inferiority because of race or color?

Or shall those established usages. customs, and traditions be overborne by the 14th amendment. which was written and adopted to place all persons on an equality before the law, regardless of race or color?

It is perfectly feasible, of course, that alternative bases of the constitutionality of a bill should be set forth in it. The judicial branch of the Government might find either, both or neither of them adequate, and it might uphold the law on entirely independent grounds. There is value in guidelines. and extra value in an opportunity of selection, especially when the choice will make a difference in the ultimate reach of the decision and may affect its acceptability to the Nation. It is a matter of unofficial knowledge that when the notable case of

Grosjean v. *American Press Co.* was before the Supreme Court in 1936, involving the validity of a State tax on the gross revenue of newspapers from advertising, the Justices in conference voted that it was unconstitutional both under the commerce clause and the first amendment. But the ultimate decision was that it should be annulled solely as a violation of the freedom of the press. That carried it to fundamentals and the case became a landmark of liberty.

Should comparable alternatives be presented in the pending civil rights bills, and should a similar choice between them be made in the courts, it would avoid a general and permanent broadening of the field of Federal criminal law. Under this concept, racial discrimination by an individual, in the management of his property, would not violate the law unless it was part of a community pattern, Consequently, the effective breaking of the pattern of discrimination, by the combined effect of the law and of changing attitudes, would put an end both to the need of the law and of the power to enforce it. Revival of systematic discrimination would revive the force of the law. The extension of Federal jurisdiction, beyond what has previously been recognized, would be strictly confined to the purposes for which the 14th amendment was adopted, and consequently would entail no deviation from present constitutional principles. There would be a total avoidance of that broad and permanent spread of Federal jurisdiction in criminal matters that might result from expanding the application of the commerce clause, and that certainly would ensue if it should be held that the 14th amendment controls the actions of individuals without regard to the participation of the State.

One question remains: the application of a civil rights law, based on the principles here outlined, in cases of racial discrimination that is enforced by usage and custom within narrower bounds than those of a State. Such regions, found mostly in the North, would be brought within the scope of the law on the same principle that governs in the common law of England. Local custom, as a part of the common law (and in some instances even when in conflict with it), has binding force when not contravened by parliamentary enactment. Great happenings have hinged on that principle. The English Revolution of 1688, unseating the Stuarts, had many causes. But it was given much of its power and impulse by the action of James II in abrogating the charter of the city of London. He did so because of a clash between the royal prerogative and the custom of the city in the manner of choosing sheriffs, by Crown appointment or by popular election. The stake was the sheriff's power to pick jury panels that would either do the King's bidding or stand for justice and freedom in treason and sedition trials. The King won the round, and lost his throne.

Permit me to suggest, in respectfully submitting this statement to the consideration of the committee, that there may be more than a fancied analogy between the futile effort of a Stuart monarch to stem the rising tide of political freedom in England, and the no less futile endeavor of honest but shortsighted Americans to perpetuate the vestiges of a vanished order of master and servant based on race and color. The day of change is at hand. No greater service can be performed by Congress, either to the Nation as a whole or to those who are clinging to the past, than to help make it a change based on law, orderly conduct and harmonious understanding.

STATEMENT OF HON. JEFFERY COHELAN, U.S. REPRESENTATIVE FROM THE STATE OF CALIFORNIA

Mr. Chairman and members of the committee, a fundamental pledge of the Declaration of Independence is that all men are created equal; that they are endowed with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness.

This is a pledge guaranteed by our Constitution. It is a pledge which Americans have fought and died to defend. But across our country today we are confronted with the ugly fact that our practices do not always match our promises, that our words are not always equaled by our deeds.

It is well settled that all individuals are not equal in ability, in motivation or in talent. But it ought to be possible in this great land of ours, where liberty, freedom and justice are cherished rights, for all Americans to have equal opportunities to develop their resources to the fullest degree, free from restraint because of the color of their skin.

Our Negro citizens are required to meet the same obligations and responsibilities of citizenship as their white neighbors. But they are denied many of the same rights and privileges.

The Negro in America today has half as much chance of completing high school and a third as much chance of completing college. He has a third as much chance of being a professional man and half as much chance of owning his own house. He has twice as much chance of being unemployed and the prospects of earning only half as much. He is denied the opportunity of being served in public accommodations, of attending the school of his choice, and of exercising his right to vote—a right which forms the cornerstone of our democracy.

There can be no question that progress has been made in insuring equal rights and equal opportunities. But the great lesson of Birmingham and Greensboro, of Danville, Cambridge and others, is that gradualism and moderation by themselves will not remove the dread disease of discrimination.

Our efforts, accordingly, must be increased. The gap which continues to exist between our aspirations and our realizations must be closed, not only because it is economically wasteful and damaging to our position throughout the world, but most importantly, because it is morally wrong.

Mr. Chairman, this legislation which we are considering, and which I have joined you in sponsoring, would enable us to take a major step toward closing this gap. It would provide us necessary tools to deal with the task at hand. It would allow us to join more effectively in the compelling fight for racial justice and human equality.

I urge that this legislation be approved and enacted without delay. It is essential if we are to meet our responsibilities; if we are to safeguard the basic rights of all Americans and the vitality of a fundamental American ideal.

LOCAL No. 147, COMPRESSED AIR, FOUNDATION, TUNNEL, CAISSON, SUBWAY, COFFERDAM, SEWER CONSTRUCTION WORKERS OF NEW YORK, NEW JERSEY STATE, AND VICINITY,
New York, N.Y., July 22, 1963.

Hon. EMANUEL CELLER,
House of Representatives,
Washington, D.C.

DEAR MR. CELLER: The accompanying resolution was introduced by members at our meeting held June 30, 1963, and endorsed unanimously. On a motion made and seconded the members voted to send a copy to all Senators and Representatives of districts where our members live as well as those areas where they work.

This union endorses the President's civil bill and urge that you support it in its entirety. In this great country of ours there should be but one standard of citizenship for all. We further believe that all Americans should enjoy the same full and equal benefits derived from that standard. It is our opinion that anyone proud to be known as an American cannot in good conscience be content as long as another fellow American enjoys less.

Yours truly,

EDWARD CROSS, *Secretary-Treasurer.*

THE ENEMY WITHIN

(An open letter to the Representatives of the U.S. Congress, Washington, D.C.)

DEAR MEMBERS: The entire structure of American democracy is being attacked, desecrated and trampled upon by the enemy within, who enforce discrimination and segregation upon American citizens because of their color.

If the Representatives of Congress allows this cancerous condition to continue, where the majority white American citizens through segregation and discrimination under local legalism enslave the minority black American citizens, then the Members of Congress will have abdicated their high office of responsibility to freedom-minded Americans.

These are times where real Americans will proudly and boldly, as statesmen, stand up "now" and vote for full equality and equal rights for all Americans both black and white, while the weaklings, the politicians will falter, will hem and haw and say this is not the time. Tokenism maybe, gradualism maybe, such fawning weakness make those politicians the captive agents, and supporters of the enemy within. "Away with tokenism," "away with gradualism" (it has been around too long).

Your duty to establish and protect equal democratic rights for all Americans transcends all politics and party lines. Today American and world history call upon you to stand up unitedly and unanimously vote for and put into law President Kennedy's civil rights bill in its entirety.

(Signed by 20 members of Local 147, Compressed Air & Free Air Workers Union, AFL–CIO, 230 Seventh Avenue, New York, N.Y.)

STATEMENT OF HON. DOMINICK V. DANIELS, U.S. REPRESENTATIVE FROM THE STATE OF NEW JERSEY

Mr. Chairman, I deem it a great privilege to testify in support of H.R. 7152, the President's Civil Rights Act of 1963, of which I am a cosponsor.

Despite the great strides which we as a nation have made toward realizing the ideals of liberty and justice for all, the specter of racial prejudice still lurks in our midst. Racial discrimination still persists throughout our land, both North and South. Twenty million American Negroes are still denied the rights of first-class citizenship. Their voting rights are impinged upon. Their economic and social opportunities are still sharply curtailed. That such a situation should persist, 100 years after the abolition of slavery, is extremely tragic. We cannot allow this state of affairs to continue. As the leading Nation of the free world, we must demonstrate our responsiveness to these continuing inequities and to the great domestic ferment which they have produced. It is my firm belief that the law is a great teacher, and that the enactment of effective legislation by this Congress can do much to speed the eradication of this moral and social blight. For these reasons, I strongly urge the passage, in undiluted form, of the present legislation.

I shall now turn to the actual substance of H.R. 7152, the Civil Rights Act of 1963. Let me first say, Mr. Chairman, in response to the critics of this measure, that H.R. 7152 neither creates any new rights nor violates any old ones. In my opinion, this legislation does no more than to secure for every American citizen those rights which are already his by virtue of the Constitution of the United States and the cherished traditions of American democracy.

TITLE I

The right to vote is, in a democracy such as ours, one of the fundamental prerogatives of a citizen of our Republic. The ability to vote transforms government from an alien and hostile power to one in which the individual participates and one over which he can exert control. To deny the right to vote to any American citizen on the basis of race, color, creed, or nationality is an act which is not only unconstitutional, but also inimical to the political well-being of our society.

Title I, to enforce the constitutional right to vote, presents no new field for congressional action. Through the Civil Rights Act of 1957 and 1960, the Congress has already shown its resolve to eliminate inequities in this area. The power to do so is derived from the 15th amendment, which states:

"SEC. 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

"SEC. 2. The Congress shall have power to enforce this article by appropriate legislation."

Although the first article of the Constitution gives the States the right to set voting requirements, I think it is correct to say that insofar as any racial discrimination is in evidence, the 15th amendment supersedes article 1 and gives Congress the power to enact "appropriate legislation" in order to eliminate such discrimination.

Of course, many of our Southern States put forth the following argument: "We do not deny a person the right to vote because of his color. Nay, all we seek to do is to insure that only those who are qualified are allowed to vote." Certainly, one cannot but agree with such an admirable thought. Nevertheless, when we examine the actual practices of the southern counties and parishes, we see how the qualification criterion can serve as a facade to mask acts of racial discrimination. For example, there is the Louisiana law requiring every citizen to display an ability to give a "reasonable interpretation" of any clause of the Constitution. Such a test is subject to the greatest plasticity, as the 1961 report

of the Commission on Civil Rights makes clear. I quote the following example from pages 59 to 60 of that Commission's report on voting:

"Henry Kimp is a Negro ex-serviceman of Jackson Parish. When he sought to register in July 1960, he was asked to interpret an article entitled 'treason against the United States.' Treason against the United States is defined in the Constitution: it 'shall consist only in levying war against them, or, in adhering to their enemies, giving them aid and comfort.' He testified that he defined treason as 'abetting and aiding the enemies in time of war with information that concerns the United States and its Government.' He was rejected; the registrar, Mrs. Wilder, said: 'I don't think you understand what you read.'"

If such a test were administered throughout the State of Louisiana, or any State, with equal stringency, I doubt if there would be many adults at all who would qualify to vote.

By attempting to insure uniform application of written tests, title 1 of this bill will, I think, go a long way toward preventing this kind of discrimination under the guise of "qualification."

The same thing applies to the literacy tests which are employed in many States. In the State of Louisiana, for example, over 80 percent of the Negro population is literate, and yet less than one-third of the Negroes in that State are registered voters. It is hard to believe that sheer apathy accounts for the discrepancy in these percentages. It is even harder to believe, in light of the numerous reports of bogus literacy tests, of parishes in which semiliterate whites are permitted to register but clearly literate Negroes are not. The present bill will substantially eliminate the inequities in the administering of literacy tests. Under subsection 3 of title 1, completion of the sixth grade will be a presumption of literacy. Such devices as this presumption of literacy, and the requirement for a written test, will help secure the uniform application of law which means the end of voting discrimination.

The further subsections of this title provide for procedures by which individuals can obtain redress, and by which the Department of Justice can implement the provisions and the intent of this section. All in all, the provisions of this title are a significant forward step in insuring nationwide compliance with the 15th amendment. We must bear in mind, however, that this act may not be a final panacea. Undoubtedly, new and more devious means will be attempted to discriminate in this area. Nevertheless, by constant vigilance and a continuing demonstration of our resolve, I am confident that we can put an end to the repeated efforts to violate the 15th amendment.

TITLE II

Let me now turn to title II of H.R. 7152, which provides for injunctive relief to individuals who are refused access to public accommodations. As we all know, this is one of the most common forms of racial discrimination, one which imposes considerable hardship and psychic pain upon nonwhite citizens. In my own State of New Jersey, we have enacted legislation expressly prohibiting such discriminatory practices. Let me quote briefly:

"All persons within the jurisdiction of this State shall be entitled to the full and equal accommodations, advantages, facilities, and privileges of any places of public accommodation, resort or amusement, subject only to the conditions and limitations established by law and applicable alike to all persons." (N.J. Rev. Stat. 1–2.)

Thirty States and the District of Columbia have already enacted such antidiscrimination laws; but in light of the intransigence of the Southern States, which contain a large percentage of the Negro population, on this issue, it is highly desirable that the Federal Government act now to insure equal access to public accommodations.

There are those who argue that such a law violates the inalienable and inviolable rights of private property. This contention, however, fails on two counts. First, how private is a restaurant which is open to the general public, in and out of which establishment flow hundreds of people daily? Is there not a difference between this kind of private property and the privacy of a man's home? Furthermore, it is quite apparent that such ownership is not and has never been so completely inviolable. A property owner must pay minimum wages, sell pure foods and drugs. The law enjoins him from using child labor and insists that he fulfill minimum health and safety requirements. Health regulations, building regulations, fire regulations—all of these are testimony to

the fact that a place of public accommodation, although privately owned, must in the last be responsive to the interest and welfare of the community. When that private ownership is exercised to the detriment of society, it is a long-standing principle that society has a duty in such cases to protect its own best interests, to place necessary restraints upon private ownership. In the final analysis, the right to own property is derived from the consent of the community to such ownership. Since that right is derived from the community, it can also be modified by the community.

There are also those who argue that this legislation is patently unconstitutional. Once again, however, I feel that this assertion can be refuted. To begin with, title II rests primarily upon the commerce clause of the Constitution, which declares that Congress shall be empowered "To regulate commerce with foreign nations, and among the several States." In his opinion in *Hammer* v. *Dagenhart* (1918), Justice Oliver Wendell Holmes states that the power of Congress to regulate interstate commerce is plenary: it can regulate such commerce for any purpose it sees fit. A whole line of Supreme Court decisions in this century have supported this view of Justice Holmes. In *McCrary* v. *United States* (1904) the Court upheld a Federal law to enforce the production of wholesome oleomargarine. In *Hoke* v. *United States* (1913), the Court validated the Mann Act, which banned prostitution in interstate commerce. Justifying such legislation, the Court said:

"Our dual form of government has its perplexities, State and Nation having different spheres of jurisdiction—but it must be kept in mind that we are one people; and the powers reserved to the States and those conferred upon the Nation are adapted to be exercised, whether independently or concurrently, to promote the general welfare, material and moral."

Later decisions by the Court have continued to bear out this view; that power of Congress over interstate commerce is plenary, that it can be used for any purpose deemed desirable, and that it does not conflict with the prerogatives reserved to the States under the 10th amendment. In my opinion, an antidiscrimination section such as title II based on the involvement of most public establishments in interstate commerce is thoroughly constitutional.

Although I would say that the commerce clause is sufficient to validate this legislation, there are those who would rest it equally upon the 14th amendment, in order to insure complete coverage. Even though this approach appears to offer certain legal difficulties, I think there is something to be said for it. The 14th amendment states, in section 1, that:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

In the *Civil Rights* cases of 1883, the Court invalidated the Civil Rights Act of 1875 on the grounds that it enjoined only acts of private discrimination, which were not expressly forbidden by the 14th amendment. The question which I would raise—one which is not raised by that 1883 decision—is whether State inaction to prevent discrimination is not itself a form of State action. The principle of State responsibility on the grounds of negligence is a widely accepted principle of International law, and I would suggest that perhaps it has equal application in the present situation. A State grants a license to operate a place of public accomodation. Its police power is used to protect that establishment, even to exclude persons who are unwanted on the premises. Is this not sufficient State involvement to constitute a State denial of rights under the 14th amendment? I suggest that it does, and I think here are powerful reasons why the Supreme Court should—and would—reexamine its ruling in that 1883 decision, just as it has reexamined the "separate but equal" doctrine which was set forth in *Plessy* v. *Ferguson* (1896). But even if the Court chooses not to modify its 1883 interpretation of the 14th amendment, the commerce clause still gives title II of this bill a valid claim to constitutionality.

TITLE III

Unfortunately, 9 years after the Supreme Court's decision in *Brown* v. *Board of Education*, there are still large numbers of children attending segregated schools. As reported in a recent issue of the Southern School News, only 1,092 of the 3,053 biracial districts in 17 States which formerly required segregation will be integrated as of September 1963. Out of 3.3 million Negro pupils in those States, about 90 percent will still attend all-Negro schools. Not only are these school facilities still largely separate, but in many cases they are also vastly

unequal. In Mississippi, for example, the average size of the classes in an all-Negro school is 39.2 pupils, compared to 28.2 pupils for the average white class. Because of these deprivations in the field of education, the Negro child, as compared to white children, has only one-third as much chance of completing college, only one-third as much chance of becoming a professional man, and twice as much chance of becoming unemployed. Segregation in education is economically wasteful, morally wrong, and patently unconstitutional.

Title III of this act seeks to remedy these existing inequities. It authorizes the Commissioner to provide assistance, both technical and financial, to help school districts enact a program of speedy and effective desegregation. Where cooperation is not sufficient for achieving integration, this title also authorizes the Attorney General to institute suits on behalf of private citizens who are being deprived of equal protection of the laws. This is an extremely important provision. In many areas of the South, the Negro population is extremely poor. The average family lacks the means to sustain the expense of legal procedure. By empowering the Attorney General to institute suits in such instances, this bill will help in those areas where the Negroes are most backward and most deprived. Both of the main recommendations of this section are completely in line with the 1961 Report of the Commission on Civil Rights. They are significant implementations of the Supreme Court's exhortation to achieve desegregation with all deliberate speed.

TITLES IV AND V

These two sections of the Civil Rights Act establish mediation, conciliation, and investigatory agencies dealing with civil rights problems. A Community Relations Service would serve to promote the voluntary abandonment of discriminatory practices. That racial disputes should be settled peacefully is a matter of the highest priority. Such a Community Relations Service would further that end, and promote understanding among our citizens.

As for the Civil Rights Commission, there can be no doubt that its activities have shed great light on the racial problem throughout the United States. Its findings have facilitated the formulation of effective legislation in this area. The present act would lengthen the life of this Commission and strengthen its fact-finding procedures. We must bear in mind that the problem of discrimination in this country is far from a complete solution. To dissolve the Commission now would be an unrealistic and unwise act. Therefore, I strongly support title V of the present bill.

TITLE VI

Title VI of H.R. 7152 would give the President discretionary authority to withdraw Federal assistance from any program or activity in which individuals are discriminated against on the ground of race, color, religion, or national origin. It is wise to make this authority discretionary rather than mandatory, since there may be programs conducted which are essential to the national security and welfare, to withdraw funds from which would be detrimental to that security and welfare.

In the area of education, however, I would strongly urge that the withdrawal of funds be made mandatory. During the 87th Congress, as a member of the Committee on Education and Labor, I chaired an ad hoc subcommittee which studied the problem of segregation in federally assisted public education programs. It was the recommendation of that subcommittee that the Federal Government withhold funds from States which practice segregation in its educational facilities. In light of the importance of education as a vehicle for economic and social improvement, and in light of the Supreme Court's decision in *Brown v. Board of Education*, I think it is imperative that Federal funds be mandatorily withheld in this particular area. The Congress has no business subsidizing a practice which has been damned as unconstitutional. Earlier in this session, the Education and Labor Committee reported out a bill which would require such mandatory withdrawal of Federal funds, after a 1-year period for compliance. I see no objection to including such legislation within the scope of the Civil Rights Act which is now under consideration.

TITLE VII

The same argument applies to this title of the bill as aplies to title VI: the Federal Government should not permit its moneys to be used in connection with activities involving racial discrimination. This principle should apply to Government contracts as well as to Government grants and loans. Title VII of this

bill would create a Commission on Equal Employment Opportunity, the function of which shall be to prevent job discrimination in any program involving Government contracts or subcontracts. Such a Commission is already in existence, created by an Executive order. This bill will give it a sounder status under law.

Let us bear in mind, however, that a Commission of this sort is just a beginning. There is widespread discrimination against Negroes, both by labor unions and by management. This situation deserves more extensive study and, perhaps, congressional action which is greater in scope.

The right to vote, the right to equal education, the economic freedom of choice, the opportunity for self-betterment—these are ideals which Americans long have cherished. But if we fail to translate these ideals into the realm of practice, if we fail to give these ideals a universal application which is blind to color, then we are guilty of unpardonable hypocrisy. Racial discrimination is wasteful, improvident, and unconstitutional. This bill seeks, by thoroughly constitutional means, to put an end to racial discrimination. For this reason, I urge the committee to give this bill prompt and favorable consideration.

STATEMENT OF HON. JOHN D. DINGELL, A U.S. REPRESENTATIVE FROM THE STATE OF MICHIGAN

Mr. Chairman, for the record my name is John D. Dingell. I am a Member of Congress from Michigan's 15th District.

I appreciate the opportunity to appear before this committee and express my support for the omnibus civil rights bill covering the proposals in President Kennedy's message to Congress.

I have long supported strong and meaningful civil rights measures, which would truly make available to all, voting rights, employment opportunities, public accommodations, and public education, in particular, and extend first-class citizenship, in general, to many citizens who have been unjustifiably and traditionally denied equal rights, in our American society.

I urged enactment of this legislation not only because I have observed the crippling effect of discrimination and segregation upon the economic, educational, and cultural life of this Nation; nor only because I have sadly witnessed the destruction of human values from the corrosive disease of racial prejudice and hate. I have urged the passage of civil rights legislation because it is fair, decent and just that all fellow Americans should enjoy the basic democratic right of equality of opportunity and fairness of treatment.

The administration's bill provides Congress with the opportunity to give real meaning and hard purpose to democratic pronouncements of fairplay and justice, within the boundaries of our great Nation and an opportunity to manifest our respect for freedom and social justice, for all men, throughout the nations of the world.

Now permit me to address myself more specifically to the titled sections of the President's bill.

TITLE I—VOTING RIGHTS

The fountainhead of democratic government is in the fact that its people are free to make and enforce laws through representatives whom they elected. A denial of this fundamental and primary right is tantamount to a denial of citizenship. The 15th and 19th amendments to the Constitution specifically, and more broadly, the 14th amendment to the Constitution, commands that neither the Federal Government nor a State may deny or abridge the right to vote on account of race, color, religion, national origin, or sex. Yet, in many southern communities, American Negroes are systematically prohibited from voting, by the fraudulent and discriminatory application of legal voter-registration qualifications. This is a shameful indictment of our democratic system. I am pleased that the President, in the legislation before the committee, seeks to guarantee rights to all in Federal elections and abolish discriminatory literacy tests, which deny the full exercise of this right by literate and qualified American Negroes. Moreover, provisions in this section which permit court-appointed voting referees and the Federal courts to promptly process voting rights complaints, recognize the urgency for incisive, corrective action in the establishment of this basic citizenship right.

TITLE II—PUBLIC ACCOMMODATIONS

The public accommodations section of the administration's bill strikes at the vitals of discrimination and segregation, practiced in the everyday lives of a great number of American citizens.

This is an effort to abolish segregration in places of public accommodation, the practice of which robs the victim not only of his constitutional right but also his human dignity. There is no valid reason why a public business concern, dependent upon public patronage for survival, and which in many instances is licensed by the State or a political subdivision thereof, should not be required to serve all of the public, equally, fairly, and uniformly. A Negro is as much a part of the public as any other person and as such, is entitled to be served in the same manner and form as his white prototype.

Many Negroes across the width and breadth of this Nation, undertaking to be accommodated in public places, have faced racial denials extending in dimension from a blunt, "We don't serve your kind," to the more sophisticated but equally humiliating, "Sorry, but we are all filled up."

This section of the President's bill rightfully seeks corrective legislation, to abate the ugly practice of denial and discommodity of citizens, in their quest for public accommodation, merely because of color of skin. I urge this committee to consider favorably title II in the administration bill and help establish dignity in travel for all of our citizens.

TITLE III—PUBLIC EDUCATION

Nine years after the Supreme Court's decision in the *School Segregation* cases, we find only minimal desegregation in most of the communities where racial segregation in public schools was originally practiced. In numerous other communities there have been open, defiant, and collusive attempts to circumvent the Supreme Court's ruling and maintain racially separate public schools. In spite of such flagrant violation of the ruling of our highest judicial body, Congress has been unresponsive to pleas for support of the court order and has reacted indifferently to the needs of many educationally deprived citizens and the needs of the Nation as well, at a time when Federal legislation is sorely required to accelerate public school desegregation.

The constitutional limitations on the Supreme Court are too narrow and the expense of litigation is too prohibitive to expect a speedy resolution of this problem without congressional support.

If we have learned anything in the 9 years since the Supreme Court's ruling in the *Segregation* cases, it is that all resources of Government are needed to remove this blight from our fair land.

The President has proposed legislation to provide technical and financial aid to local school officials engaged in school desegregation. Further, the administration's bill authorizes court action by the Attorney General to speed school desegregation. I fervently urge that you give it favorable consideration.

TITLES IV AND V—COMMUNITY RELATIONS SERVICE, CIVIL RIGHTS COMMISSION

To complement the other sections of the administration's bill and facilitate the integration of nonwhite citizens into the mainstream of American life I earnestly solicit your support for these sections as well.

TITLE VI—FEDERALLY ASSISTED PROGRAMS

There is no valid reason why Federal moneys collected from the general public should be disbursed to a State which uses this money in a racially discriminatory manner. To permit this is to make the Federal Government a party to such undemocratic practice.

If the State accepts Federal money, it should be required to comply with the Federal law. The rest of the country should not be compelled to help finance prejudice and bigotry.

This title which permits the Federal Government to deny Federal grants when said grants are used in a discriminatory way is just and fair. I urge your support for its passage.

TITLE VII—EQUAL EMPLOYMENT OPPORTUNITY

Job discrimination coupled with the lack of education limits the employability of many nonwhites and results in low and unstable incomes. In fact the pathway to a major portion of the benefits derivable from the full exercise of civil rights, has its beginning in employment opportunities. When employment is restricted, the economic resources which provide decent housing, a good education, participation in public accommodations, and cultural and social mobility are likewise limited. Thus it appears that the head chair at the welcome table of opportunity is equal employment opportunity.

Negro workers are largely concentrated in the occupational categories covering unskilled laborers, service workers, operatives, and kindred workers. Beginning with semiskilled workers through managerial and professional categories, the Negro worker becomes increasingly less in number. Even in the North, employers and unions are still quite conservative, if not reluctant to consider the promotion of Negroes to positions requiring supervision of white workers. Further, it is common practice to permit qualified Negroes with seniority to be "frozen in grade" for protracted periods, rather than act on their promotions, especially when the salary allocation for the position reaches the $10,000-a-year level.

The greatest need appears to be in encouraging industry to train qualified Negroes, to promote competent Negroes to skilled and supervisory positions and, consider them for management positions consistent with their demonstrated abilities and educational training.

Our economy becomes a heavy loser when potentially capable people are barred from the labor market, and those who have managed to win an education, skill, and training are compelled, through discriminatory hiring practices, to take laborer's jobs or other underemployment.

This section of the President's bill seeks to remove the national disgrace of racial discrimination in employment. Title VI offers fair employment practices legislation which applies both to employers and unions. It also creates permanent status for the Committee on Equal Employment Opportunity. Other provisions, supporting and stimulating not only equality of employment opportunity, but employment per se, are included in this section. It deserves your unqualified support.

To summarize, Mr. Chairman, although the provisions set forth in the administration's bill are directed specifically at the removal of racial discrimination visited upon nonwhites, the true beneficiaries of the bill are indeed all Americans, for the denial of equality of opportunity, to any person throughout our Nation, is an affront to our professions of democratic principle and expression.

STATEMENT OF HON. HAROLD D. DONOHUE, A U.S. REPRESENTATIVE FROM THE STATE OF MASSACHUSETTS

Mr. Chairman and committee colleagues, it has been a most satisfactory duty to have participated, under the dedicated leadership of our distinguished chairman, in the achievement of a significant record, over the past decade, of legislative accomplishment in the challenging field of civil rights.

Our distinguished chairman, with his committee colleagues, has here initiated and then guided into law the first projections into this legislative area since reconstruction days and these projections are historically known as the Civil Rights Acts of 1957 and 1960.

Mr. Chairman, in the committee comments of recommendation for approval of these acts, it was stated that if and when more comprehensive legislation might be required, this committee would promptly review the particular need and offer futher appropriate legislative recommendation.

It is then, I think, a special tribute to the acknowledged wisdom of our distinguished chairman and this committee that the further need for additional legislation to protect the civil rights of all of our citizens has been readily sensed and consequently these hearings have been instituted.

In the path of this committee hearing action, most recent events have made it even more abundantly clear that the time has come, now, for this Congress to legislatively extend its previous pledges that the promises of equal opportunity for all, as set forth in the Constitution of this great Nation, shall be realistically fulfilled through and by Federal Government direction and authority.

Mr. Chairman, the substance of this problem, now threatening the very foundations upon which this Nation rests, is to spur our national consciousness to the stark realization, out of our human experience, that incidents of disastrous and unintended violence inevitably develop from certain peaceful activities. Accepting this realization and to forestall any expansion of the atmosphere and circumstances for violence, which no responsible citizen desires, let us promptly demonstrate our legislative willingness to make federally available to each and every American, through our legal institutions, effective instruments for the fullest and freest exercise of constitutional rights.

Mr. Chairman, we are faced today with the absolute and imperative need for removing racial, and all other discriminations, from every walk of American life. Our response should be heightened by the reflection that it is hypocritical and contradictory to aspire for world leadership to honorable peace until we have removed every temptation for the occurrence of racial strife in the streets of our own cities.

Mr. Chairman, I have come here more to plead on the subject than to testify in favor of any particular bill. I do most earnestly implore you to include, in your final bill, provisions to eliminate racial discrimination not only in the more publicized field of the voting privilege but in the equally important areas of education, employment, housing, public accommodations of all types, and the administration of justice. These basic areas are the foundation stones of our pledged and guaranteed American way of life. It is our solemn duty, therefore, to insure, as fully as we legislatively can, that every person in this country enjoys, not in theory but in reality, equal opportunity in these fundamental areas.

Mr. Chairman, the issues being presently reviewed by this committee are not confined to any one local or regional area of our country; they are truly of national significance. The problems facing us here are not those of one race; they are a challenge to all Americans worthy of the name.

The responsibility for equitable solution cannot be placed upon one faction of our people or our government; every person in all stratas of our society and at every level of government must share in the responsibility and contribute toward the solution.

The major accomplishments we have already reached in this legislative area have been the results of mutual respect and unified patriotic determination without prejudice, without partisanship and without parliamentary harassment.

Strengthened by reflection of past achievement, let us go forward again in unified patriotic response to our individual duty and the fulfillment of our national obligation.

Mr. Chairman, I very well know that under your energetic direction this committee will expeditiously move ahead in accord with our great President's most pertinent observation in his own civil rights message—that there could be no more worthy, impressive recognition of the centennial of the Emancipation Proclamation than the enactment of further guarantees of the civil rights of all Americans, living harmoniously together as neighbors, in one nation, under God.

I am further certain that out of the summation of all the evidence, testimony and individual bills before you this committee will forge a measure that will forever remain as a legislative milestone in the glorious history of this Nation's unceasing progress toward freedom for all and equal opportunity for everyone in the land of the just.

STATEMENT OF HON. FLORENCE P. DWYER, A U.S. REPRESENTATIVE FROM THE STATE OF NEW JERSEY

Mr. Chairman, it is impossible to exaggerate the importance of the legislation before you—both the President's civil rights program and our two Republican bills which I have joined in sponsoring—and so I express my gratitude, as a colleague and a citizen, to the members of the committee for devoting their considerate and expeditious attention to this, the most important legislation before the Congress.

It is the hope of all of us that this attention to civil rights, in and out of Congress, will somehow communicate to the well meaning, fairminded, and responsible majority of the American people the sense of rightness and urgency about this legislation which will assure its passage in effective form.

Despite the clear and unequivocal guarantees contained in the U.S. Constitution, our daily experience confirms repeatedly the dismaying fact that millions of our fellow citizens are not free: they have never known equal opportunity, and they have never received equal protection of the laws.

The Constitution, however, is not a self-enforcing document. It requires interpretation and application by the courts and implementing legislation by the Congress. In the area of civil rights, our highest Court and many of our lower courts have spoken frequently and clearly and decisively and have thereby given life in particular circumstances to the principles of the Constitution and to the highest ideals of our people. Congress, unfortunately, has been slower, more hesitant, and less clear about its own responsibility in this regard.

Congress cannot open the hearts and liberate the minds of those who insist on practicing discrimination in their personal lives, but we can and must deny to segregation and every other form of racial discrimination any shadow of public sanction or support.

This is not coercion. It is prevention. It is not our purpose to punish or to intrude, but to protect people and to enforce the law of the land, equitably and humanely. If, in seeking to accomplish this end, it should interfere with local customs or institutions, it will only be because those customs and institutions have been built upon an indefensible foundation—injustice, discrimination, and disregard for the primary rights of human beings. Our freedom cannot extend to the point where we are free to deprive others of their freedom, whether we live in the North or in the South.

As a matter both of principle and of prudence, Congress must not delay in equipping the Government with authority to protect quickly and effectively the legal rights of all our people, regardless of color, religion, or economic or social position, whenever these rights are threatened. This is the entire purpose of the civil rights legislation before this committee.

The means we proposed are straightforward. They are constitutionally sound. And they would be effective. The bills we Republicans have introduced, and to a somewhat lesser extent the administration bill, provide what the Constitution already explicitly and implicitly guarantees. We propose to assure to all Americans: equal opportunity to better oneself by a good education; equal opportunity to exercise political freedom and responsibility by means of the vote; equal opportunity to work and progress economically; equal opportunity to live in decent housing and in a decent neighborhood as befits one's means and quality as a person; equal opportunity to avail oneself of the services and accommodations offered to the general public; and equal assurance of justice and the protection of the laws from the courts and law enforcement agencies.

To those who deny or question the need for legislation of this kind, I urge a thorough reading of the hearings and reports of the U.S. Civil Rights Commission, especially the Commission's remarkable 1961 report, with its depressing and documented record of our national failure to prevent the abuse, mistreatment, terror, heartlessness, and denial of the most basic rights toward Negro Americans.

Obviously, Mr. Chairman, no legislation can be a cure-all in the sensitive and complex area of human relations. The reasons for prejudices and discrimination—fear, ignorance, insecurity, or other more morally reprehensible factors—lie beyond the direct influence of legislation. Nevertheless, we cannot stand idly by and silently concur in the havoc wrought to humanity by these personality malfunctions. The Federal Government has a clear and compelling constitutional obligation to protect the rights of its citizens, whatever the source of the threat to those rights. If we cannot correct the disorders, we can at least limit their destructiveness.

But the law has an educative value, too. Respect for the law can lead people of good will to reflect upon past patterns of behavior, the meaning and consequences of which may not have been entirely clear to them, and to adjust their actions accordingly.

The law can also reinforce the good intentions of those to weak or too intimidated by social pressures to do what they know is right in the face of a hostile crowd. We cannot expect, realistically, too much individual heroism. Enforcement of a law which applies equally to all can free men from the fear of boycott or competition or harassment, and can encourage the majority within a community to express its good will and innate decency more openly and persuasively.

This civil rights legislation, Mr. Chairman, presents those of us who are privileged to serve in the Congress with a rare opportunity and an immense challenge. We have the opportunity in our time to make the dream of America come true as never before in our history. We are challenged to make the promise of our splendid Constitution a reality for all the world to see. But we must do it for even more fundamental reasons: because it is right and because any other course is wrong.

STATEMENT OF HON. CARL ELLIOTT, U.S. REPRESENTATIVE FROM THE STATE OF ALABAMA

Mr. Chairman, I want to thank you for this opportunity to testify and express my profound and total opposition to H.R. 7152, the Civil Rights Act of 1963.

I do not come here today to make an emotional appeal. Such would be an insult to the decorum and dignity of this great committee and of the Congress, a Congress which all men agree is the world's greatest deliberative body. I come, rather, to appeal to the intellect and reason of the members of this distinguished committee.

I come here as an elected Representative of all the people of Alabama. While there is no doubt that my views will be opposed by certain leaders, Negro and white, of the civil rights movement, I sincerely believe that what I shall submit is in the best interest of the people—North and South, black and white.

These are troubled times for Americans, internationally and domestically, and I am sure no man of good will, North or South, will deny that racial unrest is a major national problem which cries out to be solved. But as in most cases, problems are more easily identified than solved; the greater the problem, the more difficult it is of solving. And we do not contribute to its solution by resorting to emotionalism or demagoguery; nor do we contribute to its solution by hypocritically playing one region against another.

Our problem, North and South, is to approach the solution in the great American tradition: to shrug off the influences of extremists of all persuasions and to progress toward our peaceful goal, keeping in mind the rights of all our people. Central to the American tradition is the principle that even the best of ends does not justify improper means. All history teaches us that the finest moral goals pale in comparison with evil or oppressive means. We must, therefore, carefully scrutinize the means of achieving goals of whatever merit if we are to protect our constitutional, democratic way of life.

I say this, Mr. Chairman, because of my convicition that the "Civil Rights Act of 1963" employs means which constitute a great threat to our time-honored institutions; that the cures envisioned by this bill are more dangerous to America than the diseases; that H.R. 7152 is, without any question in my mind, unconstitutional on its face. In providing this point, I shall make reference to most of the provisions but shall concentrate, primarily, on title II which relates to so-called public accommodations.

TITLE I—VOTING RIGHTS

At the outset, let me state that our Constitution makes no provision for an absolute right to vote. It provides that the States will set qualifications for voting. States set age requirements; they set literacy requirements. In the past, voters have had to be landowners, or taxpayers, or property holders, or men only. I need not remind anyone here that women were discriminated against and did not gain suffrage until this century.

My point is that, and until this season I thought it was one of the more elemental points in the law, our Constitution declares, in section 2 of article 1 and in section 1 of the 17th amendment, that "The electors in each State shall have the qualifications requisite for electors in the most numerous branch of the State legislature." The Constitution thus leaves to the States the authority to prescribe qualifications for voters and it is because of this fact that women gained their suffrage through the process of constitutional amendment rather than through legislation. To the extent, therefore, that this title sets up voter qualifications (by requiring, for instance, an absolute presumption that all persons with a sixth grade education are literate) it is unconstitutional.

Mr. Chairman, let me say, first, that the very term "public accommodation" is in need of clarification. We are not speaking of public utilities, communications, transportation or other services in which the public has a proprietary right by virtue of governmentally granted monopolies. We are not speaking of governmentally owned or operated places of amusement or recreation. Rather, this bill refers to places of private business, wholly owned and operated by private citizens who offer their marketable, private goods or services to the public for a price. In other words, we are here considering that sector of our capitalistic economy which defines the free enterprise system. This is Federal legislation to regulate the conduct of business by our main street merchants in the fields of hotels, motels, theaters, places of amusement and recreation, retail stores, barbershops, department stores, markets, lunchrooms, and restaurants.

If there is a private sector to our economy, it is that very sector in which this bill seeks to prohibit discrimination. The authority claimed for justifying Federal legislation in this field is a combination of the 14th amendment to the Constitution and the "commerce clause," article I, section 8, clause 3, of the Constitution which gives Congress the power, "To regulate Commerce with foreign Nations, and among the several States and with the Indian Tribes."

I might say, Mr. Chairman, that the dilemma in which the drafters of this bill found themselves speaks for itself. Their problem was, of course, that neither the 14th amendment nor the commerce clause provides such authority so they have attempted to obscure this fatal defect by combining the two. The inescapable fact of life and law is that one invalid law plus another invalid law makes two invalid laws, not one valid one.

In all my legal research I have failed to find, nor have the proponents of this legislation offered, one case or authority to disprove the fundamental proposition that the 14th amendment applies entirely to actions by the States. Conversely, the 14th amendment provides Congress with absolutely no jurisdiction to prohibit purely private acts of racial or any other kind of discrimination. This means simply that the proponents of this legislation, who find a flaw in the rights guaranteed by the Constitution, have come to the wrong forum. Congress has no authority to legislate in this field. The only recourse is to seek a constitutional amendment.

That this is so was decided by the U.S. Supreme Court in 1883 when it held unconstitutional an almost identical public accommodations provision contained in sections 1 and 2 of the Civil Rights Act of 1875. The doctrine, thus established 80 years ago by our highest court, that the 14th amendment applies only to State action and not to that of private citizens, is by no means outmoded. This fundamental interpretation of the clear and unambiguous language of the 14th amendment was reaffirmed on May 20 of this year in the case of *Peterson v. City of Greenville*, when the Court stated, "It cannot be disputed that under our decisions 'Private conduct abridging individual rights does no violence to the equal protection clause unless to some significant extent the State in any of its manifestations has been found to have become involved in it.'" What is meant by "some significant extent" may be debated but this proposed legislation would apply across the board. The prohibitions encompass all private businesses which serve the public without attempting in any way to distinguish private from State conduct. For these reasons alone, the 14th amendment will not support this legislation.

With respect to the commerce clause, Mr. Chairman, we all recognize that it gives Congress broad powers to legislate which are denied under the 14th amendment. While there is some question what the framers of the Constitution had in mind when they included this clause, the fact remains that today, most of our national economic legislation in the fields of health, education, welfare, labor, to say nothing of our great economic regulatory agencies, derive their authority from the commerce clause. There is no question, in other words, that goods and services moving in interstate commerce are susceptible to Federal regulation. There is little question, even, that certain intrastate activities which directly affect interstate commerce may also be the subject of Federal legislation.

Similarly, there is no question that there are hundreds of local, intrastate activities which do not affect, directly, or indirectly, interstate commerce and which are, therefore, not subject to Federal control as proposed in this legislation. I need not cite Madison and Jefferson to state that the framers of our Constitution definitely did not intend the commerce clause to apply to the selling practices

of the local merchant. But the legislation before this committees fails completely to recognize this limitation, or any limitation, upon the powers of the National Congress and this failure renders the proposal completely invalid and unconstitutional.

TITLE VI—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Mr. Chairman, we all remember that in April of this year the Civil Rights Commission proposed withholding Federal funds from Southern States, Mississippi in particular, because of alleged acts of discrimination. We remember, too, that this irresponsible proposal was rejected by practically every responsible person in Government from the President on down.

Notwithstanding this fact, section 601 of this bill proposes to do virtually the same thing. By the broadness of its language, it gives to the President the power to withhold the benefits of Federal funds and programs from beneficiaries in States where discrimination exists.

There is no doubt that such a provision, if passed, would place in the hands of a President extreme and dangerous power to withhold tax dollars from our taxpayers. I will rest my case on this point by quoting President Kennedy's press conference, question 13, as it appeared in the New York Times of April 25, 1963, at page 16. The question related to the President's use of a blanket power to withdraw Federal expenditures from a State. He said:

"I said that I didn't have the power to do so and * * * I don't think a President should be given that power, because it could be used in other ways, differently."

There are many other failings in this legislation. It fails to recognize that, in ratifying the Constitution, the States retained to themselves the police power—the maintenance of public peace, tranquility and order. And, of course, the legislation virtually repeals the concept of private property contained both in the 5th and 14th amendments to the Constitution.

Mr. Chairman, in recent weeks, "Mrs. Murphy's boardinghouse' 'has become the symbol of our people's positive need to identify that sort of local, intrastate business, that sort of private property, which is clearly beyond the pale of regulated interstate commerce. For the Federal Government to regulate Mrs. Murphy is to say that there is no commerce that is not interstate commerce; to regulate Mrs. Murphy is to say that local police power is a meaningless principle.

To regulate Mrs. Murphy, Mr. Chairman, is to deny the merit of an important fundamentad principle which which counsels forbearance to all who consider hasty social legislation. This principle was best expressed by Mr. Justice Brandeis when he said:

"The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings, and of his intellect. They knew that only a part of the pain, pleasure, and satisfaction of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions, and their sensations. They conferred, as against the Government—the right to be let alone, the most comprehensive of rights and the right most valued by civilized men."

Mr. Chairman, I oppose the Civil Rights Act of 1963, H.R. 7152, and urge that the committee issue an unfavorable report.

Thank you.

STATEMENT OF ANDREW FOWLER, DIRECTOR, WASHINGTON BUREAU, NATIONAL FRATERNAL COUNCIL OF CHURCHES, U.S.A., INC.

Mr. Chairman and members of the committee, having testified before this committee on several occasions, I am aware of your interest in the rights of mankind. However, the National Fraternal Council of Churches representing more than 8 million members, urges you to report the President's public accommodations bill. This will be a great step forward. When human beings are thirsty, they should be able to drink water; when they are hungry, they should be able to eat; when they are tired, they should be able to sleep. Approve this bill and provide these and other privileges.

STATEMENT OF HON. JACOB H. GILBERT, U.S. REPRESENTATIVE FROM THE STATE OF NEW YORK

Mr. Chairman and members of the Committee on the Judiciary, in May of this year, when hearings were begun on civil rights bills before our committee, I made a comprehensive statement covering the numerous bills on civil rights which I had introduced, and I pointed out the great necessity for approving and passing strong, effective, civil rights legislation.

Thereafter, I introduced bills to reduce the congressional representation of States which deny the vote to Negroes. Congress has an obligation to enforce section 2 of the 14th amendment. If effective action is taken by the Congress in this regard, it would correct the injustice against Negroes who are now prevented from voting; absurd residence requirements and complicated literacy tests would disappear.

The social revolution now progressing at full speed throughout our country has intensified. Negroes and members of other minority groups are not to be denied their just rights; they will not be content with empty promises; they are demanding equality now. They are casting off the yoke of second-class citizenship. Because of recent events, I feel it necessary to make a supplemental statement.

The President, on June 19, 1963, sent his message on civil rights and job opportunities to the Congress. He was eloquent in his appeal to the conscience of the American people and called upon us to meet the growing moral crisis in American race relations. Thereafter, Mr. Chairman, you introduced H.R. 7152, which embodies the President's program. On June 24, 1963, I introduced H.R. 7223, which is identical with your bill, to show my strong support, as I wished to lose no opportunity to work for this important legislation. The bill is the most comprehensive civil rights bill ever to receive serious consideration from the Congress. There are titles relating to voting rights, public accommodations, school desegregation, Community Relations Service, Civil Rights Commission, nondiscrimination in Federal programs, Commission on Equal Employment Opportunity, and other provisions.

Discrimination against human beings because of their color, race, religion, national origin or ancestry in any phase of our American life is morally wrong.

The conscience of the American people has been aroused. Every right thinking American wishes to help those who suffer the indignities of discrimination; the millions who, for generations, have been denied voting rights, educational and employment opportunities, decent housing, and who have been refused lodging and food because of the color of their skin.

We have heard testimony by leaders in all walks of life who advocate prompt enactment of this legislation; religious leaders, labor organizations, national service organizations, educators, civic organizations, State and city officials, any many others, have made persuasive pleas for the millions who look to us for the help this legislation would afford them.

It is an indisputable fact that the future of our Nation depends upon enactment of the administration's civil rights bill. We face terrible consequences if we fail in our duty now. I hope and pray that our committee and the Congress will not shirk the duty and responsibility which is ours.

I wish to make my position clear—we must pass strong, effective civil rights legislation. The proposed reforms are long overdue. I call upon our committee and the Congress to approve the administration's bill in its entirety and in the form in which it was introduced—including the important public accommodations section. Anything less will mean a continuation of racial strife and violence.

Let us now establish here in our Nation the true democracy of which we have boasted; let all citizens enjoy the equality and rights guaranteed them by our Constitution.

A Case Study of an American Child Who by Circumstance Became a Negro "Radical"

(By M. A. Harris of the Negro History Associates, New York, N.Y.)

I am an American Negro whose ancestry in America goes back to colonial days in both Virginia and Maryland. These were the first and third colonies founded in America. My mother was a native of Virginia who was among the first generation in her family born free out of slavery. Yet, the Haskins (which was her maiden name) by their industry and thrift became taxpaying property owners and good, loyal citizens. With the help of her parents and through great personal sacrifice, my mother achieved her ambition to become a schoolteacher after graduating from what is now Dover State College. Her last teaching job was in Rowlandsville, Md., in a little wooden building erected by my great-grandfather, which served as the colored schoolhouse. There she met and married my father. They left Maryland for Brooklyn, N.Y., and there I was born in 1908.

Here is a picture of my great-grandfather, George Washington Harris. The written legend on the front and back of this picture states that he was born in 1794. His mother, Milla Harris, was born in 1778, and her mother, Sarah Prigg, was born in 1761. It also says they were owned by Elizabeth Cole Gilbert of Harford County. Everyone who has a superficial knowledge of the significant dates and events in American history should concede that I am not alone thoroughly American by birth but by heritage, I am American to the very core of me. Knowing that no people under the sun have not been, at some time, enslaved, I am proud, rather than ashamed, to talk about my slave ancestors.

I hold in my hand a copy of a document on record in the county court of Harford, Md. It is a deed of manumission executed by Elizabeth Coale, of Harford County, on April 30, 1822. By this deed Elizabeth Coale liberated the grandmother of my great-grandfather, Sarah Prigg. It promised freedom from slavery to his mother, Milla Harris, when she reached the age of 31 years. Likewise it promised freedom to my great-grandfather 26 years in the future when he, too, should attain the age of 31 years. Think on that—you are an innocent child but by law, you are owned body and soul—yet, take heart for after you are 31 years old, life for you may begin. That was the promise contained in this document, but not all such promises were kept.

Here is another deed of manumission executed by another member of the Coale family. It is a deed of manumission by which Samuel Coale, on March 3, 1819, freed a number of slaves, the offspring of a slave woman named "Prina." Samuel Coale was the son of Margaret Coale who died in 1786, leaving a stipulation in her will that her son, Philip Coale, might have the use of her 15-year-old slave, Prina. Philip was to free Prina at the age of 21 years but, in event of the death of Margaret Coale, Prina, together with her posterity, should nonetheless be freed. As previously noted, Margaret Coale died in 1786. Philip neglected to carry out his mother's command with the result that not until 33 years later was Prina's posterity liberated. Two generations of Prina's unborn posterity were worked free out of caprice, avarice, or carelessness. They had no recourse to the courts for damages because the same devious minds which found justification for the slave system in America also devised laws which did not permit a Negro to testify in court against a white person. Out of this system, providing free labor, America was carved from a wilderness by my ancestors.

Now your attention is called to this third document copy which I obtained from the hall of records in Annapolis, Md. This is dated, in 1832. It is the paper issued to Milla Harris on attaining her freedom according to the deed executed by Elizabeth Coale in 1822. In order to prevent forgeries and slave escapes, a freedom paper was issued by a court and contained an exact description of the person to whom it applied. In part, my great-great-grandmother was described as "a bright mulatto." Elizabeth Coale had referred to her as "my mulatto woman." I find it difficult to describe my shock and bitter disappointment to learn that not even on my father's side could I claim direct African ancestry. Frankly, I would be prouder to trace my ancestry to an African cannibal. Cannibals at least, used their victims as food. On the other hand, some of our American mobs, after killing their prey, are content with buying bits of bones as souvenirs. White skin color is a fetish to Americans, otherwise they would not boast of being part this or part that while making every effort to deny being part African. Yet, a people who can face possible extinction from hydrogen

bombs and yet go calmly about their daily tasks, surely they can face the truth as supplied in the figures of our Census Bureau.

Southern politicians are vociferous about the purity of the white race. If they consult the Census Bureau, they will learn that, in 1915, there were 28 cities in the United States having 5,000 or more Negroes among the population wherein mulattoes comprised at least one-third of the Negro population. Of these 28 cities, 20 of them were in the South. In Greenville, S.C., 53.7 percent of the so-called Negroes were actually mixed whites; of the Negroes in Portsmouth, Va., 49.5 percent were mulattoes; as were 48.7 percent in Portsmouth, Va.; Danville, Va., the scene of recent disorders over segregation, contained a Negro population in 1915 which was 36 percent part white; in Waycross, Ga., 34.9 percent of the Negroes were blood relatives of white fellow townsmen.

I can never forget dear old Waycross, Ga. I was passing through there on a pullman train in 1937 when the pullman porter hastily pulled down my window shade. Apologetically, he told me that the sight of a Negro riding in a pullman car so enraged these unworthy citizens that they threw rocks at the windows.

Little Rock, Ark., in 1915, contained one out of four Negroes who were mulattoes; Greensboro, N.C., where the modern sit-ins began could not conceal a 20.6 percent of persons who were either part white or partly of some dark-skinned extraction. Montgomery, Ala., the city which got religion from Rosa Parks and Martin Luther King, had a 1915 mulatto population which comprised 27.7 percent of their Negro population.

Throughout the United States, between 1890 and 1910 the black population in the South increased only 20.1 percent while the mulatto population increased 90.4 percent. This occurred in a section where the laws and customs castrated the Negro males and exposed colored women to the lust of white men, immune from the law. These figures were compiled by white census enumerators on the basis of visible signs of admixture.

Though I am mixed on both sides of my family, a person my color would probably have been assigned to the black column. However, the figures are sufficient to certify that if no further admixture between the races occurred after 1915, practically every Negro who goes back in America prior to 1915 is related to some white-skinned American. Perhaps, it might be more apt to point out that, since the oldest human fossils found thus far were discovered in Africa, there is no white person who can at this point deny his African origin. Only those persons totally ignorant of mankind's migratory history, have the audacity to proclaim themselves pure anything, with the possible exceptions of aborigines and Neandermericans. (Neandermericans are a species of humans who inhabit North America. They combine a Stone Age mentality with American delusions of caste and race superiority.)

I am proud of the Harrises and the virtues they represent. America should be proud of them and the people they represent. I discharge all my duties as a citizen just as my ancestors would want me to do. I intend to exercise all my rights and privileges that accompany first-class citizenship. This land deed will show that a mere 10 years after obtaining his freedom my great-grandfather was a taxpayer in the State of Maryland. Each of his succeeding generations went a little further in contributing of themselves and their material substance for the benefit of this Nation and its people. Who dares to deny this? I have seen, in the Historical Society in Baltimore, a list of names of some white convicts transported out of English prisons to America, then bought and sold just as my ancestors. The same was done to indentured whites. At one time two-thirds of the colonists were comprised of these miserable people. Is it their descendants today whose character is such that neither the laws of God nor man impress them?

Between 1815 and 1915, not less than 30 million white immigrants came to this land of opportunity which was prepared for them by the free slave labor of my ancestors. These immigrants were not people who were comfortable, secure, and happy in their own lands. The words of Emma Lazarus on the Statue of Liberty well describes their condition: "Give me your tired, your poor, your huddled masses, yearning to breathe free * * *." Is it the descendants of this "huddled mass" who expect me to submit myself to the indignities heaped upon me because of my God-given complexion? My citizenship cannot be taken away like that of a naturalized person. My citizenship was purchased in the Revolutionary War and in each succeeding war with the blood of some member of my family.

During World War II, I was a Red Cross field director in the Southwest Pacific area. In Hollandia, New Guinea, just 2 weeks before he was killed in battle I

ran into a young cousin of mine. It would be vain to say that he died to bring the four freedoms into America. Never shall I forget that just a short time before going overseas myself, I got a demonstration as to how far even official America would go to maintain the illusion of race superiority which affects so much of our population. I was about to make a blood donation at the Red Cross center in New York City. At my insistence, the head doctor finally admitted that my blood would be segregated from that of white-skinned donors. Ashamedly, she said the Red Cross did this at the order of the War Department. She asked me to go ahead and donate as the Allies were suffering horrible losses in dead and wounded. I replied that I would make the blood donation if she could tell me that there was any difference between her blood and mine. She replied that as a scientist, she had to admit that blood is simply blood and has nothing to do with skin color.

Now I had, at that time, a younger brother who was on the Lido Road in Asia. exposed to primitive living conditions and under murderous gunfire of the enemy. At the same time I was rearing a promising 12-year-old boy. After a moment's consideration, I dressed and departed without making any blood donation. I chose to take a chance on sacrificing my brother, who is of my generation, rather than to subscribe to a lie and reinforce another hurdle intended to degrade my next generation.

Such everyday cruelties practiced on dark Americans, undoubtedly, are the product of depraved minds which seek to bring to me and my people a little death each living day. Faith in the promises of the Creator helped my ancestors to survive and made it possible for me to witness how slowly man becomes a civilized creature. The pages of history are full of details that demonstrate the cruelty and ignorance of white men. Yet, no age has surpassed the tortuous fragmentation of the personality which he has practiced on the Negro in America.

In colonial America, one of the great debates was how to secure equitable representation in the First Congress between the slave and nonslaveholding States. The compromise effected for the benefit of godless men was to base representation on a census count which considered the Negro two-thirds human and one-third chattel property with no rights as a human being. The Missouri Compromise made him free in some sections of the country and less than a human in another section. That Americans have not improved their morals may be noted from a recent piece of Maryland legislation which affords Negroes rights in 12 counties of the State that the rest of the State's counties deny to dark-skinned Americans. I detest everything about American legal hypocrisy but I have special reason for bitterness over this Maryland law.

In August of 1962 I went by bus to Virginia to sell the last acreage held by my mother's family in Prince Edward County. I had resolved not to pay taxes to the only county in the United States which shut down all public schools rather than abide by the law of the land. I had completed the deal and was in the bus en route home to New York. Twenty miles from Baltimore, on Route 40, the bus broke down. The driver said we would have to wait for a replacement from Baltimore so we had better eat at a nearby diner. As it was then 5:30 p.m., and I was hungry, I went with the other passengers into the diner. There I was informed that I could not be fed because State laws forbade serving a Negro. Aside from any comparisons between me and my fellow travelers, the damning thing about this insult was that it occurred in a State where my family has paid taxes for over 105 years. Since my humiliating experience on Route 40, a bill was passed making it possible to eat in most public places along that route in Maryland. From what I have been able to learn from reading about this bill, it does not affect public places on the Eastern Shore of Maryland. How is a traveling stranger to know if he will be served or insulted without a county scorecard to consult? It is even more galling to know that this bill which traumatizes me was passed, not out of consideration for me nor a concession to Negro residents of Maryland. It was an expedient manner of placating the U.S. State Department which was besieged by enraged diplomats refused service on Route 40 which leads into Washington, D.C. The courageous actions of members of the Committee of Racial Equality also forced this issue where the conscience of the Nation failed to lead. All this is not to say that I have not experienced discrimination in the North. However, there is a distinction between discrimination sanctioned by law and that which exposes itself to punishment if a law forbidding discrimination is violated.

My forefathers had a faith in this country and its people that greatly exceeds my own. They never enjoyed the fruits of freedom as a result of their labors

and limitless patience. Having a sense of history, and knowing from whence Americans have come, including myself, for a long time I had faith that America and its people would truly fulfill their destiny as an example of true democracy. Now in my middle age, I am rapidly reaching the end of my patience for voluntary compliance with that commandment which tells us to "love thy neighbor as thyself." Among other things, the Prince of Peace said this:

"I have come to bring a sword, not peace. For I have come to set man at variance with his father, and a daughter with her mother, and a daughter with her mother-in-law, and a man's enemies will be those of his own household. He who loves father or mother more than I is not worthy of Me. And he who does not take up his cross and follow Me is not worthy of Me. He who finds his life must lose it and he who loses his life for My sake will find it."

Knowing my ancestry, I could never stoop to plead with any man for what I know my rights to be. I was born with them and you can only obstruct me in the exercise of my birthright. It is not yours, either to give me nor take away. I may neglect to use rights or I may exercise them. That is my prerogative. Of this you may be certain, whenever I choose in the future to exercise my rights as a citizen, and I find such obstructions as have existed in the past, I shall oppose them with every cell and fiber of my being. I truly believe that the day has come of which Thomas Jefferson spoke when he said these words: "I tremble for my country when I reflect that God is just: that His justice cannot sleep forever."

There is no more time to temporize; to fragment; or simply to cauterize the cancer of racism that is eating away the soul of America. The gap between the American creed and the American deed must be closed. All inequities in laws that discriminate against Americans because of race, color, creed, or previous condition of servitude must be wiped out now.

It is later than we think.

STATEMENT OF THE JAPANESE-AMERICAN CITIZENS LEAGUE

Although we addressed a brief letter to the chairman of this subcommittee early in May endorsing legislation to expedite the voting rights especially of our Negro fellow citizens in most of the States of the Old Confederacy and authorizing the continued existence and expanded activities of the United States Civil Rights Commission—which were the only two measures then being advocated by the Administration—the Japanese American Citizens League (JACL) now feels duty bound to submit another and more comprehensive statement concerning this most vital domestic issue of the day in the light of the changed circumstances and the greater urgency.

The then smoldering impatience of our Negro citizens, chained by discrimination and prejudice in almost every aspect of human existence as surely as if they were still slaves a hundred years after the Emancipation Proclamation—and subsequent implementing constitutional amendments and statutes—had given them the promise of the justice, the equality, and the opportunities that are the birthright of every American, has fanned into a mighty conflagration that today threatens the very framework of our democracy, for "to secure these 'inalienable' rights," our Declaration of Independence proclaims, "governments are instituted among men".

The spark that was ignited at Birmingham, with vicious police dogs and high-pressure fire hoses arrayed against certain parading Americans peaceably demonstrating to dramatize the shortcomings of their citizenship, has exploded into the "fires of frustration and discord (that) are burning in every city, North and South," East and West, which our President so eloquently recognized in his address to the Nation on June 11.

To avoid "inviting shame as well as violence" and a "rising tide of discontent that threatens the public safety", the President submitted to the Congress legislative proposals calculated to assure "every American (the right) to enjoy the privileges of being American without regard to his race or color * * * (and that) every American * * * (will) have the right to be treated as he would wish to be treated, as one would wish his children to be treated".

These are the legislative proposals now under consideration by this subcommittee, proposals that, while far broader and more meaningful than those offered by any previous administration, still represent—in our opinion—the very minimum that the Congress should enact this session to try to help close the uncon-

scionable gap between our promises and our practices insofar as one-tenth of our fellow citizens are concerned.

It would be our hope that this subcommittee will strengthen the several proposals to make for more effective and expeditious enforcement and enlarge their scope to assure more meaningful application, for we recognize the political realities that whatever this subcommittee ultimately reports will probably represent the absolute maximum to be considered by the House and the Senate this session.

Thus, in a very real sense, the high hopes of those who believe in human rights and social justice for all Americans, regardless of ancestry or religion, are in this subcommittee.

Congress, as the coequal legislative branch—it seems to us—has a special responsibility for the current state of racial unrest and friction that it cannot escape by blaming the executive and judicial branches. The judiciary especially has been in the forefront in upholding the rights and dignity of all Americans. The Executive is taking an increasingly more positive attitude toward this subject matter within the areas of its jurisdiction through executive orders and administrative actions. The legislature, on the other hand, has been particularly reluctant to approve the necessary statutes that will provide equality in and under the law. In this instance, the Congress has abdicated its leadership in interpreting and implementing the people's will.

The record of congressional inaction makes it all the more imperative that this subcommittee report meaningful civil rights legislation as the first step to congressional approval of adequate statutes to assure equitable treatment for all our citizens.

In our letter of May 8 to this subcommittee, JACL, in addition to urging speedy enactment of the two administration-supported bills to expedite voting and extending the life of the Civil Rights Commission, called for the following:

"1. Authorize the Attorney General of the United States to institute civil actions in the courts to protect the constitutional and civil rights of all Americans;

"2. Establish fair employment practices to govern all employment;

"3. Assure fair housing practices in the purchase and/or rental of all housing in which any Federal funds, directly or indirectly, are involved;

"4. Provide for the equal protection of the laws to all Americans, including protection from mob violence and police brutality;

"5. Eliminate segregation in transportation facilities;

"6. Desegregate all places providing public accommodations, entertainment, recreation, etc.; and

"7. Expedite the full and complete integration of all public schools."

JACL is pleased to note that the President's proposed Civil Rights Act of 1963 includes in whole or in part, though often in more moderate scope than we intended, all of these suggestions, except for those relating to the equal protection of the laws, open housing, and integrated transportation. The latter two, however, have been the subjects of limited administrative action and court rulings, respectively.

Moreover, the President suggested two other important programs: (1) the establishment of Community Relations Services to help create and preserve peaceful relations among the citizens of our many communities across the land, and (2) the withholding of Federal funds from any discriminatory program or activity receiving, directly or indirectly, Federal assistance.

After making some general comments concerning this civil rights problem as JACL views it, we will comment on each of the seven proposals submitted by the President in terms of the unique experiences of Americans of Japanese ancestry.

To begin with, of interest may be the official statement of the league, which was issued in Omaha, Nebr., July 21, 1963, by the special civil rights committee convened by our national president.

As Americans of Japanese ancestry who, just 20 years ago, suffered unprecedented deprivation of civil rights and loss of property solely on the basis of our ancestry, we support the present struggle for human dignity now being dramatized by Negro fellow Americans.

The Japanese-American Citizens League therefore endorses intensified participation in responsible and constructive activities to obtain civil equality, social justice, and full economic and educational opportunities as a matter of fundamental right for all Americans regardless of race, color, creed, or national origin.

To this end, we accelerate our continuing program in seeking legislative, judicial and executive fulfillment of constitutional guarantees of human rights for all Americans. We call upon our members, and all other citizens to actively participate in every area of responsible and constructive activity to attain these objectives.

In further affirmation of our concern, the Japanese-American Citizens League contributes financial and other cooperation to the National Leadership Conference on Civil Rights, a representative mobilization of nationwide voluntary organizations.

The Japanese-American Citizens League will participate in the march in Washington, D.C. to petition peacefully for the redress of grievances on August 28, 1963, to be welcomed by the President of the United States of America.

By these and other manifestations of our concern, we keep faith with our national motto—"For Better Americans in a Greater America."

By way of explanation, JACL is the only national organization of Americans of Japanese ancestry, with members and chapters in 32 States.

All of our members are native born or naturalized citizens of the United States; most, but not all, are also of Japanese ancestry.

As a matter of record, ever since JACL became a national association in 1930, we have consistently worked for civil rights through legislation, litigation, and administrative action, on the National, State, and municipal levels.

While it is true that many of our past efforts were directed to those racial discriminations sanctioned by law primarily against those of Japanese ancestry in various sections of our country, nevertheless our successes enlarged and more liberally defined the general area of constitutional rights for all Americans. Indeed, there are some observers who claim that our unprecedented mistreatment as a nationality group in World War II and the subsequent decisions of the Supreme Court of the United States in cases relating to our wartime travail and other discriminations helped establish the precedents for many of the historic civil rights rulings of the past decade and a half.

JACL visualizes this civil rights problem not as one solely involving Negro citizens but as an all-American proposition, embracing the "majority" as well as the "minority" Americans.

Even though Negro Americans—and rightly so—are in the forefront of the campaign to dramatize the disabilities and indignities they are forced to suffer in spite of the demands made upon them in the name of citizens, such as the payment of taxes and liability for military service, and even though they may be the most disadvantaged of all Americans today, we respectfully submit that many other American minorities still suffer some measure of indignity and humiliation, not to mention outright discrimination and prejudice.

Among these other disadvantaged citizens are the American Indian, the Mexican American, the Jewish American, and the Asian American, including those of Japanese ancestry.

It is patent, therefore, that if and when our Negro fellow Americans secure their constitutional rights and opportunities, all of the other racial and religious minorities in the United States also benefit. The same applies to the "majority" too, for unless all are secure and free, none is truly so.

If fair employment practices, with promotions based on individual merit and ability, for instance, are gained by the Negro, the Japanese and all other Americans too will benefit greatly. The economy of our country will be expanded as the presently wasted manpower, facilities, services, resources, purchasing power, etc., will be replaced by more efficient utilization of all our people.

If open occupancy becomes the rule, and not the exception, Japanese and all other citizens will be able to rent or purchase homes and apartments in locations of their choice and ability to pay. This will mean a larger market with more reasonable prices and rentals for all, for discrimination then would not have to be subsidized.

If integrated public schools become truly operative, the education of all our children will be accelerated and bettered, to the good of our community and Nation.

If all Americans are able to enjoy equal opportunities in and under the law, then the billions of dollars now wasted annually as the price our country pays for bigotry and intolerance, not to count the hurt and the humilitation of those victimized because of race, color, creed, or national origin, may be put to constructive and productive purposes.

At a time when we as a nation and as a people are engaged in an economic, as well as ideological, war with the totalitarian Communists of the Sino-Soviet bloc, even the United States cannot afford the luxury of deliberately ignoring—except at our national peril—the most effective and efficient use of all our resources and facilities, especially that of manpower where we are already less well endowed than many other countries. We can no more afford second-class citizenship that divides and dissipates the energies of our population than we can tolerate second-class industry and production. Yet the one influences the other.

Accordingly, we respectfully suggest that, in considering these civil rights proposals, the Congress keep in perspective this all-American approach and objective.

Beyond purely domestic considerations, as Secretary of State Rusk so ably testified, there are widespread international implications in what this Congress will do with this civil rights issue.

The people and Governments of the free, the uncommitted, and the slave worlds, respectively, may well gauge our performance on this matter that is so clear and unequivocal to them as the measure of the sincerity of our professions. Indeed, what we do or fail to do in this field of human rights and decency may well be crucial to the ultimate survival of our way of life and government.

African and Asian diplomats too often come face to face with this ugly manifestation of presumed racial superiority on the part of some of our citizens and political entities. These unpleasant and often degrading experiences may color their attitudes toward our country, and in the years to come may be decisive in the conduct of foreign affairs to the detriment of the United States.

We can testify, for instance to the grave interest of the Japanese, for to them on the Western ramparts of our mutual, collective security system, confronting both Soviet Siberia and Communist China across a narrow channel of sea water, this is another opportunity to match our practices against our preachments.

In World War II, the Fascist and the Nazi propaganda ministries attempted to exploit the mass military evacuation and internment of Americans of Japanese ancestry as an example of America's hatred against all non-Caucasians, and especially Asians. They were not successful because the story of Japanese Americans in World War II became the great success story of democracy in action, of the ability of democracy to correct its mistakes and even abuses that were fomented in the hate and hysteria of war.

Nevertheless, in Japan today, and probably everywhere else, reports and pictures of what is taking place in almost every section of the United States as Negro Americans demonstrate—in parades, in picketlines, in sit-ins, sit-downs, etc., are frontpage features in all of the newspapers.

Because so many in foreign lands tend to identify themselves with the demonstrators, even though there may be racial problems in their own countries, the image and the prestige of the United States of America as the leader of the free world is compromised and jeopardized.

In this nuclear, space age, when the survival of mankind itself may be at stake, we can ill afford to lose our friends and allies by continuing to mistreat so many of our own citizens.

In commenting on the specifics of the administration's civil rights proposals, we do so as concerned laymen who have had some unique experiences in racial persecution and prosecution over the past half century, and not as legal technicians or legislative draftsmen.

While we understand and appreciate the necessity for precisely defining the legal scope of the legislation before the subcommittee, we want to emphasize that what are involved are human beings, and not, as stressed by the Executive Secretary of the National Association for the Advancement of Colored People in recent testimony, commas and periods in a grammatical exercise.

Just as only those Americans of Japanese ancestry who underwent the nightmare of arbitrary mass evacuation and internment in World War II can truly understand what we experienced, even though we have not been able yet to fully articulate the depth of our personal suffering and feeling, so only the Negro American can know his bitterness, his frustration, his discontent. To him, second class citizenship is not a legal euphemism; it is a matter of living and even dying as something less than other more fortunate Americans.

It is because of this circumstance, therefore, that we urge that the legislative proposals be examined positively and constructively, not negatively in the spirit of the least that can be approved, but affirmatively with the idea of advancing as far as possible the hopes and aspirations of our Negro citizens. No other group

in our history has so less; no other minority has so far to go before catching up with the mainstream of our society. So, expedition is the essence of this common cause.

JACL shares the impatience of the Negro Americans with those who, for one reason or another, maliciously or otherwise, overlook that the basic human rights and social justice which this one-tenth of our population seeks are constitutional guarantees that are supposed to be available, as a matter of right to every American, and are not special privileges or luxuries that need to be "earned" through meritorious and exemplary conduct. These are basic rights to which most other Americans are entitled automatically at birth. Why should Negro Americans have prerequisites for their attainment of full citizenship rights when most other Americans receive them through no action or fault of their own?

It is a curious commentary on the problem that today many of those who oppose equality and dignity for Negro Americans echo the charges of those who so vigorously objected to certain basic rights for Japanese-Americans in the not distant past.

It was not so long ago, for instance, that the lawfully admitted, immigrant Japanese on the west coast were accused of being "poor Americans" because they were not American citizens. Our parents were not American citizens because our then Federal laws prohibited those of the Japanese race from the naturalization process. Again, the failure of our parents to purchase land was used to allege that those of Japanese ancestry were "unassimilable" as Americans because they were not interested enough "to dig their roots deep into the soil" as other immigrants did. But this neglect was not of our parents' choosing. The antialien land laws of the Western States prohibited the purchase of land by "aliens racially ineligible for citizenship."

These and other melancholy reminders of our own grim past are brought to mind when we hear allegations concerning certain alleged failures of the Negro American translated into arguments against his "right" to the basic opportunities of all other citizens.

And, as for the efficacy of laws, we know out of own experiences that legislation in and of itself cannot change the minds and hearts of some men. But we do know that appropriate legislation is necessary to provide legal sanctions against discrimination and official prejudice. When the legal conduct is set down as the standard for the community and effectively enforced, most citizens will comply, especially if the penalty for violation is reasonably severe and certain to be applied. Our experience has taught us that once compliance becomes the accepted and automatic order, the tensions and questions of the transitional stage pass away.

We know that antinarcotics laws do not prevent all persons from smoking marijuana. But we do know that those laws serve a very useful purpose.

In commenting on the seven major titles of the proposed Civil Rights Act of 1963, as submitted by the administration, we shall not attempt to analyze each title in detail, or to present evidence or argument for each specific proposal, for your subcommittee has heard expert testimony concerning the legalisms of this particular legislative package and the evidence and the arguments for each title.

Suffice it to say at this point that JACL intends to make such suggestions and observations as it will on the basis of the special experience of the Japanese-American concerning those certain aspects of civil rights with which we are most knowledgeable, and, as expressed earlier, in the spirit of providing the widest possible scope and effectiveness to the corrective and remedial legislation now pending before this subcommittee.

Such suggestions for amendments or changes as may be made will not also suggest the appropriate legal language to encompass the comments, for we leave this up to those more competent in such matters.

Title I has to do with voting rights.

JACL believes that the right to the franchise is fundamental to responsible government.

We hold that one of the main reasons for many of the disabilities and inequities visited upon Negro Americans in certain areas of our country is due to the fact that they have been virtually disenfranchised. Giving them the power of the ballot should prove most salutary to their efforts to secure corrective legislation.

We recommend, therefore, that title I be expanded to apply to both Federal and State elections, for we cannot understand any justification for sanctioning any discrimination in the use of the franchise in any political election.

As for implementing voting rights, we prefer the voting registrar proposals, applied to all elections, recommended by the U.S. Civil Rights Commission, although we concede that the administration's proposals would reinforce the 1957 and 1960 statutes on this subject and provide the Department of Justice with additional tools in this highly vital area.

As far as literacy requirements are concerned, however, we prefer none whatsoever, for good citizenship is not based exclusively upon the ability of a person to read or write or even to speak English. But, if some literacy test is necessary, we would suggest that the administration's earlier request in this regard be substituted for its present proposal, that a sixth-grade education be considered conclusive, and not presumptive, as to an applicant's ability to read and write English.

It may be coincidental but we feel constrained to point out that, under the Immigration and Nationality Act of 1952, it is provided in certain circumstances that lawfully admitted for permanent residence aliens may take the prescribed examinations for naturalization in other than the English language.

In any event, Americans of Japanese ancestry know from bitter experience the importance of being able to vote in local, State, and National elections. From the birth of our Nation until the enactment of the Walter-McCarran Act 11 years ago, persons of the Japanese race were denied the right to become naturalized citizens, even though they paid taxes, served in the Armed Forces, contributed to the development of their respective areas, States, and country, lived as exemplary individuals, had citizen children, etc. Discriminatory State and local legislation, which circumscribed seriously the lives and opportunities of both the alien and citizen generations for more than a half-century, were enacted by the several jurisdictions on the grounds that the discrimination in Federal law could be implemented by further discrimination in State and local statutes.

While these particular disabilities against the Japanese were eliminated by court and legislative remedies, nevertheless it is clear that the phychological and tangible benefits that flowed to the Japanese American minority as a consequence of being given the right to vote, as a naturalized citizen, were many and substantial. Among these were the increased attention and respect that elected public officials paid to these newly enfranchised-through-naturalization citizens of the United Staes.

If these were the consequences to the small Japanese American minority that comprises less than one-half of 1 percent of the national population, imagine what it might well do for those who make up more than 10 percent of our country's people.

Title II has to do with the right to public accommodations.

As witness the many direct-action demonstrations of the Negro American in every section of our country and the testimony both pro and con of many public and private individuals, this may well be the "heart" of the administration's proposals.

Certainly, it is the most controversial as far as the Congress and the public are concerned. But, its objectives are so clearly just and required that there ought to be no question regarding its enactment. As NAACP's executive secretary testified, "the affronts and denials that this section, if enacted, would correct are intensely human and personal. Very often they harm the physical body, but always they strike at the root of the human spirit, at the very core of human dignity.

"Negro Americans will be bruised in nearly every waking hour by differential treatment, or exclusion from, public accommodations of every description. From the time they leave home in the morning, en route to school or to work, to go shopping or visiting, until they return home at night, humiliation stalks them. Public transportation, eating establishments, hotels, lodging houses, theaters and motels, arenas, stadia, retail stores, markets, and various other places and services catering to the general public offer them either differentiated service or none at all."

We note that substantial questions have been raised concerning the legal grounds on which this title should be based, on whether the so-called commerce clause or the 14th amendment to the National Constitution should be relied upon in assuring this right to public accommodations. While the administration submission cites both these constitutional grounds in its preamble, it refers only to the "commerce clause" in its enabling authority.

JACL respectfully recommends that title II be predicated on both the "commerce clause" and the 14th amendment. In this way, not only will the constitutional basis for this right be doubly assured, but, more importantly, all establishments, businesses, and services catering to the general public will come under the provisions of this legislation. The administration's proposal is limited to those that "substantially" affect interstate commerce.

If any activity or operation invites public trade, regardless of its impact on interstate commerce or its size or volume of business, it ought not to be allowed to discriminate between the people who comprise the public that it will serve on the basis of race, color, creed, or national origin. As we see it, there should be no dollar sign on freedom and equality. Once exemptions are considered, complications will result and the actual consequences of this right to public accommodations may be severely compromised.

And to help assure compliance from owners, operators, and others related with these public accommodations, JACL suggests that a reasonable but effective penalty be imposed on all violators. The traffic law analogy may be helpful in this regard. Reasonably high fines and jail imprisonment, or both, have resulted in a high degree of compliance with speeding limits, for instance, especially when that fine at least is automatic and the burden of proof is with the motorist.

What the Negro citizen today is encountering in too many places, in all sections of our land, is not unlike the patterns of segregation and racism that used to haunt and humiliate Americans of Japanese ancestry, especially out in the West, in the "yellow peril" era before and during World War II.

Even today, with all the vaunted acceptance that is supposed to be that of the Japanese American, there are swimming pools and beaches, motels and hotels, restaurants, and other places of public accommodation that are closed to persons of Japanese ancestry. As a matter of fact, we were advised recently that certain Maryland beaches which advertise in the daily newspapers wrote not only American citizens of Japanese ancestry but also officials of the Embassy of Japan that all would be denied admittance at these beaches. Recently too, we were advised of a young lady from Hawaii who was refused service at a lunch counter in nearby Virginia.

Indeed, there are even cemeteries that will not inter persons of Japanese ancestry, even though they might be honorably discharged veterans of military service in our Armed Forces in World War II and in Korea.

Thus, this particular title that so intimately touches the daily life of the Negro American is also of real significance to Japanese Americans and other disadvantaged Americans, for the ugly fact of prejudice knows no boundaries or persons.

Title III now has to do with the right to integrated schools.

JACL believes that, in the long run, the enlightened education of all our youth in desegregated schools—through all the grades, including higher education as well as trade and apprentice institutions—provides our country with our best hope for a truly integrated, harmonious, cooperative Nation.

Under this title, technical assistance, grants, and loans would be made available to school boards to meet problems arising out of school desegregation or the adjustment of racial imbalance in schools. The more important part of this title authorizes the Attorney General to institute civil actions for school desegregation upon receipt of complaints and a determination that the complainants are unable to institute legal proceedings on their own.

In the testimony of the Attorney General, this proposal "would thus combine a program of aid to segregated school systems, which are attempting in good faith to meet the demands of the Constitution, with a program of effective legal action by the Federal Government * * * these programs would smooth the path upon which this Nation was set by the *Brown* decision. The school desegregation title is second only to the public accommodations title in furthering civil rights in America * * *."

We would prefer more sweeping provisions to assure, not only in the South but also in the North and the East and the West, equal educational opportunities and facilities for all minorities, for in some areas of our country there are children of other minorities attending what amounts to segregated schools, with poor facilities.

But, more importantly, we would extend the authority of the Attorney General of the United States, while making it his duty too, to resort to the courts in civil actions to not only desegregate the schools, but also to secure, protect, and preserve all of the civil rights of all Americans, without regard to their ability to institute and carry such suits.

What JACL proposes is an enlargement of the original title III that was a part of the Civil Rights Voting Act of 1957, but which was rejected by the Senate.

In effect, what we are proposing is a catch-all title that would allow and require the Attorney General of the United States to serve as the official guardian of the civil rights of all Americans. In this capacity, in addition to the proposals submitted by the administration, he could seek court injunctions to preserve the peace, to provide the equal protection of the laws, to eliminate police brutality. Additionally, he could enforce any other civil right that he considered to be threatened or in jeopardy insofar as any group or individual is concerned.

In reference to the experience of Japanese Americans, our immigrant parents considered that the proper education of their children was their single most important responsibility. Accordingly, many suffered and sacrificed beyond reason in order that we Japanese Americans might have a worthy and worthwhile education.

At one time, in certain areas of the Pacific Coast, the public schools available to Japanese and other Asian children were segregated. During world War II, while in training in Mississippi, for example, the children of Japanese American combat infantrymen had to be sent to specially segregated schools, for our schoolchildren were not accepted by either the white or the Negro public schools. As might be expected, the schools maintained in the internment camps were restricted to Japanese Americans, except for the few children of supervisory Government personnel employed in the centers.

From this personal knowledge of segregated schools, Japanse Americans know that the "separate but equal" doctrine is fiction and that the educational opportunities and facilities are less advantageous in racially segregated than in integrated schools.

JACL is committed to the belief that the future of our country and our way of life is dependent upon the proper education of all our children. Thus, greater educational opportunities for all Americans, regardless of whether they are in the majority or in the minorities, should be made available, with greater incentives too to remain in school and to move on to higher education.

More and better educational facilities at less expense may be secured if all schools are integrated as to their student bodies and faculties, for the costly waste of discriminatory practices will be eliminated.

Then, as we read stories, see pictures, and hear reports of violence and brutality against persons and properties of Negro Americans, including those seeking admission to public schools and universities in accordance with the decisions of the Highest Court in the land, it is not difficult to recall those days of World War II when Americans of Japanese ancestry and our homes were the victims and targets of terrorists, vigilantes, and rifleshots in the dark and the dynamiting of homes. Even wounded Japanese American soldiers, still wearing the uniform in which they fought overseas, were not safe from those who wanted to prevent the return of evacuee Japanese Americans to their west coast homes after the U.S. Supreme Court held that loyal Americans of Japanese ancestry could not be continued in detention in the war relocation camps and the Western Defense Command of the Army lifted its exclusion ban.

And we remember too stories told us by our pioneer parents when they had "to leave town by sundown," when lynching was a real threat, when man's inhumanity to man if he were of Japanese ancestry seemed to be lawful and socially quite acceptable.

Because current events remind us of our personal experiences with naked and unrestrained violence, JACL would authorize and direct the Attorney General of the United States, as the principal law enforcement officer of our Government, to go to the courts to protect all the civil rights of all Americans at all times and under all circumstances.

As minority Americans, we have learned over the years to put our trust in the courts. We may not always agree with the ultimate decisions, as in the so-called evacuation test cases, but our experience especially since the end of World War II is that, more than any other institution or agency, the judiciary seems to understand and defend the rights, privileges, and immunities of minorities, even under the most difficult of circumstances.

Having said this, however, JACL believes that, even within the framework of our judicial system, the aggrieved minority, or individual, regardless of whether he is the plaintiff or defendant in a suit, should be allowed to freely request

and be granted the transfer of jurisdiction from a local and/or State system to the Federal courts, and also from one Federal court district to another.

Our own experience has been that in certain localities and States, where prejudice and persecution have been the accepted practice for decades and the judges are known to be biased, a fair and impartial trial is impossible. Under such circumstances, in order to secure equal justice under the law, the removal of that case from one jurisdiction is not only justified but mandatory.

Briefly, then, JACL would combine in title III school integration procedures with the mandate for the Attorney General to use the courts to enforce all the civil rights of all Americans, with the right of transfer of civil rights cases from one jurisdiction to another in order to secure equal justice for all.

Title IV has to do with the creation of a Community Relations Service.

A new agency, described as the Community Relations Service, would be established to help resolve on a voluntary discussion basis problems in local areas arising from discriminatory practices.

By providing an authorized opportunity to bring together people of leadership and influence in the various groups involved, a kind of mediation and conciliation service, a useful public function is provided. This new Service, however, is not a substitute for enforcement authority and should not be accepted as the voluntary alternative for the implementing of civil rights.

The experience of Japanese Americans with a somewhat similar arrangement is a happy one. After the 1942 arbitrary mass evacuation of all persons of Japanese ancestry from their Pacific Coast homes and associations and our subsequent internment in Army-type, barrackslike camps in interior wastelands and Indian reservations, the War Relocation Authority (WRA), charged by the President with supervision of these civilian centers, promulgated a program under which investigated citizens could leave detention and seek employment and housing in so-called normal communities outside the Western Defense Command.

Inspired by the WRA, and aided by its professional staff on community and public relations, resettlement committees were organized of interested volunteer churchmen, civil liberterians, civil leaders, etc. Subsequently, when the west coast was reopened to the evacuees, fairplay committees were organized. The voluntary members of both these committees, often supplemented by paid WRA staff, met with various groups that had expressed opposition to the evacuees and tried to persuade them that as law-abiding and loyal Americans these evacuees should be welcomed in their respective areas and their skills utilized. In addition, these committees set up hostels and found adequate housing and available employment for these Japanese-American evacuees.

The heartwarming, remarkable success of these voluntary committees cooperating with an authorized Federal agency in resolving community tensions and differences and helping to prepare an area to accept public policy as enunciated by Government augurs well for the proposed Community Relations Service.

Title V has to do with extending the life and the activities of the U.S. Civil Rights Commission.

The administration proposes a 4-year extension and an expansion of its services to become a national clearinghouse of civil rights information, to provide advice and technical assistance to both public and private agencies.

JACL is well aware of the extraordinary and distinguished service of this Commission, first authorized by the Civil Rights Act of 1957. Its thorough, impartial, and courageous investigations; its well documented and monumental report; its well-reasoned and often imaginative recommendations; its development of advisory committees in every State—these are among the reasons that JACL urges that this competent and invaluable independent agency be made a permanent Commission.

Realistically, even if the current legislative proposals are enacted into law, JACL has no illusions concerning the timetable for the ultimate resolution of the civil rights problems of all Americans. This national shame will be with us for many, many years, we fear. Therefore, the need for a continuing factfinding, investigative agency for many more years to come is apparent. If given permanent status, instead of being forced to seek extensions every 2 or 4 years, the Commission would be able to make long-range plans for carrying out its mission in a highly explosive, ever-changing, and very difficult field.

Moreover, JACL would suggest that, in addition to the national clearinghouse authority proposed by the administration, the Civil Rights Commission be given overall responsibility for making all civil rights meaningful for all Americans.

It already has a competent and experienced professional director and staff; it has citizens' advisory committees in every State; it has the background of information to understand the problems; it has demonstrated its courage and its willingness to come up with new solutions and approaches to old problems.

There are so many facets and implications to this total civil rights problem, including many that are not a part of the legislative proposals now under consideration before this and other subcommittees and committees of the Congress and several that are operating under Executive orders of the White House, such as those involving equality in housing and armed services opportunities, etc. It would appear logical and proper, therefore, that there ought to be a single independent body that should be charged with the overall responsibility for coordinating the combined activities of the multitudinous programs and projects in this field.

Of all currently constituted or proposed agencies and authorities, the Civil Rights Commission is best equipped in experience, staff, and orientation, with the necessary prestige and recognition, to oversee all of the civil rights of all our citizens on behalf of the national purpose of our Government. In the case of the Attorney General's many responsibilities, for example, the Commission could not only advise him of necessary action but also review his judgments and actions, including his recourse to the courts, etc.

Inasmuch as only a total effort, properly coordinated and directed, can assure civil rights for all our citizens within a reasonable period, JACL urges that the Civil Rights Commission be charged with this awesome but vital responsibility.

In February 1946, then President Truman issued an Executive order creating the President's Committee on Civil Rights, the predecessor agency to the U.S. Civil Rights Commission.

Its invaluable and unprecedented investigations into the civil rights situation as of that tme, immediately after World War II, and its comprehensive report and recommendations in 1947 to secure these rights guaranteed by our Constitution may be reread today with real value.

Several recommendations directly relating to Japanese Americans were included in that report.

One suggested "A review of our wartime evacuation and detention experience looking toward the development of a policy which will prevent the abridgment of civil rights of any person or groups because of race or ancestry."

Another urged enactment by Congress of legislation establishing a procedure by which claims of evacuees for specific property and business losses resulting from the wartime evacuation can be promptly considered and settled.

Still another requested the modification of Federal naturalization laws to permit the granting of citizenship without regard to the race, color, or national origin of applicants.

And finally, a call for the repeal by the States of laws discriminating against aliens who are ineligible for citizenship because of race, color, or national origin.

JACL is pleased to report that, for all practical purposes, all of the recommendations of the President's Committee on Civil Rights of 1947 as they apply specifically to Americans of Japanese ancestry have been implemented, except that relating to a review of our World War II evacuation experiences.

Title VI has to do with the withholding of Federal funds from any program or activity that receives Federal assistance, directly or indirectly, by way of grant, contract, loan, insurance, guaranty, or otherwise, when discrimination is found in such program or activity.

While there is ample opinion that the President already has the authority to withhold funds from any program or activity in which unconstitutional discrimination is found, JACL does not object to a legislative confirmation of this administrative power. On the other hand, we most certainly do not concede that a failure on the part of the Congress to specifically affirm this authority cancels it and relieves the Chief Executive of his discretionary responsibilities to withhold certain Federal funds to further the national purpose against racial discrimination.

Over the years, for many reasons, much more in the way of Federal funds have been poured into the southeastern section of our country than it has contributed to the National Treasury. As a matter of conjecture, it may well be that this area receives more per capita over the years than any other comparable region in Federal funds for various purposes.

By coincidence, this is the territory of the old Confederacy, where the spirit of rebellion and the Civil War still burns brightly in too many places. It is

in this part of the country that the historic decisions of the U.S. Supreme Court relating to the desegregation of schools, transportation, and certain public facilities are most denounced, evaded, and disregarded, often with official local endorsement.

It may well be that this implied threat to withhold needed Federal funds to carry on the economic life of the region may cause those in the leadership against civil rights and compliance with the orders of the highest tribunal to modify their attitudes and to comply in upholding the law of the land.

In some respects, we suspect that this proposal of the administration may prove to be most effective, for it hits where it hurts most—in the pocketbooks. It makes discrimination an even more expensive luxury.

All the people pay taxes, including the many minority Americans, and particularly the Negroes. We doubt very much that these minority Americans would want to subsidize discrimination in the Deep South, or any other section of the Nation.

As we envision this proposal, the withholding of funds by the President is a discretionary authority, and not a mandatory one, to be exercised in the national interest of all the people. Moreover, since this withholding is not to be on a State, or regional, or community basis, but rather in terms of specific individual projects and programs and activities, this can be a most useful instrument of persuasion for every part of the country where racial discrimination is practiced.

JACL agrees with the thesis that Federal funds contributed to the National Treasury by all the people should not be utilized in a way that discriminates against some of the people who contribute those funds. Moreover, JACL agrees that public funds should not be used to subsidize continued violation of the constitutional rights of some of our citizens. Federal moneys should be used to discourage, not promote, racial prejudice and bigotry in every form.

Title VII now has to do only with equal employment opportunity.

The administration request would reestablish the President's Committee on Equal Employment Opportunity as a Commission and grant it authority under which to continue to operate as it has.

Without doubt, the present Committee has been more aggressive than its predecessor in trying to eliminate racial discrimination in Federal civil service and in businesses and companies having Government contracts. It has also secured pledges from leading corporations and labor unions to try to do away with racial prejudice in employment practices.

While JACL joins in commending its work thus far, we know that it is gravely handicapped by the lack of statutory authority, finances, and personnel, as well as by its limitations in jurisdiction.

JACL, therefore, urges that this subcommittee substitute a "fair employment practices" provision for that submitted by the President.

From newspaper accounts earlier this week, we understand that the chairman has agreed to allow a motion to substitute the fair employment practices bill favorably reported by the House Education and Labor Committee for the limited proposal of the President. We congratulate the chairman on his willingness to accept the broader and more realistic legislation, for we cannot condone discrimination as it were between employment by Government and Government contractors and by private employers, and we urge the subcommittee to accept this amendment also.

The right to equal employment opportunity, as used in this context, means more than just jobs as such. It means recruitment, on-the-job training, promotions, retirement, etc. It includes not only employment in factories and offices, but also in the professions and in the businesses. In other words, when JACL speaks of employment, we mean the right to equal opportunity to seek the employment, the professions, and/or the businesses of our personal choice. Color, race, creed, and national origin should not be a bar to any human endeavor.

The right to this equal opportunity, with its attendant benefits, is of the utmost importance to all minorities, and especially Negro Americans because it is true that they are "the last hired and the first fired."

If the Negro, for example, enjoys the right of equal employment opportunities, our country and our industries would be able to more efficiently and effectively utilize our manpower resources. Production costs would be lowered and our goods made more competitive with foreign merchandise both in our home market and in oversea areas. The gross national product would be increased and the individual standard of living would be enhanced. All wages and

salaries would go up, especially for those now exploited because of discriminatory employment practices.

Once there is a free labor market, in which minority Americans are secure in their jobs and confident of promotions based on performance, they will become increasingly interested in "good citizenship", in more education for themselves and in better education for their children, in more adequate housing, in expanded recreational facilities, in more expensive luxuries, etc.

That a Commission can accomplish much is evidenced in the extraordinary achievements of the wartime Fair Employment Practices Committee. Armed with enforcement powers, such a Commission as is proposed can do much to eliminate racial discrimination in private and public employment.

In the case of Japanese Americans, that Presidential Committee opened up employment in previously closed industries, such as aircraft, industrial research, defense production, etc. The effectiveness of its operations may be measured by the fact that in our situation the Nation was at war with the country of our ancestry, security considerations were most decisive, and the Army had ordered our evacuation because we were suspect.

Today, though the acceptance of Japanese Americans as individuals and as a nationality minority is the highest in history, there are still many areas of employment that are closed to us, as they are also barred to many other minority Americans.

Actual documented complaints of employment discrimination are rare among Japanese Americans. Aside from the understandable reluctance to be "test cases," most Japanese Americans will seek employment in fields where we know in advance that we are acceptable. We deliberately shun jobs that might be closed to us.

Because there is no Federal assurance of employment opportunities, Japanese Americans train ourselves for only certain types of work, or study in schools for only certain professions or businesses. Hearing from their parents concerning the viciousness of pre-World War II job discrimination against those of Japanese ancestry—when a college degree meant a job in a fruit stand, etc.—our young people today carefully select their employment and careers not so much in terms of their personal likes and qualifications, but in reference to the acceptance of Japanese Americans in that particular activity. Often, Japanese Americans, once hired, find that promotions are more difficult to secure than for some of their coworkers and that there is an unwritten ceiling in their employment beyond which they may not progress.

In some employment, the racial barriers on labor union membership, and on apprentice training, serve as effective warning signals to efforts to seek work in certain activities.

We suspect that what is true for Japanese Americans is also true of many other minority Americans.

These observations regarding the voluntary restrictions that Japanese Americans place on ourselves in seeking employment probably accounts for the fact that few, if any, electricians, carpenters, plumbers, masons, etc., catering to other than our own nationality are of Japanese ancestry. Yet, as in the San Francisco Bay region, as an illustration, these are among the highest paid jobs.

Hand in hand with this problem of employment is that of housing.

While Japanese Americans are no longer forced to live in ghetto-like "'Lil Tokyos," "Little Osakas," etc., as in the preevacuation era on the west coast, there remain many restrictive covenants directed against those of Japanese ancestry. These may be legally unenforcible, but through unwritten agreements and undertakings many tract homes, among others, will not be sold to Japanese Americans. Apartments, too, often are closed to rentals by Japanese Americans, including those employed by the U.S. Government in highly responsible positions.

Again, as with employment, documented cases of actual discrimination are difficult to secure. And, as with employment, Japanese Americans tend to avoid buying or renting in areas where they "know" they are not wanted. They tend to buy or rent where they are "welcome."

Because there is no open occupancy requirement of law, Japanese Americans and other minority citizens are forced to pay higher prices and rentals than would otherwise be the case. We are not only paying more because of our color and race and creed but our freedom of choice is also narrower because of racial discrimination.

In view of the "companion" Executive order that established the President's Committee for Equal Housing Opportunity, JACL recommends that title VII in-

clude the establishment of commissions on fair employment practices and on open occupancy in buying or renting housing, each with effective enforcement authority, possibly in the way of reasonably heavy fines and/or imprisonment, or both.

The right to fair employment and fair housing opportunities are basic to the well-being of not only those currently being deprived of these human rights but also to the "general welfare" objective of the U.S. Constitution.

Title VIII has to do with the miscellaneous provisions for necessary appropriations to effectuate the administration's proposals and for the usual "separability clause" to insure that all other sections of the President's package are constitutional should one be held invalid.

In the fall of 1947, President Truman's Committee on Civil Rights prefaced its report in these concluding paragraphs:

"This report deals with serious civil rights violations in all sections of the country. Much of it has to do with limitations on civil rights in our Southern States. To a great extent this reflects reality; many of the most sensational and serious violations of civil rights have taken place in the South. There are understandable historical reasons for this. Among the most obvious is the fact that the greater proportion of our largest, most visible minority group—the Negro—live in the South.

"In addition to this seeming stress on the problems of one region, many of our illustrations relate to the members of various minority groups, with particular emphasis upon Negroes. The reasons are obvious: These minorities have often had their civil rights abridged. Moreover, the unjust basis for these abridgements stands out sharply because of the distinctiveness of the groups. To place this apparent emphasis in its proper perspective one need only recall the history of bigotry and discrimination. At various times practically every region in the country had its share of disgracefnl interferences with the rights of some persons. At some time, members of practically every group have had its freedoms curtailed.

"In our time the mobility of our population, including minority groups, is carrying certain of our civil rights problems to all parts of the country. In the near future it is likely that the movement of Negroes from rural to urban areas, and from the South to the rest of the country, will continue. Other minority groups, too, will probably move from their traditional centers of concentration. Unless we take appropriate action on a national scale, their civil rights problems will follow them.

"The protection of civil rights is a national problem which affects everyone. We need to guarantee the same rights to every person regardless of who he is, where he lives, or what his racial, religious, or national origins are."

As we view the racial tensions and strife that mark every section of our country today, it may well be that we are paying the price for our failure to heed the recommendations of that President's Committee in the intervening 16 years since its historic report, for what they foresaw as the tragedy of civil rights has come about.

With this graphic lesson before us, JACL calls upon this subcommittee and the Congress to act fast and favorably on meaningful civil rights, keeping in mind that all Americans, and not just the Negro American alone, will benefit. The central issue involved in this civil rights question is not whether the Negro American, as a Negro, has certain rights and opportunities. It is whether any citizen, of any race, or creed, or color, can be deprived, openly or covertly, of such basic human rights and social justice as are herein involved.

Obviously, the enactment of even meaningful civil rights legislation will not correct the inequities and the indignities that exist. The basic need is for a national assault on poverty and literacy, coupled with a reassessment of individual attitudes and practices. But the start has to be made, and the Congress is the one that must act now—and quickly. The courts have pioneered in this field of human advancement; the Chief Executive has promulgated Executive orders and proclamations in those areas where administrative action is possible. The Congress has been the laggard thus far in the great civil rights revolution that is shaking the Nation.

We are familiar with the argument that urges the voluntary approach as the most effective. Our easy answer is that this voluntary action has been available for the past hundred years and the current deplorable state of civil rights attests to the ineffectiveness of that method. Also, as the Attorney General of the United States has testified, the voluntary procedure cannot work

in areas of high tension and emotionalism. Moreover, as he pointed out, only by requiring all to comply through compulsory enforcement as advocated also by JACL, can those who would want to capitalize on their segregated status be forced to share the common national objective. The mayor of the city of Atlanta, Ga., whose municipality has progressed considerably toward equality in public accommodations, for example, requested that a national statute be passed. This would not only assure that every establishment had to comply with the law, but would speed the total integration of the community. Had there been such a national directive, he thought that the whole program would have been easier and faster.

To those who question the propriety of the urgency of this legislation, let him answer the President, when he asked: "If an American, because his skin is dark, cannot eat lunch in a restaurant open to the public; if he cannot send his children to the best public school available; if he cannot vote for the public officials who represent him; if in short, he cannot enjoy the full and free life which all of us want, then who among us would be content to have the color of his skin changed and stand in his place.

"Who among us would then be content with the counsels of patience and delay? One hundred years of delay have passed since President Lincoln freed the slaves, yet their heirs, their grandsons, are not fully free. They are not yet freed from the bonds of injustice; they are not yet freed from social and economic oppression.

"And this nation, for all its hopes and all its boasts, will not be fully free until all its citizens are free."

Having answered, we recognize that civil rights for all Americans is the gravest national and congressional test of our belief in our system of government and the integrity of men.

In a real sense, we Americans stand at the Amageddon of our times.

We are confident that if this Congress meets this great issue headon, in the spirit of a legislature proud of its tradition of leadership and prouder still of its respect for the dignity of every human being, the rest of the Nation will gladly follow, for this recognition of the individual citizen is not only what sets this country apart but also makes the American dream more meaningful for all.

After all, as the preamble states, the Constitution of the United States of America was ordained and established to: "Form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity."

STATEMENT BY HON. JOSEPH E. KARTH, A U.S. REPRESENTATIVE FROM THE STATE OF MINNESOTA

Since the Civil War our Nation has been faced with the dilemma of reconciling the lofty principles embodied in the intellectual and spiritual bases of our democracy while, in fact, imposing second-class citizenship status on Negroes. The experience has been an unnecessarily cruel one for the Negroes who have been inflicted with the hardships of physical deprivation, and of social and economic degradation. It has not been easy either for those whites whose consciences have borne the crushing burden of their hypocrisy.

As long as labor was extensively employed at field handwork in cotton, tobacco, vegetable, and fruit crops, and at heavy unskilled work in industry, the Negro, as a citizen, was found on the periphery of our society, of it, but really not in it. Changing markets and the technological revolution on the farm—the new types of machinery, the commercial fertilizers, the insecticides, the weedkillers, the new techniques—have displaced millions of workers, primarily the Negroes, and forced them to seek job opportunities in the cities. The social upheaval caused by this migration in the last two decades in itself has often been a catastrophe for the men, women, and children who have been displaced. In addition, the personal suffering for these unfortunate people, who are mainly uneducated and untrained, has been further aggravated by the discrimination practiced against them in their new, strange locations in hiring, when they seek

housing, or when they try to find a place to eat or sleep away from home. Discrimination of the worst sort is practiced against their children when a substandard education is provided, thus tending to perpetuate an inferior social and economic status, generation after generation.

The omnibus bill which I support, when enacted, will do much to get the Negroes and other minority groups into the mainstream of American life. In view of our vaunted democratic tradition it should not have been necessary for Negroes to resort to the recent public demonstration and civil disobedience to win their rights. Our Government and the people who have a voice in it have been laggard too long and have failed adequately to fathom the depth of the resentment and to gage the intensity of the anger of those who have been deprived of opportunity and have been degraded in their own eyes and those of the public.

The gradualistic "solutions" which have been counseled in the century after the Emancipation Proclamation are no longer acceptable because they have not worked. We must act now to reassure the Negroes, the Puerto Ricans and the other minority groups that as of right now the Constitution and the laws of the land will be a shield and assure to each citizen his full rights his color, his national origin, or his creed notwithstanding.

STATEMENT OF HON. EUGENE J. KEOGH, A U.S. REPRESENTATIVE FROM THE STATE OF NEW YORK

Mr. Chairman and members of this subcommittee of the House Committee on the Judiciary. the opportunity to present my support of the civil rights proposal of the President of the United States as contained in H.R. 7152 and similar bills impresses me personally with an enormous sense of responsibility. Yet, at the same time, I consider it fortunate to have this opportunity to support the rights of all American citizens.

Anyone from day to day who reads the newspapers, watches television, or listens to the radio knows the problems which the United States is facing today throughout the length and breadth of this land. During these difficult times our President has made every effort to insure that law and order would prevail with due consideration for the rights and privileges of all of the people involved. I have nothing but commendation for the action of this administration to meet these and many involved problems.

Our experience in the past several months clearly indicates the need for the enactment of the legislative proposals submitted by the President to this Congress. It can be the most complete and effective statute in the history of this Nation to eliminate discrimination because of race, creed, color, or national origin. This Nation has made great strides in many other fields, and there is no reason why we should not make the same progress in the field of civil rights. These rights which are guaranteed by the Constitution and laws of the United States and the Constitution and laws of the various States are the fundamentals upon which anything this Nation does is predicated. To send a man to the moon would be a great triumph, but I should prefer to send a man to a voting booth to vote as he sees fit.

The founders of this Nation were indeed men of wisdom and foresight. They provided us in the basic principles of our republican form of government, as set forth in our Constitution, with the opportunity as Members of the Federal legislative body to implement those principles. I do not believe, Mr. Chairman, that they could have foreseen in the days of the formation of the Constitution the myriad and difficult racial problems which have arisen throughout this land. Nevertheless, they did provide that you and all of your colleagues who are Members of this Congress could have the opportunity under that Constitution to solve these problems. That is our responsibility today. We owe it not only to ourselves, but we owe it to each and every person within the jurisdiction of this great Nation to prove to the world that American democracy does what we mean it to do: No discrimination and equal opportunity for all.

STATE OF ILLINOIS FAIR EMPLOYMENT PRACTICES COMMISSION, FIRST ANNUAL REPORT, 1962

(Submitted by Hon. Otto Kerner, Governor, State of Illinois, February 1, 1963)

The Illinois Fair Employment Practices Act was enacted into law by the 72d general assembly on June 30, 1961, and signed by Gov. Otto Kerner on July 21, 1961. This law establishes the right to equality of employment opportunity in Illinois and creates a five-member commission to carry out its provisions. The law requires the commission "to report to the Governor and the general assembly at the beginning of each general assembly and upon request." In compliance with this provision, this report is presented to the Governor, the members of the legislature, and the people of Illinois.

ORGANIZATION OF THE COMMISSION

Appointments of commissioners

Chairman Gray and Commissioners Foreman and Myers were appointed to the commission by the Governor in September 1961, and these appointments were confirmed by the senate in November 1961. Subsequently, Commissioners Kemp and Seaton were appointed and, on January 24, 1962, the commission held the first of its 17 meetings in 1962.

Establishment of offices and hiring of staff

The commission established its first office at 205 West Wacker Drive, Chicago, Ill. The commission opened an office in Springfield on January 2, 1963. The commission staff includes Walter J. Ducey, executive director; John Cheeks, director, Springfield office; Joseph Minsky, technical adviser; Wayne Williams, field representative, and three clerk-stenographers.

THE WORK OF THE COMMISSION

Charges of unfair employment practices

The basic objective of the law is the elimination of discrimination in employment-related activities, whether it occurs in a labor union, an employment agency or a business firm. The protection of the commission becomes available to an individual when he files a charge that he believes himself to have been discriminated against because of his race, his religion, or his national origin. The charges filed with the commission are investigated in a swift and orderly fashion and the investigative procedure is designed to protect the interests and rights of all parties involved.

The commission received 78 charges during 1962. Of this number, 50 have been investigated and, as of December 31, 1962, 28 are open pending investigation or conciliation. Of the 50 cases investigated, 24 were dismissed because the commission determined there was not substantial evidence of a discriminatory action, 7 were dismissed because the commission determined that it lacked jurisdiction in the matter and 8 were adjusted.

The adjusted cases were settled during investigation and no official conciliation conference was required. Seven cases were subjects of conciliation as prescribed by the law. These conferences are conducted by a commission member who calls both parties to a private discussion of the charge. Terms of conciliation are proposed by the presiding commissioner and are subject to the agreement of both parties. The settlement arising from the conciliation conference is then approved by the full commission. Three charges were withdrawn by complainants with the approval of the commission. One case required a public hearing.

TABLE 1.—*Disposition of charges, 1962*

Charges filed	78	Dismissed—continued	
Open as of December 31, 1962	28	Lack of jurisdiction	7
Dismissed	46	Lack of evidence	24
Conciliated	7	Withdrawn	3
Adjusted	8	Public hearing	1

Table 2 shows the causes of the complaints and the types of respondents.

TABLE 2.—*Cause and type of respondent*

	Race	Color	Religion	National origin or ancestry
Employers:				
Private	58	54	4	0
Public	9	9	0	0
Labor unions	6	6	0	0
Employment agencies	5	3	2	0
Total	78	72	6	0

Table 3 shows the cause of the complaint and the unfair practice alleged.

TABLE 3.—*Cause and unfair practice alleged*

	Race or color	Religion	National origin or ancestry
Denied employment	41	4	0
Denied promotion	6	0	0
Condition of employment	3	0	0
Denied union membership	2	0	0
Denied referral by union	5	0	0
Denied referral by employment agency	3	2	0
Discharged	12	1	0
Total [1]	72	7	0

[1] This table shows 79 alleged unfair practices which is one more than the number of complaints filed since 1 complainant alleged 2 unfair practices against a respondent.

Table 4 shows the results of conciliation and adjustment. The total results are greater than the 15 cases conciliated or adjusted because in a number of cases more than one result was obtained.

TABLE 4.—*Results of conciliation and adjustment*

Complainants employed or promoted	4
Other minority group members hired or promoted	2
Nondiscrimination policy statement adopted	6
Back wages paid	1
Union membership or referral granted	7
Retroactive seniority granted	3
Application form revised	2
Other	2

Of the 78 charges filed, 72 were filed from Cook County and 6 were filed from all other counties of the State. Of the nine charges filed against government employers, one was against the Federal Government, three were against departments of the State government, and five were against units of local government.

The small number of cases does not reflect, in the estimation of the Commission, an atmosphere of nondiscrimination in employment practices in the State of Illinois. It reflects only the infancy of the law and the limits which staff and communications impose upon the Commission. It is the Commission's forecast that future years will see a substantial increase in the number of complaints coming before it as residents become aware of their rights under the law.

Rules and regulations

The Commission adopted a provisional set of rules and regulations on June 20, 1962. These rules were initially regarded as provisional in order that interested parties would have an opportunity to study them and express their views to the Commission at subsequent public hearings. These hearings were held in Chicago and Springfield in September 1962. Many important contributions were

made by groups which presented testimony and a number of the recommendations were incorpated into the set of rules and regulations adopted by the Commission on December 15, 1962.

Testimony at these hearings was presented by the American Civil Liberties Union, Anti-Defamation League of B'nai B'rith, Associated Employees of Illinois, Bureau on Jewish Employment Problems, Caterpillar Tractor Co., Chicago Association of Commerce and Industry, Chicago Urban League, Illinois State Chamber of Commerce, and Independent Citizens Council of the United States, Illinois Branch.

Educational activities

Recognizing that widespread and accurate public understanding of the law and the Commission's responsibility is essential to the achievement of fair employment practices, the Commission has utilized a number of educational methods to develop this understanding. Approximately 130 speeches have been made by Commissioners and staff members throughout the State. Alton, Belvidere, Chicago and suburbs, Harvard, Jacksonville, Joliet, Kankakee, Ottawa, Peoria, Quincy, Rockford, and Springfield are among the cities visited by members of the Commission.

The Commission has distributed 6,000 copies of the Fair Employment Practices Act, 2,000 copies of an interim report, and 600 copies of the proposed rules and regulations. In addition, the Commission has authorized the printing of 10,000 copies of the rules and regulations which will be available in March 1963. A Memo to Management was being distributed in February 1963. This booklet provides a checklist of fair employment practices to assist employers in complying with the purpose and spirit of the law.

Public advisory committee

A public advisory committee composed of 18 citizens from the fields of commerce, industry, law, labor, and the communications media has been appointed to assist the Commission in its broad educational program. The committee met in Springfield on November 17, 1962, for a discussion of an action program to extend fair employment throughout the State. Governor Kerner met with the Commission and advisory committee and emphasized the importance of fair employment practices to all the people of the State. The committee promises to be of great help to the Commission in carrying out its responsibility to reduce denial of employment opportunity because of race, color, religion, national origin, or ancestry.

Cooperation with other organizations

The Commission has met with representatives of a number of Federal, State, and local agencies responsible for developing equal employment opportunities. These conferences have been fruitful for the Commission and have provided understanding of the concepts and methods used by other fair employment practices commissions.

Expenditures

In its first calendar year of operation, the Commission spent the indicated amounts in the following ways:

TABLE 5.—*Commission expenditures, 1962*

Personal services	$17,837.72
Travel	4,312.04
Contractual services	6,603.08
Equipment	4,502.40
Stationery, printing and office supplies	998.06
Grand total	34,253.30
Balance of appropriation unexpended	65,746.70

SUMMARY

The development of the Fair Employment Practices Commission in Illinois is occurring in a growing and changing economy in which technological change is demanding new job skills and obsoleting others. Employment opportunities are developing in certain parts of the State and declining in others. There is a growing general recognition of the need to take all necessary steps to remove

artificial barriers to the full development and utilization of our State and National manpower. This understanding strengthens the support for fair employment practices.

To move toward fair employment practices in Illinois, the Commission and other groups must work for acceptance of the principles of this legislation and practical application of these principles by employers, unions and employment agencies throughout the State. During the coming year the Commission will promote understanding of their responsibilities and rights under the law to employers, unions, employment agencies and minority groups. Equal employment opportunity will result from the development of motivation to that end and increased knowledge and skills by minority youths so that job competition will be equal. The Commission will work with private and public agencies to elevate the level of skills and education of disadvantaged minority group youth.

The Commission is heartened by the modest results of the first year of operation. With the many small and large problems of initial establishment and organization now behind us, we look forward to a more fruitful year ahead. The spirit of the people of the State of Illinois, as expressed in the Fair Employment Practices Act, provides us with a mandate to work toward complete equality of employment opportunity for every resident of Illinois. The Commission will do this.

PUBLIC ADVISORY COMMITTEE

Louis G. Alexander, Practical Electronics Manufacuring Company, Inc., Chicago.
Warren Bacon, Supreme Liberty Life Insurance, Chicago.
Marc Buettell, Ideal Industries, Sycamore.
Lee Chapman, International Association of Machinists, Springfield.
Rubin Cohn, University of Illinois, Champaign.
Kenneth Davis, University of Chicago, Chicago.
Irving Dilliard, Chicago's American, Collinsville.
Milton Friedland, Plains Television, Springfield.
Robert Gibson, Illinois State Federation of Labor, Chicago.
Michael Greenebaum, Glencoe.
Robert Herbin, Illinois State Branch of Amalgamated Meat Cutters & Butcher Workmen of North America, Chicago.
Leroy Jeffries, Johnson Publishing Company, Chicago.
Elizabeth Kuck, International Harvester Co., Chicago.
Jewel Rogers Lafontant, Stradford, Lafontant & Lafontant, Chicago.
Donald Morgan, Representing Illinois Bar Association, Peoria.
Nathaniel Nathanson, Northwestern University, Chicago.
Robert Perry, Illinois State Chamber of Commerce, Chicago.
Henry Slane, Peoria Journal Star, Peoria.
James E. Stamps, Service Federal Savings & Loan Association, Chicago.
Rev. Douglas Still, Social Welfare Department, Church Federation of Greater Chicago, Chicago.

RESOLUTION ADOPTED BY THE EXECUTIVE COUNCIL OF THE LUTHERAN CHURCH IN AMERICA, JULY 1, 1963

Whereas the Church of Jesus Christ must heed God's call to practice love and justice in human relations; and

Whereas predecessor church bodies of the Lutheran Church in America have expressed themselves against the evils of segregation and discrimination on the basis of race (Augustana Luthern Church, 1948, 1956: the United Luthern Church in America, 1952, 1956, 1958); and

Whereas action compatible with the Christian responsibility for love and justice is necessary: Therefore be it

Resolved, That the executive council, acting in behalf of the Luthern Church in America:

1. Affirm the 1952 statement of the United Luthern Church in America and the 1956 statement of the Augustana Luthern Church, regarding race relations, pending a pronouncement by a convention of the church on this matter;

2. Declare its conviction that any segregation or discrimination on the basis of race in the congregations, agencies and institutions of the church is in violation of God's will;

3. Commit itself to work for eradication of such segregation and discrimination wherever they may eixst;

4. Call on the congregations, synods, institutions, boards, commissions, and auxillaries of the church to develop within their assigned areas of responsibility programs of self-examination and action leading to justice in race relations;

5. Urge members of the congregations to initiate and support efforts at reconcilliation between the races in their communities and to support proper legislation designed to assure equal opportunity for all citizens in housing, education, employment, voting, and access to all facilities serving the public; and

6. Authorize and request the president of the church to send to all the ministers of the LCA and their congregations, a pastoral letter expressing the conviction and concern of the church on the fundamental moral issues of love and justice in race relations.

EXCERPT FROM PASTORAL LETTER BY DR. FREDRIK A. SCHIOTZ, PRESIDENT OF THE AMERICAN LUTHERAN CHURCH, JUNE 17, 1963

"What can we as pastors in the congregations of the American Luthern Church do? I submit the following suggestions:

"(1) If you are without convictions on this issue, ponder the gravity of this hour of judgment in the life of our Nation, and let your people know where you stand. This is important even in northern, rural congregations where there may be no colored people living. With the frequent movings that occur, today's farmer may be tomorrow's city dweller.

"(2) Be sure that your own congregation does not withhold the hand of welcome from a Negro guest or applicant for membership.

"(3) The Christian has a commission to pray. In your Sunday worship services during June–September, include a weekly petition that God may dispose our hearts in penitence for our racial sins and in a hunger to allow 'Justice to roll down like waters, and righteousness like an everflowing stream' (Amos 5:24).

"(4) Encourage your people to write to their Senators and Congressmen. It is not for us to tell them what kind of legislation is required; but they should know that we expect them to support any legislation that looks toward insuring the Negro of his rights as an American citizen. Let Senators and Congressman be advised that this is no time to stymie action by support of or participation in fillibustering.

"(5) Be quick to encourage your lay leaders to participate in community consultations, bringing together white and Negro leaders for conversation and peaceful action.

"Finally, all of us are concerned about the dishonor present events bring to our Nation. Communism makes hay out of our iniquity. The proclamation of our foreign missionaries is robbed of much of its power. But God can make the present evil serve for good. Before us lies the possibility that our Nation may be the first one wherein God has an opportunity to demonstrate the blessings He can pour out upon a people that recognizes and acts on the truth that God is the Creator and Redeemer of all men."

STATEMENT OF HON. JOSEPH G. MINISH, U.S. REPRESENTATIVE FROM THE STATE OF NEW JERSEY

Mr. Chairman and members of the subcommittee: More than 186 years have elapsed since the Founders of this Nation penned the mighty words of the Declaration of Independence. The cardinal principle embodied in that document, and the fountain head of American democracy, comes forth with unmistakable clarity:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

Unfortunately, the fact of discrimination in the land comes forth with equal clarity. This all too obvious discrepancy between principle and practice in the area of minority rights, particularly in the case of Negroes, is the single most glaring defect in our Nation's moral fiber. Congressional action in this matter is painfully long overdue.

These remarks, Mr. Chairman, as you well know, are not and cannot be directed at any particular section of the country. The ugly fact of discrimination and the consequent evils which flow therefrom, are a national problem. The dramatic and much publicized events of one part of the country, have their subtle, but no less shameful counterparts, in most of the other parts of the Nation. None of us, regardless of which section we are privileged to represent, have any real cause for pride and smug complacency.

In requesting prompt attention to these matters, I am not unmindful of the genuine progress we have made in recent years. The administration has made a good beginning toward the elimination of discrimination in certain aspects of our national life. The Executive order providing for equal opportunty in housing, for example, will go a long way toward fulfillment of the congressional policy of "a decent home and a suitable living environment for every American family." (Housing Act of 1949, 63 Stat. 413). Court decisions, Executive orders, administrative rulings, State and local legislation, and private agencies have all been instrumental in removing some of the barriers to equal rights for all. Much, however, remains to be done. Neither the President nor the courts can complete the job. The task of moving the Nation ahead in the field of civil rights falls upon the Congress. This is where the protection of human rights and individual dignity belongs—with the people's representatives. The time for determined action, Mr. Chairman, is now.

The unhappy spectacle at Birmingham has underscored the need for Federal authority to protect the rights of citizens due them legally and morally. We are all citizens of the United States, but it is a shameful fact that 100 years after the Emancipation Proclamation men can be held in bondage to the color of their skins. The winds of change are blowing over the world, including our own country, and we do not have another 100 years to resolve the problems left unresolved when the Emancipation Proclamation freed the slaves. We cannot tolerate another Birmingham; we cannot permit the spirit and the letter of our laws to be mocked and violated. All citizens must be assured the full enjoyment of the rights guaranteed by the Constitution.

The Attorney General of the United States has stated: "Continued refusal to grant equal rights and opportunities to Negroes makes increasing turmoil inevitable." It is the duty of Congress to enact promptly the full complement of civil rights legislation needs as demonstrated by the crises in Mississippi, Alabama, and elsewhere. The open and flagrant violation of constitutional guarantees must be firmly and unequivocally ended by the Federal Government.

I have introduced a number of bills designed to bring us nearer the goals of equal treatment and opportunity for all Americans regardless of race, color, creed, or national origin.

A brief explanation of those of my bills that are before your committee follows:

(1) H.R. 2027: An omnibus bill to protect the right of individuals to be free from discrimination or segregation by reason of race, color, religion, or national origin.

(2) H.R. 2146: A Federal antilynching bill to protect all persons from violence and lynching.

(3) H.R. 2147: A bill to permit the Attorney General to institute civil action in the name of the United States to prevent denials of rights guaranteed by the Constitution.

Mr. Chairman, in the coming weeks and months, we shall take up many matters of vital significance. The 88th Congress, like its predecessors since the end of World War II, will be called upon to make many fateful decisions; decisions vital to the security and survival of this great Nation. This, however, is no excuse for further delay in facing up to "substantial and urgent problems in civil rights." Racism is our most serious domestic evil; we must eradicate it. How secure is a nation which does not guarantee equal opportunity and treatment to all its citizens? Security in the context of discrimination is illusory. The key to real security and national survival rests ultimately upon freedom—that quantum of freedom embraced in the words "with liberty and justice for all."

The Civil Rights Commission report title "Freedom to the Free" issued on Lincoln's Birthday this year, concluded:

"We have come a far journey from a distant era in the 100 years since the Emancipation Proclamation. At the beginning of it, there was slavery. At the end, there is citizenship. Citizenship, however, is a fragile word with an ambivalent meaning. The condition of citizenship is not yet full-blown or fully realized for the American Negro. There is still more ground to cover. The final chapter in the struggle for equality has yet to be written."

It is the privilege of we who serve in this Congress to do our part in meeting the great moral challenge of our times, the issue of civil rights, and thus make America truly "one Nation under God, indivisible, with liberty and justice for all."

MONTGOMERY COUNTY, MD.,
COMMISSION ON HUMAN RELATIONS,
Rockville, Md., August 14, 1963.

Hon. EMANUEL CELLER,
Chairman, Committee on Judiciary,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CELLER: The Montgomery County (Maryland) Commission on Human Relations wishes to present to you and to the members of the Committee on Judiciary of the House of Representatives a brief statement reflecting our experience working under a county antidiscrimination ordinance and to urge that you make every effort to secure passage by the House of Representatives of meaningful civil rights legislation.

The Montgomery County Council passed the first antidiscrimination ordinance in the State of Maryland. The ordinance known as the public accommodations ordinance became effective February 15, 1962, and subsequently commissioners were appointed. Commission members met for an organizational meeting on April 26, 1962. Thus we have had a little over a year's experience, plus the year's experience of the previous voluntary commission upon which to draw our conclusions.

In our forthcoming report to the Montgomery County Council, the Commission on Human Relations states: "Promises and partial concessions of citizenship to the Negro population of Montgomery County are insufficient to maintain peace and order in our county * * *. The patience of the most patient runs out when he feels he has been betrayed by promises. But to ignore the problem is worse than making empty promises; it incites to unsavory demonstration those who are the victims of second class citizenship as they try to make unmistakably clear the problem which others say does not exist."

We, the members of the Montgomery County Commission on Human Relations, feel that our Congress, as well as our council, should assume leadership to assure equal treatment for all citizens rather than wait for the demand to come under duress.

We do not favor any exemptions in the area of public accommodations. We have respectfully requested that the Montgomery County Council remove from our ordinance the clause "but shall not include * * * any taverns or bars wherein alcoholic beverages are sold or dispensed as a primary part of such business." (Sec. 2: Scope of Ordinance—Ordinance No. 4–120.) In the cases brought before our commission in which the exemption has been claimed, the proprietors have argued that to permit Negroes on the premises would be to invite loss of business. "This means that, insofar as the proprietors are concerned, their income is determined by the racial prejudice of their patrons, and is dependent upon the perpetuation of such prejudice. * * * as long as even one small place of business is allowed to discriminate because of race, all places of business are unfairly treated, if not unfairly hurt."[1]

It is the commission's sincere belief that if Negroes, or other minority groups, are denied those basic opportunities guaranteed and promised to all citizens (in public accommodations, housing, employment, education, justice, health, and welfare) our country will be confronted, continually, with the kind of difficulty which we now abhor in places like Cambridge, Md., and Jackson, Miss.

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[1] Commission report to the county council, July 1, 1963.

In order that our country not be confronted with such difficulties the members of the Montgomery County Commission on Human Relations urge that the Committee on Judiciary of the House of Representatives support the objectives of the President's program on Civil Rights through proper legislative action.

Respectively submitted.

MARION J. KING,
Mrs. Robert W. King,
Acting Chairman.

ORDINANCE No. 4–120 RE: ELIMINATION OF DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION

(Adopted, Jan. 16, 1962—Effective, Feb. 15, 1962)

Whereas the practice of discrimination in places of public accommodation, resort or amusement in Montgomery County, Maryland, on account of race, color, religion, ancestry, or national origin, causes breaches of the peace, intensifies conflicts between groups and individuals, threatens the peace and good order of the county, results in loss of business and other economic injury to the owners and operators of many business establishments in Montgomery County, subjects many county inhabitants to indignities, hardships and deprivations which are detrimental to their physical and mental health, increases juvenile delinquency, is contrary to the nondiscrimination policy of the people and government of Montgomery County, results in conditions which tend to reduce the revenues and increase the costs of the county government in dealing with the harmful effects of such discriminatory practices, undermines the foundations of a free and democratic county, and thereby results in grave injury to the safety, peace, good government, health and welfare of Montgomery County, Maryland, and its inhabitants, and in substantial harm to the good repute of the county in the eyes of the people of the county, the State of Maryland, the United States, and the world; and

Whereas substantial numbers of foreign persons visit Montgomery County or are brought to Montgomery County by agencies of the United States Government, and such discriminatory practices against such persons have in the past and may in the future adversely affect the relationship of the United States with other nations of the world; and

Whereas the Commission on Human Relations, after a year of efforts at persuasion for voluntary desegregation, urges the adoption of a public accommodations law to insure the right of every person to full and equal service in any place of public accommodation in Montgomery County; and

Whereas experience in other communities has proved that the adoption of ordinances to prohibit and penalize discriminatory treatment of individuals in places of public accommodation, resort or amusement, on account of race, color, religion, ancestry, or national origin and to centralize the administration and enforcement of such ordinances is necessary and desirable for the protection of the safety, peace, good government, health, and welfare of the community and its inhabitants, and will prevent or ameliorate the harmful conditions and injurious results mentioned above: Now, therefore, be it

Ordained by the County Council for Montgomery County, Maryland, that—

SEC. 1. STATEMENT OF PUBLIC POLICY.—It is hereby declared to be the public policy of Montgomery County, Maryland, that discrimination in place of public accommodation against any person on account of race, color, religion, ancestry, or national origin is contrary to the morals, ethics, and purposes of a free, democratic society; is injurious to and threatens the peace and good government of this county: is injurious to and threatens the health, safety, and welfare of persons within this county; and is illegal and should be abolished. It is further declared that this ordinance is intended to apply and shall apply to all places of public accommodation in this county, whether or not such places are listed in section 2 hereof, except as otherwise expressly provided.

SEC. 2. SCOPE OF ORDINANCE.—This ordinance applies to discriminatory practices in places of public accommodation within the territorial limits of Montgomery County and shall apply and be applicable to every place of public accommodation, resort or amusement of any kind in Montgomery County, Maryland, whose facilities, accommodations, services, commodities, or use are offered to or enjoyed by the general public either with or without charge, and shall include, but not be limited to, the following types of places, among others: all

restaurants, soda fountains and other eating or drinking places, and all places where food is sold for consumption either on or off the premises; all inns, hotels, and motels, whether serving temporary or permanent patrons; all retail stores and services establishments; all hospitals and clinics; all motion picture, stage and other theaters, and music, concert or meeting halls; all circuses, exhibitions, skating rinks, sports arenas and fields, amusement or recreation parks, picnic grounds, fairs, bowling alleys, golf courses, gymnasiums, shooting galleries, billiard and poolrooms, and swimming pools; and all places of public assembly and entertainment of every kind, but shall not include any accommodations which are in their nature distinctly private, nor any taverns or bars wherein alcoholic beverages are sold or dispensed as a primary part of such businesses.

SEC. 3. PROHIBITED ACTS.—It shall be unlawful for any owner, lessee, operator, manager, agent, or employee of any place of public accommodation, resort, or amusement within Montgomery County—

(*a*) To make any distinction with respect to any person based on race, color, religion, ancestry, or national origin in connection with admission to, service or sales in, or price, quality, or use of any facility, or service of, any place of public accommodation, resort or amusement in Montgomery County, Maryland; or

(*b*) To display, circulate, or publicize, or cause to be displayed, circulated or publicized, directly or indirectly, any notice, communication or advertisement which states or implies (i) that any facility, service, commodity or activity in such place of public accommodation, resort, or amusement will not be made available to any person in full conformity with the requirements of clause (*a*) above, or (ii) that the patronage or presence of any person is unwelcome, objectionable, unacceptable, or not desired or solicited, on account of any person's race, color, religion, ancestry, or national origin.

SEC. 4. COMMISSION ON HUMAN RELATIONS.—(*a*) There is hereby established a Commission on Human Relations to carry out the provisions of this ordinance. The commission shall consist of nine members to be appointed by the county council. The terms of the members of the commission first appointed shall be as follows: Three members to serve for one year, three members to serve for two years, and three members to serve for three years. Thereafter the term of service shall be for three years. Each member of the commission shall continue to serve after his term until his successor has been appointed and has qualified.

(*b*) The commission annually shall elect one of its members as chairman and may elect such other officers as it may deem necessary. The commission shall hold meetings at regular intervals but not less frequently than once every month. Five members of the commission shall constitute a quorum for the transaction of business, and a majority vote of those present at any meeting shall be sufficient for any official action taken by the commission.

(*c*) The members of the commission shall serve without compensation, but they may be reimbursed for all expenses necessarily incurred in the performance of their duties in accordance with appropriations made by the council.

(*d*) The county manager or his designee shall serve as an executive director. Other personnel may be authorized by the council to assist the commission in carrying out the provisions of this ordinance. In proposing a budget for the operation of the commission, and in selecting other personnel authorized by the council, the county manager shall take into consideration the recommendations of the commission.

SEC. 5. DUTIES OF COMMISSION ON HUMAN RELATIONS.—The Commission on Human Relations shall have the power and it shall be its duty

(*a*) To initiate or receive and investigate complaints of discrimination against any person because of race, color, religion, ancestry, or national origin, and to seek conciliation of such complaints, hold hearings, make findings of fact, issue orders and publish its findings of fact and orders in accordance with the provisions of this ordinance.

(*b*) To study and investigate by means of public hearings or otherwise and conditions having an adverse effect on intergroup relations.

(*c*) To institute and conduct educational and other programs to promote the equal rights and opportunities of all persons, regardless of their race, color, religion, ancestry, or national origin, and to promote understanding among persons and groups of different races, colors, religions, ancestries, or national origins. In the performance of its duties, the commission may cooperate with interested citizens and with public and private agencies.

(*d*) To render from time to time, but not less than once a year, a written report of its activities and recommendations to the council.

(*e*) To recommend such legislation as it may deem necessary and proper to promote and insure equal rights and oportunities for all persons, regardless of their race, color, religion, ancestry, or national origin.

(*f*) To adopt such rules and regulations as may be necessary to carry out the purposes and provisions of this ordinance.

SEC. 6. COMMITTEES.—The chairman of the commission may, with the approval of the commission, appoint committees to carry out any of the powers and duties of the commission. Any committee appointed to administer the provisions of this ordinance relating to discrimination, or to investigate conditions having an adverse effect on intergroup relations or alleged violations of laws of the county as specified in subsections (*a*) and (*b*) of section 3 of this ordinance, shall consist of not less than three members. Two members of any such committee shall constitute a quorum for the transaction of business, and the concurring vote of at least two members of any such committee shall be sufficient for any official action taken by the committee. Any action taken by such committee shall be deemed to be the action of the commission, except that where a committee recommends a public hearing, the approval of the majority of the members of the commission shall be required before any public hearing may be held and before any alleged violation of law or any violation of an ordinance of the county may be certified to the county attorney or State's attorney.

SEC. 7. ENFORCEMENT PROCEDURE.—(*a*) A complaint charging a violation of this ordinance may be made by the commission itself, or by an aggrieved individual.

(*b*) The commission shall make a prompt and full investigation of each complaint of any practice made unlawful under this ordinance.

(*c*) If the commission determines after investigation that probable cause exists for the allegations made in the complaint, it shall attempt to eliminate the unlawful practice by means of conciliation and persuasion. The commission shall not make public the details of any conciliation proceedings, but it may publish the terms of conciliation when a complaint has been satisfactorily adjusted.

(*d*) In any case of failure to eliminate the unlawful practice charged in the complaint by means of conciliation or persuasion, the commission shall hold a public hearing to determine whether or not an unlawful practice has been committed. The commission shall serve upon the person charged with engaging or with having engaged in the unlawful practice, hereinafter referred to as respondent, a statement of the charges made in the complaint and a notice of the time and place of the hearing. The hearing shall be held not less than ten days after the service of the statement of charges. The respondent shall have the right to file an answer to the statement of charges, to appear at the hearing in person or to be represented by an attorney, and to examine and cross-examine witnesses.

(*e*) If, upon all the evidence presented, the commission finds that the respondent has engaged or is engaging in any unlawful practice, it shall state its findings of fact and shall issue such orders as the facts warrant.

(*f*) In the event the respondent fails to comply with an order issued by the commission, it shall certify the case, and the entire record of its proceedings to the county attorney or State's attorney for appropriate action.

SEC. 8. PENALTIES.—Any person who violates any of the provisions of this ordinance relating to discrimination practices or any rules or regulation pertaining thereto adopted by the commission, shall be subject to a fine not exceeding $1,000 and costs, or shall be subject to imprisonment for a period not exceeding six months, or both such fine and imprisonment. Prosecutions under this ordinance shall be instituted only by the county attorney or State's attorney, and prosecutions may be brought only after case has been certified to the county attorney or State's attorney by the commission. In addition, the county may institute injunction, mandamus, or other appropriate action or proceeding to prevent any violation of this ordinance, and any court of competent jurisdiction may issue restraining orders, temporary or permanent injunctions, or mandamus or other appropriate forms of remedy or relief.

SEC. 9. SEVERABILITY.—The provisions of this ordinance are severable and if any provision, sentence, clause, section, or part thereof is held illegal, invalid, or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of the ordinance or their application to other persons and circumstances. It is hereby declared to be the legislative intent that this ordinance would have been adopted if such illegal, invalid, or unconstitutional provision, sentence, clause, section, or part had not been included therein, and if the person or circumstances to which the

ordinance or any part thereof is inapplicable had been specifically exempted therefrom.

SEC. 10. SAVING CLAUSE.—The provisions of this ordinance, so far as they are the same as those of ordinances repealed by this ordinance, are intended as a continuation of such ordinances and not as new enactments. The provisions of this ordinance shall not affect any act done or any complaint or proceeding pending under authority of the repealed ordinances. All rules and regulations adopted pursuant to any ordinance repealed by this ordinance shall continue with the same force and effect as if such ordinance had not been repealed.

SEC. 11. EFFECTIVE DATE.—The effective date of this ordinance is February 15, 1962.

A true copy.

Attest:

HOWARD LEE COOK, Jr.,
Clerk, County Council for Montgomery County, Md.

STATEMENT OF HON. F. BRADFORD MORSE, A U.S. REPRESENTATIVE FROM THE STATE OF MASSACHUSETTS, IN SUPPORT OF HIS BILL H.R. 3484

Mr. Chairman, members of the committee, I appreciate the opportunity to appear before you today to add my support for the bills now being considered in the field of civil rights.

This year marks the 100th anniversary of the Emancipation Proclamation. While we have made great strides in the field of civil rights, much remains to be done in securing for all citizens the rights guaranteed by the Constitution. If the Constitution is to be a reality, all branches of the National Government must actively help to bridge the gap between our aspirations and our actions.

The violence that has been reported in recent headlines, and the cruel murder of William Moore should be a source of shame to us all. I am here today because I, like many other Americans, believe that the Congress can do more, and must do more, to protect the right of our Negro citizens. Traditionally, the courts have led the way in this field—executive action has followed, but the Congress has been reluctant or unable to take action. The 1957 Civil Rights Act marked the first positive statement on civil rights by the legislative branch since 1875.

The 1957 act authorized the Federal Government to bring civil suits in its own name and obtain injunctive relief where any person was denied or intimidated in the exercise of his right to vote. It gave the Federal district court jurisdiction over such civil proceedings without requiring that State remedies first be exhausted. It elevated the Civil Rights Section of the Department of Justice and created the Civil Rights Commission. That Commission, by the way, has, in my view, made notable contributions to the advancement and extension of civil rights in our country today. The 1960 Civil Rights Act went further and provided machinery to expedite the granting of the right to vote to all American citizens.

These two legislative expressions indicated that Congress does have the capacity to act in the civil rights field. Both the 1957 and 1960 acts dealt primarily with voting. This field remains a serious source of concern to us all. But the Department of Justice has prosecuted more cases of voting rights than ever before and, more Negroes are voting today in the South than ever before.

We must now turn our attention to other areas where Negroes are not receiving the equal protection of the laws. We can do this in a number of ways. Congress can, and should, declare that its appropriations be spent in a nondiscriminatory way. I was disappointed that Congressman Sibal's amendment to the Health Professions Educational Assistance Act was defeated last week. Mr. Sibal, as a supporter of the bill, offered this amendment in good faith, and I was disturbed to see so many Members, who profess concern for civil rights, vote against this basic declaration of equality before the law.

The evils of congressional failure to provide this basic guarantee have been especially noticeable in the health field. Under an optional separate-but-equal clause, hospitals have denied staff positions to qualified Negro doctors. Others have signed nondiscrimination pledges in their requests for Federal funds and have then denied fair treatment to Negro patients. Other public health services, partially supported by Federal funds, have discriminated against Negroes. The Civil Rights Commission is currently conducting a detailed survey of discrimination in health facilities. Its report, expected early this summer, will,

I am sure, suggest a number of courses of action available to the Congress in this field.

Education is, perhaps the most-talked-about problem in civil rights. The 1954 Supreme Court decision that segregated schools are "inherently unequal" followed years of courageous effort by Negro and white Americans, and a firm legal foundation laid in earlier decisions. Progress in achieving the constitutional requirement outlined by the Court has been all too slow. While many parts of the Nation have followed the mandate of the Court with exemplary vision and intelligence, others have lagged behind while public officials nurtured the kind of hate and bitterness that have erupted so tragically in recent days.

At the present time the burden of legal protest against persistent segregation is on the Negro pupil and his parents. Too often desegregation efforts are marred by inadequate preparation and planning. The civil rights bill which was introduced by the Republican members of this committee, and which I subsequently filed, would remedy both these problems. Section 123 of the bill would authorize the Attorney General to institute, in the name of the United States, a civil action or proceeding for preventive relief of a child who has been denied admission to any public school on account of race or color. As proposed, the bill provides safeguards for the State judicial process and would not give a Federal court jurisdiction over such a suit if the school district involved has already adopted a plan to desegregate its facilities according to the mandate of the Supreme Court.

To assist State and local educational agencies in formulating and effectuating desegregation plans, title III of the bill provides for a program of Federal aid to help cover the costs incurred by local educational agencies in providing administrative services such as pupil placement occasioned by desegregation.

I am confident that this committee, considering these urgent and trying problems will be able to develop a legislative program which guarantees basic constitutional rights to all of our citizens without further delay.

Let us face it, gentlemen, the responsibility is ours; we can no longer ignore it.

STATEMENT OF HON. ABRAHAM J. MULTER, U.S. REPRESENTATIVE FROM THE STATE OF NEW YORK

Mr. Chairman, I appreciate the opportunity to testify in support of the bills before the committee, including my own bills, H.R. 543 and H.R. 548. H.R. 543 is designed to prevent discrimination in public places and public transportation against members of the Armed Forces; H.R. 548, to protect the right to vote in Federal elections.

A modern day de Toqueville or Lord Bryce, Mr. Chairman, might well conclude that civil rights is a triennial bloom in the congressional garden. In 1957 after years of agonizing frustration—frustration within as well as without the Congress—we enacted a Civil Rights Act. In that act, the Congress took a significant step toward fulfillment of the promise of the 15th amendment which guarantees to every American citizen the right to vote regardless of race or color. By that act, Congress authorized the Federal Government to bring civil actions for injunctive relief where discrimination denied or threatened the right to vote. The act further prohibited intimidation, threats, and coercion for the purpose of interfering with the right to vote in Federal primary and general elections.

Three years later, in the wake of some obvious disappointments in connection with its earlier efforts, Congress sought to strengthen the 1957 act by enacting the Civil Rights Act of 1960. It provided that States, as well as voting registrars, may be sued for discriminatory practices. Title III of the 1960 act required the preservation of voting records, and empowered the Attorney General to inspect them. Under title IV, Congress provided for Federal voting referees to facilitate the registration of persons improperly denied the right to vote.

Another 3 years have passed. We are now seized of the opportunity which, if I may continue with my horticultural analogy, will permit us to convert this delicate bud into a hardy perennial. The means for accomplishing this are embodied in proposals before this committee.

The right to vote is a constitutional right. As everyone familiar with Federal elections knows, many qualified Americans are systematically denied the right to vote. This is accomplished by the so-called literacy test. These tests, fair and nondiscriminatory on their face, are administered so as to prevent certain of

our citizens from voting. They make a mockery of the 15th amendment. They eat at the vitals of the democratic process. They are, in short, an intolerable evil in a representative system of government.

H.R. 548, if enacted, will remedy this unwholesome situation. This is not a new proposal, indeed some of the members of this committee have introduced identical or similar legislation in this as well as the 87th Congress. It is, in truth, a modest proposal. It does not attempt to eliminate literacy as a proper and reasonable qualification for voting. I do not think the requirement of literacy for voter qualification should be abandoned completely. It is important that the voter have an understanding of the issues which he is called upon to decide. But, as frequently used, these tests bear absolutely no relationship to a person's qualification to vote.

This bill, moreover, is applicable only with respect to voting in Federal elections—a matter of some concern to the Nation and Congress as well as to the States.

Lastly, the bill does not propose any oppression or arbitrary governmental action against individuals. On the contrary, it is designed to facilitate a person's constitutional right to vote only in the face of State discriminatory action.

The bill requires the States which use literacy tests, to use an objective standard. The maximum uniform standard set forth in the bill is the completion of the sixth grade in any public school or accredited private school. This includes such institutions in the several States, the District of Columbia, and Puerto Rico. This is a reasonable standard; it is much like the standard which my own State of New York has used for many years.

When this proposal was before the last Congress, some Members expressed doubts as to its constitutionality. The power to determine the qualifications of voters, they argued, was left to the States. That power—the power to set the qualifications for voters in Federal, as well as State elections—is not, however, unlimited.

The 15th amendment provides that neither the Federal Government nor the States can deny or abridge the right of citizens to vote on account of race or color. And, Congress is empowered to enforce this prohibition by appropriate legislation.

The clear import of the 15th amendment is that Congress has the power to enact laws to prevent the States from abridging the right of citizens to vote on racial grounds. The Commission on Civil Rights has found that certain States are in fact using their voter qualification laws to deny citizens the right to vote on racial grounds. If Congress endorses these findings—which are incorporated in H.R. 548—it clearly has the power by "appropriate legislation" to prevent the States from abridging the right of citizens to vote on racial grounds.

Is the enactment of an objective standard—the sixth grade test in this case—beyond the power of Congress? This test does not alter the State requirement that persons be literate in order to vote. The sixth grade test is simply a means by which Congress may insure that an otherwise legitimate State voter qualification—literacy—is not used as a means of excluding voters on racial grounds.

Under the Constitution the qualifications prescribed by the States for elections to the most numerous branch of their legislature apply in Federal elections. The right to vote in Federal elections is not however a right derived from the State. State-established voter qualifications are, of course, subject to the Constitution, particularly to the 14th and 15th amendments which prohibit certain types of discriminatory action.

The Supreme Court, in a number of cases, has upheld the validity of literacy tests. But these cases, and I refer specifically to *Lassiter* v. *Northampton County Board of Elections*, 360 U.S. 45 (1959), hold only that a State may adopt a fair literacy test for voting provided that such a test applies alike to all citizens of the State without regard to race or color. The *Lassiter* decision suggests, what commonsense tells us, that a State may not establish qualifications that abridge the right to vote on racial grounds.

The 14th amendment provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." That amendment also provides that Congress "shall have power to enforce, by appropriate legislation" the provisions of the amendment. In providing that persons who have completed the sixth grade shall be regarded as literate under any State literacy law, the Congress would be enforcing the equal protection clause of the 14th amendment.

Under article I, section 4, clause 1 of the Constitution the States may prescribe the "times, places, and manner of holding elections" except that "Congress may at any time by law make or alter such regulations. * * *" There are a number of decisions under this section, but none to my knowledge, has ever held unconstitutional an act of Congress regulating the manner in which elections are held. In *Smiley* v. *Holm*, 285 U.S. 355, 366–367 (1932) the Supreme Court indicated that Congress "has a general supervisory power over the whole subject" of congressional elections. Chief Justice Hughes speaking for the Court said:

"Consideration of the subject matter and of the terms of the provision requires affirmative answer. The subject matter is the times, places, and manner of holding elections for Senators and Representatives. It cannot be doubted that these comprehensive words embrace authority to provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns; in short, to enact the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved. These requirements would be nugatory if they did not have appropriate sanctions in the definition of offenses and punishments. All this is comprised in the subject of 'times, places and manner of holding elections' and involves lawmaking in its essential features and most important aspect.

"This view is confirmed by the second clause of article I, section 4, which provides that 'the Congress may at any time by law make or alter such regulations,' with the single exception stated. The phrase 'such regulations' plainly refers to regulations of the same general character that the legislature of the State is authorized to prescibe with respect to congressional elections. In exercising this power, the Congress may supplement these State regulations or may substitute its own. It may impose additional penalties for the violation of the State laws or provide independent sanctions. It has a general supervisory power over the whole subject."

In enacting a sixth-grade standard for literacy as regards Federal elections, Congress would simply be exercising its "general supervisory power" to assure that State officials in the performance of their duties under State law also did their duty as regards the United States.

These provisions—the power of Congress to enforce the 15th and 14th amendments and the power of Congress to provide for the manner in which elections are held, plus the "necessary and proper" powers—provide an adequate legal basis for enactment of H.R. 548.

I also commend to the committee for its prompt consideration, H.R. 543. This bill would make it unlawful for hotels, restaurants, theaters, parks, or other public or semipublic places as well as public transportation facilities to discriminate against, any member of the Armed Forces of the United States because of race, color, or creed. It subjects proprietors, managers, and employees of such facilities to criminal penalties for discrimination directed against members of the uniformed services.

We have an obligation to protect our service men and women from the insults of racial bias. The necessity for Federal action in this regard does not have to be labored—it is obvious to all.

Mr. Chairman, I am told that 1963 is a vintage year. The 88th Congress has it within its power to make it a vintage year for constitutional rights. Let us pour some new legislative wine into these old bottles.

The Law As It Affects Desegregation

(by Pauli Murray)

INTRODUCTION

During the past several weeks, American Negroes have confronted the Nation with what has been described as a "massive insistence" upon drastic changes in the social structure to achieve rapid and total integration. They have abandoned their traditional role of patience; they have rejected tokenism and gradualism; they are saying, "One hundred years of fractional citizenship is enough! We want full citizenship now!"

This mood pervades the entire Negro community as seen in the tremendous outpouring of hundreds to tens of thousands of Negroes into the streets of the Nation. Police violence, kicking, beating, the use of fierce dogs and firehoses, even murder—none of these has stopped them. For the 7-day period ending June 2, an estimated more than 30 demonstrations took place in widely separated areas of the country. A week later, the New York Times reported that demonstrations had occurred in nearly 50 localities since May 1. This week has been marked by defiance of the Governor of Alabama in a confrontation with the Federal Government, a televised appeal to the Nation by President Kennedy and the fatal shooting in the back of an NAACP official in Mississippi. Clearly, this is our most serious domestic crisis since the Civil War.

Describing it as the "Second American Revolution," the Washington Star editorialized on June 2 that the real problem in this situation is:

"* * * how best to cope wisely with a rapidly developing revolution. The current outbreak of mass demonstrations by Negroes * * * is a manifestation of as genuine and justified revolution as any of the revolutions in history, history being largely an account of a sequence of revolutions."

Actually, we are experiencing the climax of a phase of the continuing social revolution in the United States which began with our Declaration of Independence and our war to throw off colonial rule. Periodically our country has been thrown into convulsions as various groups of the population have taken the initiative in reaffirming their fundamental rights and freedoms. These upsurges have been part of the growth and maturing of our democracy.

The most serious of these conflicts was the Civil War which ended in major constitutional change. The fundamental law was amended to abolish slavery, to define U.S. citizenship, to guarantee to all persons due process and equal protection of the law against the power of the States, and to secure the right to vote without distinction as to race, color, or previous condition of servitude.

Women carried on a struggle for education in the 19th century which was less dramatic but no less determined than that of Negroes for education in the 20th century. The 20th century brought marches, demonstrations, and arrests of women as they entered the crucial final stage of a century-long struggle for their right to vote. Here, too, constitutional change was necessary to secure this right.

Within the memory of some of us here are the bloody battles waged by American workers in the 1930's to establish their right to organize and bargain collectively for a fairer share of the Nation's economic growth. Labor, too, voiced its demands through sit-in strikes, stay-out strikes, marches, demonstrations and picketing, as well as boycotts. So hostile were some local authorities and employers to labor's freedom of expression that in 1933, the only place where Secretary of Labor Frances Perkins could speak to the workers of Homestead, Pa., was on the steps of the Federal post office. In the summer of 1937, Chicago police opened fire on a demonstration of unarmed workers killing 10 people, many of whom were shot in the back. National legislation in the form of the National Labor Relations Act was necessary to secure labor's basic economic rights.

Now in the 1960's, Negroes are engaged in a desperate effort to end segregation and discrimination everywhere in the United States. All the evidence indicates that they will not be stopped short of their goal. President Kennedy correctly placed this struggle in its proper historical perspective, when he observed in his recent Vanderbilt University address, that it was in the best American tradition.

The issues involved in this confrontation are moral as well as legal; the alternatives have become total equality or total repression, and there is no turning back. Each of us is caught up in an atmosphere of impending conflict, of a mounting urgency to come to fundamental grips with our most longstanding and explosive domestic issue and one which rates high priority among the most crucial issues of our foreign policy.

At this turning point of our history, I find it difficult to maintain a balance between academic objectivity and deep personal emotional involvement. As one of an earlier generation of freedom riders with a prison sentence as a reminder of the days when the struggle was a lonely one, and as a student leader of successful nonviolent sit-in demonstrations in Washington restaurants, exactly 20 years ago, I cannot pretend a scholarly detachment from these events.

In our time we are being compelled to return to our revolutionary roots. Potential violence has been inherent in this issue from the beginning of our history. I am glad that this long unsettled business of democracy is now coming

to a head. I rejoice that Negroes in ever greater numbers are today standing where the American patriots stood in 1776; that they are now willing more than ever to risk their lives for personal liberty and human dignity. They are reenacting the American Revolution in 20th century form. I believe that if the American people as a whole could identify Negroes with our revolutionary traditions of liberty, we will have taken the first significant step toward eliminating the schism which has so divided and almost destroyed us as a Nation in the past.

This revolutionary upheaval has not come about through formal decision of any single group, but through a consensus made up of individual commitment by thousands of people taking a stand, igniting and inspiring others to do the same. Many of the demonstrations have been planned; others are spontaneous. Out of this personal commitment to the struggle for liberty is emerging a new self-image, a new self-respect. And if I read the signs correctly, the Nation is gaining a new image of the Negro, for it is our tradition that when people have self-respect, nothing can keep them from asserting the inalienable rights of free men, women, and children.

I emphasize children here, for in reality, Negro children in the South, for the past 9 years, have led the crusade for human dignity. I need not remind you of the children who have braved hostile communities to exercise their right to attend nonsegregated schools. You are aware of the Birmingham children who recently, as if by prearranged signal, marched out of a school assembly and into the streets to demonstrate for their rights leaving an astonished faculty and an empty school building. You have doubtless read of the school children of Mississippi carrying signs directed to their adults which read: "We have gone to jail for you. Will you register and vote for us?"

In Washington, one of my friends is having difficulty with her teenaged son who remonstrates with her because she has not let him join some of the demonstrations in nearby Maryland. He feels ashamed because his cousin—a mere girl—has already demonstrated, been arrested and taken to prison. This fire and idealism among Negro schoolchildren today is so intense that their parents are left no alternative but to join the demonstrations themselves to maintain their honor and their children's respect.

By now, it must be clear to all of us that, for the second time in our Nation's history, we stand on the threshold of a major decision on human rights of the most fundamental character. In 1963 it has been forcefully brought home to us that our Nation cannot endure with fractional degrees of equality or citizenship. The right to human dignity is indivisible.

Against this background, let us address ourselves to the following questions: (1) What is the central issue in the present conflict? (2) What has been the role of the law, and particularly of the courts, in resolving this issue? (3) What are the new factors which demand new solutions? (4) What is the role of the law in solving the present crisis? In approaching these questions, we must continually bear in mind that the law operates in a moral climate and reflects that climate.

I. THE CENTRAL ISSUE IN THE RACIAL CRISIS

As a point of departure, let me tell a story which seems relevant. I have a friend who would be described as a white Anglo-Saxon Protestant and who lives in suburbia. One day her little girl came home from school weeping uncontrollably and her mother was unable to get her to tell what happened. So the mother went to school to investigate. She learned that her daughter's playmates had refused to let her join a rope-skipping game. She was a fat little girl and not a good rope-skipper, but what really broke her heart was that the other children would not even let her hold the rope and turn it for others to skip. When she could talk about it she told her mother, "Mommy, what hurt me so was that they wouldn't even let me be a 'steady-ender.'"

The exclusion from participation as an equal with one's fellows, in work and in play in any society, makes one an outcast. It robs the individual of a feeling of personal worth and of belonging. The permanent effects of such exclusion may be apathy, self-deprecation, violence and aggression, stunted growth, lack of ambition, or sometimes refuge in the exclusion itself as an excuse for poor performance.

In the language of my friend's little daughter, for three centuries the Negro has not even been allowed to be a "steady-ender" in American life. It is against the crushing weight of these three centuries, and against a background of a world

revolution in human rights that Negroes now rebel in mass upheavals. Dr. Martin Luther King has explained this mood of impatience as a father who finds it difficult to wait for promises:

"* * * when you suddenly find * * * your speech stammering as you seek to explain to your 6-year-old daughter why she can't go to the public park that has just been advertised on television, and see tears welling up in her little eyes when she is told that Funtown is closed to colored children, and see the depressing clouds of inferiority begin to form in her little mental sky, and see her begin to distort her little personality by unconsciously developing a bitterness toward white people; when you have to concoct an answer for a 5-year-old son asking in agonizing pathos: "Daddy, why do white people treat colored people so mean?'"

The central issue in this rebellion is human dignity—the inherent rights of free men and women. This issue is not merely the American dream; it is the foundation of our society. We cannot reaffirm too often the principle upon which our Nation stands or falls:

"* * * We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these rights are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed—that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness."

These rights are entrenched in the U.S. Constitution. Therefore, they are not only inherent in our beings; they are also guaranteed by our fundamental law and placed beyond the reach of transient legislative majorities. No government can rightfully take them away or permit others to impair them.

Mr. Justice Goldberg made this clear in his opinion in *Watson* v. *City of Memphis* on May 27 of this year, in a Supreme Court decision denying further delay in desegregation of Memphis public parks and other municipal recreational facilities. Speaking for a unanimous Court, he declared:

"Any deprivation of constitutional rights calls for prompt rectification. The rights asserted here are, like all such rights, present rights; they are not merely hopes to some future enjoyment of some formalistic constitutional promise. The basic guarantees of our Constitution are warrants for the here and now and, unless there is an overwhelming compelling reason, they are to be promptly fulfilled."

The major stumbling block in the way of a national solution to our racial problem in the United States is that we have allowed ourselves to be entrapped into the fallacious idea that we have conferred rights on the Negroes and gradually extended them, when the true idea is that we are dealing with inherent rights which have to be reaffirmed. Because we have conceived of the issue as the gradual extension of rights, we have used a piecemeal, fragmentary approach which accords neither with the rightful expectations of Negro citizens, nor with the realities of the world situation.

It is as if, literally, 20 million individuals must each assert and carry the burden of proof, and reassert and reprove endlessly in a multitude of situations, rights which are, in fact, self-evident. What these demonstrations around the country are trying to tell us today is that the issue is not the extension but the reaffirmation and present enjoyment of inherent rights; that the rights which sustain human dignity cannot be fragmented and exercised in part—they must be exercised in whole. And the demonstrations are also reminding us that there needs to be not only prompt rectification but restoration on a scale which will enable Negroes more quickly to throw off generations of cultural deprivation and participate fully and freely as American citizens in our society. In my view, only if we approach this crisis as the reaffirmation of present and inalienable rights can we orient ourselves quickly toward creative and permanent solutions.

II. THE ROLE OF THE LAW AND THE COURTS

In the American legal system, as you know, the Supreme Court has the function and the authority of ultimately interpreting and applying the constitutional principles underlying guaranteed rights to myriad fact situations, and of adjudicating between various rights if they are in conflict. Having declared what the supreme law is, the Court's interpretation is binding upon all the people.

Hence, we say that our society is based upon the rule of law and not upon the rule of men.

From its inception, however, our fundamental law contained an irreconcilable contradiction, in that the same basic document which affirmed basic human rights also recognized the institution of slavery—the complete denial of these rights to some men. How was this intolerable contradiction in the law to be resolved?

In 1857, Chief Justice Taney of the Supreme Court attempted to resolve it in the *Dred Scott* case by determining that some human beings have inherent rights and others do not. He concluded that Negroes were not intended to be included in the Declaration of Independence or in the term "people" in the opening phrase of our Constitution—"We the People of the United States"; nor were any persons of African descent, whether slave or free, intended to be citizens of the United States; "that they had for more than a century before been regarded as beings of an inferior race, and altogether unfit to associate with the white race, either in social or political relations, and so far inferior that they had no rights which the white man was bound to respect." Thus, according to Taney, the framers of the Declaration of Independence "knew that it would not in any part of the civilized world, be supposed to embrace the [N]egro race, which, by common consent, had been excluded from civilized governments and the family of nations, and doomed to slavery."

This attempt by the Supreme Court to resolve the issue by exclusion did much to make the conflict irrepressible. When the supreme law of the land is consistent with human dignity, controversies as to which rights are paramount can be determined peacefully within the orderly legal processes of our constitutional system. History has shown again and again, that when the fundamental law is interpreted in such a way as to be inconsistent with human dignity, conflict is inevitable.

After a bitter Civil War of 4 years, the Nation reaffirmed and made more explicit inherent human rights in the form of the 13th, 14th, and 15th amendments to the Constitution of the United States. Congress was expressly given the power to enforce these amendments by appropriate legislation. The purpose of this constitutional change was to sweep away all political and legal barriers to the exercise of equal rights with all other citizens.

Since the institution of slavery had been supported by detailed legislation in the various slaveowning States, and since these formerly rebellious States attempted to reenslave Negroes through the enactment of the Black Codes after the war, the thrust of the 14th amendment was against State action. That amendment provides in part:

"No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

It was clear to the framers of the Reconstruction amendments that Federal protection was necessary for the full and free exercise of citizenship rights. In the 10 years following the Civil War, it also became clear that these rights had to be protected from violation by private persons as well as by State action. These rights also had to be protected uniformly throughout the United States, if citizenship was to be meaningful. Congress passed the Civil Rights Act of 1875 which declared in part:

"That all persons within the jurisdiction of the United States be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theatres and other places of public amusement; subject only to the conditions and limitations established by law, and applicable to citizens of every race and color, regardless of any previous condition of servitude."

The act made it a misdemeanor for any person to violate the law by denying to any citizen the full and equal enjoyment of public accommodations, and granted a civil remedy of damages up to $500 to persons aggrieved by such denial.

What was not sufficiently clear to Congress or to the Nation at the time of Reconstruction was that the institution of slavery over a period of two centuries had had a dehumanizing affect upon blacks and whites alike in the entire region where it had become entrenched and had affected the moral climate of the Nation as a whole. A national effort of rehabilitation and restoration of the dignity of impoverished whites and newly freed Negroes in the former slaveowning States ravaged by war was essential if the Nation was to recover

from this dehumanization. This was not done. The Freedmen's Bureau, created at the end of the war to give relief to the needy Negroes and whites in the conquered South, was imperfectly conceived, poorly administered, and short lived, lasting only 7 years. What was sorely needed was a 19th century version of UNRRA or Marshall plan for the South. The absence of such planning set in motion forces of reaction, and we are today reaping the whirlwind of those forces.

At the judicial level, there followed perhaps the most inglorious period in our history with reference to human rights. Judges of the Supreme Court were conditioned by the same attitudes which produced the *Dred Scott* case; the majority of the Court found it expedient narrowly to interpret the Reconstruction amendments, permitting the Nation to drift backward instead of marching forward. Bit by bit the Court whittled down the broad protection of these amendments. First, it limited the concept of "privileges and immunities" in the 14th amendment and the rights which flow out of Federal citizenship. In light of the current issue of desegregation, two of the Court's important decisions are relevant to our discussion.

In the famous *Civil Rights* cases of 1883, the Court, by an 8-to-1 decision, declared that the Civil Rights Act of 1875, prohibiting discrimination by private persons in places of public accommodation throughout the country, was unconstitutional and void, on the ground that Congress had no power to enact legislation operative upon individuals in this field under either the 13th or 14th amendments. While it conceded that the language of the 13th amendment was broad enough to reach individuals, it rejected the argument that the 13th amendment was intended to abolish not only the technical legal relationship of master and slave but also all of the incidents of slavery and the badges of inferiority the institution had imposed upon Negroes, whether slave or free. The Court also held that the 14th amendment applied only to State action and not to individual invasion of private rights. Presumably, suggested the Court, these rights could be protected by resort to the laws of the various States.

Mr. Justice John M. Harlan, a former slaveowner from Kentucky who had bitterly opposed the abolition of slavery before the war but who was dedicated to the supremacy of the Constitution, wrote an eloquent and masterful dissent on both of these points and left a beacon light to guide future lawyers upholding human rights. In light of the President's speech on Tuesday night calling for another Federal statute on public accommodations, Mr. Justice Harlan's dissent warrants rereading today. Unquestionably, the decision in the *Civil Rights* cases opened the door to widespread discrimination by private persons against Negroes, leaving the protection of the most basic aspect of human dignity—the right not to be humiliated by unequal and exclusionary treatment—to the whim of the various States. In my opinion, the *Civil Rights* cases were wrongly decided and are an important factor in the current unrest. As late as 1959, the Supreme Court refused to reexamine a case brought under the 1875 act. Around the same time several lower Federal courts also denied the applicability of this act to restaurants on interstate highways. Having no remedy in the courts, as President Kennedy aptly pointed out in his nationwide address, Negroes took the issue into the streets. It is significant that the first mass sit-in cases arose in early 1960 following the latest refusal of the Supreme Court to declare an available remedy.

In 1896, the Supreme Court decided the case of *Plessy* v. *Ferguson* and upheld the constitutionality of a Louisiana statute which provided separate railway cars for Negroes and whites in circumstances (a) where regulating intrastate commerce and (b) where such accommodations were "separate but equal." Here the Court denied the view that a segregation statute implied inferiority of Negroes. Although it conceded that the object of the 14th amendment was to establish absolute legal equality, it held the amendment was not intended to abolish distinctions based upon color. Again Mr. Justice Harlan dissented vigorously. His reasoning against the background of contemporary events has been proven to be eminently sound. His words were prophetic. He wrote:

"In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the *Dred Scott* case * * * What can more certainly arouse race hate, what more certainly create and perpetuate a feeling of distrust between these races, than state enactments which in fact proceed on the ground that colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens? * * * The sure guaranty of the peace and security of each

race is the clear, distinct, unconditional recognition by our governments, national and state, of every right that inheres in civil freedom, and of the equality before the law of all citizens of the United States without regard to race. State enactments, regulating the enjoyment of civil rights, upon the basis of race, and cunningly devised to defeat legitimate results of the war, under the pretense of recognizing equality of rights, can have no other result than to render permanent peace impossible and to keep alive a conflict of races, the continuance of which must do harm to all concerned."

The *Plessy* decision opened the door to massive segregation laws in the Southern States and various degrees of permissive segregation in other areas. Legislative intervention in many Northern States following this decision took the form of State civil rights statutes forbidding discrimination in public accommodations. These laws, however, varied as to places covered and as to degree of enforcement. Some States had no laws.

Distinction and exclusion on grounds of race and color became fixed in our law. As late as 1927, the Supreme Court upheld a Mississippi court ruling that it could constitutionally segregate children "of the brown, yellow, and black races" from white children in the public schools, and denied a child of Chinese ancestry the right to enroll in white schools in that State.

Rigid enforcement of segregation laws in the South, desultory enforcement of civil rights laws in the North and West, constituted the posture of the country with reference to racial segregation as it moved toward World War II. With the exception of a 1917 decision outlawing a Louisville ordinance which, in effect, created residential segregation, the Court showed no inclination to question legally enforced segregation.

Beginning in 1938 with an attack on the exclusion of Negroes from the State universities of the South, the Court, in a case-by-case approach began the task of realining the law with our fundamental constitutional principles. In 1946, it struck down segregation on interstate carriers, incidentally, declaring void as to interstate passengers, the Virginia statute under which I was arrested and imprisoned 6 years earlier. Bit by bit it overturned the barriers erected on the legal foundation of the *Plessy* case, but it was not wholly clear until the school desegregation cases of 1954 that the Court was deciding foursquare on the issue of inherent and constitutionally entrenched human rights and their incompatibility with legal segregation. Here the Court met the real issue in the following words:

"Does segregation of children in public schools solely on the basis of race even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does * * *. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone * * *."

With this decision, the Supreme Court sounded the death knell of all segregation where the exercise of State power is involved. Since 1954, that Court has handed down numerous decisions reiterating and applying the basic principle of that case, ordering desegregation of State or municipal public facilities, and more recently, reversing convictions of sit-in demonstrators and their leaders under trespass, and other statutes in cases where a local segregation ordinance was present, or local officials voiced a policy of segregation. The Court put over for further argument a case in which there is no segregation law or ordinance or no declared official policy of segregation, and yet sit-in demonstrators are arrested for trespass at the request of the owner of a place open to the public. Thus, by radical surgery in a series of operations, the "separate but equal" doctrine on grounds of race has been removed from our constitutional law. What remains to be decided or legislated is an affirmative remedy for privately enforced segregation or exclusion from public facilities.

III. THE NEW FACTORS WHICH DEMAND NEW SOLUTIONS

With the Supreme Court giving this reaffirmation of basic rights and slowly correcting the earlier deviations from our fundamental law, why have we suddenly found ourselves in a national crisis? This present explosion, of course, is not sudden. Warnings by Negro leadership have been sounded for years, but most of the Nation has been too preoccupied to listen. One important factor is the difference in outlook and tempo between Negroes and the rest of the Nation with respect to the central issue. As Dr. Ralph Bunche pointed out last

week, no government ever does enough when people are denied their basic rights. The Nation has been looking at how far Negroes have come in the past two decades, while Negroes on the other hand, are looking at how far they have to go. They see the slow pace of desegregation—four-tenths of 1 percent of Negro children attending desegregated schools in the 11 States of the old Confederacy 9 years after the Supreme Court decision. They look at their limited employment opportunities, their disproportionately high rate of unemployment, the de facto school segregation in the North which is just as damaging to the personalities of their children as the legally enforced segregation condemned by the Supreme Court in 1954. They find their way out of the ghetto to decent integrated housing blocked by various devices, one of which was used in the infamous Deerfield, Ill. case where local authorities in collusion with certain local residents condemned an integrated housing project in process of being built and took over the land for public parks. They experience the daily affronts and humiliations with reference to exclusion from public facilities. The very fact that important improvements have been made in recent years has whetted the appetite for total inclusion. It is axiomatic that the closer one gets to one's goal of human dignity, the more intolerable become the remaining indignities.

A second factor is the rise of a generation of Negroes born during or since World War II into a climate of opinion in which the universal declaration of human rights represents the common aspirations of peoples everywhere and into a world of revolutionary upsurge of colonial people against foreign rule with its implications of racial superiority. This generation has grown up in an atmosphere of incredible speed of events. Gradualism and patience form no part of its heritage, as those of you with children readily appreciate.

A third factor is that by accepting gradualism as the timetable for the solution of this problem, we have permitted the gains of a bloodless social revolution to be threatened by a violent counterrevolution. My good friend, Dr. Caroline F. Ware, social historian and a doctor of philosophy from Radcliffe, constantly reminds me that social revolutions are not violent; that violence comes into play after social change has occurred or is plainly in sight, and counterrevolutionary efforts are then made to turn the clock back.

We might have escaped much of the violence and unrest of the past decade: if the Supreme Court had moved forthrightly in 1954 to implement its decision, as the NAACP urged, and not waited a whole year which gave the counterrevolutionary forces an opportunity to regroup; if there had been intelligent and creative leadership in the White House and in Congress of sufficient strength to change the moral climate and to implement the decision by legislation which brought into play the educational, persuasive, and conciliatory techniques developed by administrative agencies in the field of intergroup relations, and the implementation of so crucial a social change had not been left to courts, which are not equipped to deal with such issues and the atmosphere of which is argumentative and contentious instead of conciliatory; if there had been intelligent joint planning on a national and local scale by Negroes and whites together to aid those Negro children who were most culturally deprived to ease the transition by projects of rapid improvement; remedial instruction and by other methods; and if Federal action had been undertaken at all levels to bar delays and subterfuges in the desegregation of the schools.

I need not recite to this audience the details of headlines which have documented events of the past 8 years and worn down the patience of Negro citizens everywhere: the bombings of homes, schools, churches; massive resistance and interposition in defiance of the authority of the Constitution and Federal court orders; closing of the schools; enactment of pupil placement laws used primarily to produce tokenism; use of other devices to delay and circumvent the 1954 decision; the compelling of Negro children and their parents in hundreds of individual cases to go through interminable administrative and legal procedures with delays and frustrations at every stage to enforce their rights to attend desegregated schools; refusal of white community leaders to sit down and discuss with Negro leaders the problems and tensions building up and to work out peaceful solutions in an atmosphere of mutual self-respect; and finally, incitement to violence by the highest officers of at least three States, and the actual or threatened violence which has forced the Federal Government to make a show of Federal force in order that the Constitution be obeyed.

Meantime, while we allowed the counterrevolution to mount an assault on rights legally reaffirmed, the swift march of world events radically altered the social climate. The peoples of Africa and Asia have achieved self-rule since World War II with a speed that was almost inconceivable a decade ago. As this happened, in the words of Harold R. Isaacs, writing in his recent book, "The New World of Negro Americans":

"The downfall of the white-supremacy system in the rest of the world made its survival in the United States suddenly and painfully conspicuous. It became our most exposed feature and in the swift unfolding of the world's affairs, our most vulnerable weakness. It was like being caught naked in a glaring spotlight alone on a great stage in a huge theater filled with people we had not known were there."

Negro citizens have watched the dramatic advances of the Asian and African peoples and their growing influence in world affairs. They note the consternation of our Government when an African diplomat is refused service in the United States, and see no reason why American citizens should still be treated with "prejudice as usual" inequality.

Over and against this swift rise to independence and recognition of Africans in the world arena, is the fact that American citizens, after patiently using the slow procedures of litigation to enforce their rights and after numerous pronouncements of the Supreme Court reaffirming these rights, find that the burden of proof still remains upon Negroes and the burden of bit-by-bit implementation has remained on the courts. Congress has passed only one significant piece of national legislation in this area since Reconstruction, the woefully inadequate Civil Rights Act of 1957. The executive branch has taken prompt action in the face of violence, and the Kennedy administration has done considerable behind-the-scenes work in efforts to persuade local authorities to comply with the fundamental law. But in the main, both the Eisenhower and the Kennedy administrations tended to react to pressures rather than to assume the vigorous moral leadership necessary to mobilize national opinion and meet the realities of the situation. It is to be hoped that President Kennedy will deepen the tone of moral commitment which pervaded his talk to the Nation on Tuesday evening.

However, given the increasing determination of Negroes to exercise their rights, the moral and legal justification of their cause, the failure of the legislative and executive branches of the Federal Government to keep apace of the Supreme Court's pronouncements, the intransigency of local authorities, and the apathy of a wide section of the public; Negroes have taken their case directly to the Nation. They now demand national legislation of a comprehensive character which will reach discriminatory action by individuals as well as States. It was impossible for our country to escape the winds of change which have been sweeping Africa and other parts of the world.

In the circumstances I have just described, until now these demands have been met by temporizing methods or have been ignored. The rising tide of discontent among Negroes to which the President referred is nothing new. Militancy and impatience have been present in Negro protest in every generation since the first African slave landed on these shores—in the slave revolts, the underground railroad movement, periodic marches and rallies, racial episodes and riots, experimental probes with nonviolent direct action during and after World War II, individual challenges to the status quo, and outbursts which have taken the form of intragroup violence.

What is new about the present revolt is the realization by many Negroes that there is an effective answer to violence and an effective alternative to sullen endurance. There is a new consciousness of strength pervading the whole of the Negro community, a total involvement including children and a mass reaction to the problem.

Dr. Martin Luther King and other leaders of his type have been able to harness seething revolt to organized, disciplined, nonviolent direct action. The legal implications of this action are that it is within the protection of freedom of expression guaranteed by the first amendment. The moral implications are, in my opinion, far more significant.

There is a growing national consensus that racial discrimination is essentially a moral problem. If so, it must be attacked at the moral as well as legal level. Nonviolent direct action is based upon the conviction that in social conflict, the power of the spirit is stronger and more enduring than the power of force in a physical contest. By discipline of the spirit, the nonviolent demonstrator determines that violence, if at all, will be on only one side of the controversy. Thus, the demonstrator exercises a certain amount of control over the conflict situation

because he eliminates or reduces the immediate provocation to retaliate and transfers the struggle to the conscience of the opponent. He believes that the opponent's hatred, if given only itself to feed upon, must eventually run its course and that, in these circumstances, reconciliation is more possible after the conflict has been resolved. The Negroes have seen this method work with Ghandi in India and have adapted it to peculiarly American situations. Where this method has consciously been used in the demonstrations, despite indignities on the part of the police, violence has been minimized.

As Dr. King wrote in his book, Stride Toward Freedom:

"We will match your capacity to inflict suffering with our capacity to endure the suffering. We will meet your physical force with soul force. We will not hate you, but we cannot in all good conscience obey your unjust laws. Do to us what you will and we will still love you. Bomb our homes and threaten our children; send your hooded perpetrators of violence into our communities and drag us out on some wayside road, beating us and leaving us half dead, and we will still love you. But we will soon wear you down by our capacity to suffer. And in winning our freedom we will so appeal to your heart and conscience that we will win you in the process."

The wider significance of these nonviolent demonstrations by Negroes and their white supporters is that they have brought together two revolutionary ideas: The equality of the rights of man and the assertion of those rights through a spiritually and morally powerful nonviolent technique. They are outpacing the application of the law and making a creative contribution to rapid social change with a minimum of violence. Historians may well record this as one of the important social developments of the 20th century. Nonviolence has filled the vacuum between the declaration and the implementation of the fundamental law.

Nevertheless, we have seen the fruits of violence even after the President made a passionate moral appeal to every American to examine his conscience in this matter. The examination by one depraved person led to shooting an NAACP leader in the back. Negro citizens cannot be expected to maintain a superhuman discipline in the face of continued provocation. It has been pointed out that from 85 to 95 percent of the Negroes in this country do not believe in nonviolence and are going along with it only because it appears to be working. If it fails, we are in for serious national bloodshed.

IV. THE ROLE OF THE LAW IN THE PRESENT CRISIS

At the beginning of our discussion, I said that we are a society built upon the rule of law and not rule by the passions of men. What, then, is the role of the law in resolving the current conflict?

It cannot be too strongly emphasized here that the history of race relations in the United States has proven conclusively that the right to be free from discrimination because of race or color—and I might add sex—is so crucial to human dignity and the exercise of the rights of citizenship, that we have been tragically wrong to leave the protection of this right in so large degree to local regulation. Local laws and policies can supplement but not substitute for a clearly formulated and enforcible national policy binding upon all persons.

The public humiliations which do such violence to human dignity are dramatized by laws, customs, and attitudes of exclusion in places of public accommodation and amusement. Congress rightly saw in 1875 that this issue was so important it must be resolved in a manner which operated uniformly throughout the United States. It recognized that there could be no piecemeal or fractional coverage in a matter which involves such explosive human emotions. And so it granted total coverage.

Negroes have lived too long with uncertainty to make the recognition of their rights dependent upon any other individual's degree of color blindness, or whether he operates in interstate or local commerce. The quest for certainty is at the bottom of the present revolt. As Martin Luther King, replying from an Alabama prison to the statement of local white religious leaders that the Birmingham demonstrations were "unwise and untimely," put it:

"I guess it is easy for those who have never felt the sting of darts of segregation to say 'wait.' But when you take a cross-country drive and find it necessary to sleep night after night in the uncomfortable corners of your automobile because no motel will accept you; when you are harried by day and haunted by night by the fact that you are a Negro, living constantly at tiptoe stance never quite knowing what to expect next, and plagued with inner fears and outer

resentments; when you are forever fighting a degenerating sense of 'nobodiness'—then you will understand why we find it difficult to wait."

The Supreme Court has the task of completing the reaffirmation of human dignity. The time has come to persuade that Court once more to reexamine the *Civil Rights* cases of 1883. The Court should be urged to overrule that decision, reinstate the Civil Rights Act of 1875 and grant an immediate remedy to Negroes who are excluded by private persons from public places of business. For Congress today has no more power than it had in 1875 when it passed the act. The *Civil Rights* cases were based upon the same fallacious reasoning as that which produced the *Plessy* case, now discarded, and the dissent of Mr. Justice Harlan in those cases was just as sound as his dissent in *Plessy* and which is now the law.

As to Federal legislation, President Kennedy has told the Nation that he plans to seek legislation from Congress in three areas: Public accommodations, voting rights, and the power of the Attorney General to bring suits to enforce compliance with school desegregation. These are steps in the right direction, but they are fragmentary and inadequate to deal with the crisis in its present form. They cannot stem the "tide of rising discontent," nor will they appease those who think there should be no legislation at all.

A minimum program of Federal legislation at this stage should include the following measures:

1. A public accommodations law which amends or reenacts the 1875 Civil Rights Act, grounded in the 14th amendment as well as in the interstate commerce clause, along the lines of Senate bill 1591 recently introduced by Senator Cooper prohibiting discrimination by any person "acting as a proprietor, manager, or employee of any business activity affecting the public which is conducted under a State license," or which is in commerce or affecting interstate commerce. Such a law would give the broad coverage necessary to meet the present turmoil in this area of human rights.

2. A Federal Fair Employment Practices Act, also grounded in the 14th amendment as well as the interstate commerce clause to permit the broadest possible coverage.

3. A Federal fair housing law.

4. A law requiring all schools affected to promulgate plans for immediate school desegregation, whether North or South.

5. A law making the U.S. Commission on Civil Rights a permanent administrative body, empowered to enforce federally protected civil rights through procedures which include conciliation, persuasion, and education as well as orders enforcible in the courts.

6. A law strengthening voting rights which effectively meets the problems of evasion by local officials.

7. A law empowering the Attorney General to initiate actions and procedures to enforce all federally protected civil rights.

8. Serious consideration should be given to the proposal recently made by the National Urban League that a "radical new approach" in the form of a massive program similar to that of the Marshall plan be put into operation in order to close the social, economic, educational, and cultural gaps between Negroes and others in the Nation. Such a program would help to rebuild the sense of positive worth and cultural participation which has so long been denied to Negroes. If the United States can spend billions of dollars in foreign aid to help bring the less developed countries abreast of the modern age, it can at least offer comparable assistance to a deprived sector of its own citizenry. We need an "Operation Bootstrap" which engages in a massive national effort to raise the hopes and the standards of that forgotten part of our population which includes both Negroes and whites. Thus, I would broaden the Urban League Proposal to reach underprivileged citizens whatever their race, color, sex, religion, national origin, and so on.

Many of these proposals are not new and are in bills already introduced in Congress. What is new is the promise by Negro leaders and the determination of Negro citizens that a filibuster in Congress will be met by the most massive acts of civil disobedience all over the Nation this country has known. This is not the Negro's fight alone; it vitally affects the welfare and safety of every American. Congress will act when the Nation is resolute. And the Nation means you and me.

STATEMENT OF THE NATIONAL CONFERENCE OF THE METHODIST STUDENT MOVEMENT ON H.R. 7152

My name is Lane C. McGaughy, president of the National Conference of the Methodist Student Movement. The Methodist Student Movement is the arm of the Methodist Church on college and university campuses and has a constituency of several hundred thousand students. At their direction, I am making this statement in support of the package of bills entitled "H.R. 7152."

The National Conference of the Methodist Student Movement met from June 16 to 22, 1963, at Ohio Wesleyan University and endorsed the following resolution:

"Because we believe the President's proposed Civil Rights Act of 1963 to be the most significant legislative step yet taken in the direction of rectifying racial injustices, we endorse this legislation and urge its immediate passage * * *."

As a Christian body, we believe that discrimination and racial injustice are irreligious and immoral: God is the Father of all mankind and to sin against one of His children is to sin against God. We believe that racial discrimination is one major manifestation of man's inability to live together with his fellow man. Before all of God's children can live together in harmony and love, however, laws must be established to provide conditions that prevent the manifestation of man's sinful tendencies. In other words, enforced justice "* * * is the way love goes about creating conditions for its entrance into a sinful world." (Sellers, James E., "The South and Christian Ethics." New York: Association Press, 1962, p. 164.) Hence, we strongly urge the passage of H.R. 7152 as a step in this direction.

In light of our convictions, we of the Methodist Student Movement have initiated many actions at our June meeting to further desegregate our own church and to aid in the civil rights struggle as a whole. May we all join together in making our country the model of freedom and justice for all of its citizens.

STATEMENT OF THE NATIONAL COUNCIL OF JEWISH WOMEN, INC., NEW YORK, N.Y., IN SUPPORT OF H.R. 7152, CIVIL RIGHTS ACT OF 1963

The National Council of Jewish Women, an organization established in 1893, with a current membership of 123,000 in 329 local communities throughout the country, has long advocated the elimination of discrimination based on race, creed, or color. We believe that the freedom, dignity, and security of the individual are basic to American democracy and that any discrimination undermines that democracy.

We welcome, therefore, this opportunity to state our strong support of H.R. 7152. We feel the committee will find it helpful to have the consensus of a group with a broad social, economic, and political base drawing its membership from every part of the country; and which is dedicated to community welfare and committed to justice for the individual.

Our sections throughout the country have, over a period of many years, studied the problems with which H.R. 7152 deals and have urged Congress to pass effective remedial legislation. Since 1940, we have incorporated in our national resolutions support for legislation to eliminate practices which abridge voting rights and to enforce laws guaranteeing such rights.

Since 1955, the National Council of Jewish Women's resolutions have called upon our membership to work for the successful integration of pupils, teachers, and administrative personnel of all races into the public schools. In these and other areas of our concern—housing, employment, social welfare services, and the special needs of youth—we have long asked our lawmakers for statutes which will meet existing problems without discrimination and on a nonsegregated basis.

As women and mothers we are perhaps most effective in developing programs to assist the youth of the country. As citizens we have studied the conditions in our communities and know the needs which must be met.

In Washington, D.C., for example council volunteers maintain a school dropout prevention project at a high school where the student body is predominantly Negro. The project helps identify the potential dropout and refers him for counseling, has program of remedial reading, and is now organizing a service to develop job opportunities.

In Louisville, Ky., council volunteers have set up a fund to help high school students remain in school.

In Cincinnati, Cleveland, St. Louis, and Baltimore, volunteers work with disadvantaged preschool children to enable them to enter school on an equal footing with other children.

Our organization has also recognized discrimination in housing as the basic cause of many other problems, and our members have supported passage of fair housing laws and have participated in open occupancy campaigns urging citizens to welcome all families into their communities and neighborhoods without discrimination.

While these examples do not deal entirely with the specific problems of discrimination which H.R. 7152 seeks to correct, we present them to highlight the emphasis which we place upon developing "the capabilities of the whole citizenry," an objective stated in H.R. 7152. We also present them to demonstrate the willingness of a citizen group to do its part to change old patterns of racial inequality.

What we have learned from our services for youth and from our work in promoting fair housing practices, community human relations committees, individual action for equality, and the opening of public accommodations without regard to race or religion, has led us to the wholehearted support of H.R. 7152.

The achievement of first-class citizenship for all Americans requires leadership from the national Government in the form of legislation and enforcement which clearly spells out a national policy of equal justice.

We feel that citizen action to foster equal opportunities must accompany and complement legal action. Thus, we urge our members to put their belief in equal rights into practice in their personal lives and in their communities. In cities and towns across the Nation you will find council sections engaged in projects to combat problems which are at the root of discrimination—projects which foster a great measure of equality of opportunity for all our citizens.

Because of the current crisis in race relations, of which we are keenly aware, the National Council of Jewish Women is committed to accelerate its search for new and better ways to speed equality of opportunity for all our citizens. While spurring our own members to discharge their responsibilities we urgently request complementary action on the part of our lawmakers. To the Congress we turn for the legal framework, and above all for the national leadership and support of measures to erase discrimination.

We strongly recommend the enactment of H.R. 7152 as a measure which will go far toward enforcing the rights of our Negro citizens and which clearly states that discrimination by reason of race is incompatible with national policy. The Congress of the United States and its citizens, together, can reaffirm and enforce the individual's rights to personal dignity so essential to our national vitality and growth and to our position in the world as a leading example of a working democracy.

STATEMENT OF NATIONAL FARMERS UNION BY JAMES G. PATTON, PRESIDENT, NATIONAL FARMERS UNION, PRESENTED TO THE NATIONAL CIVIL RIGHTS CONFERENCE HOTEL ROOSEVELT, NEW YORK CITY, JULY 2, 1963

I am privileged to join with you in support of President Kennedy's Civil Rights Act of 1963.

Naturally this critically important program will not be agreed to in its entirety by everyone, either in Congress or in the Nation. However, I am convinced that the overwhelming majority of Americans favor its major provisions.

Delegates to the annual conventions of the National Farmers Union have consistently supported the goals which the Congress is now asked to help attain through this legislation.

The Farmers Union recognizes, as does President Kennedy, that economic gains are inseparable from social gains. We have repeatedly emphasized the need to:

(1) Improve and expand social security.
(2) Extend maximum wage coverage to all citizens.
(3) Eliminate poverty everywhere.
(4) Protect hired farmworkers.
(5) Equalize educational opportunity for all our children.
(6) Guarantee fully adequate food stamp and food distribution programs for the needy, and
(7) To take such other public and private action as is necessary for a full-employment economy.

These programs are essential if economic justice is to prevail and if social equality and uniform opportunity are to be insured. We agree with President Kennedy that:

"There is little value in a Negro obtaining the right to be admitted to hotels and restaurants if he has no cash in this pocket and no job."

The President cited the need for more job opportunities, particularly for minority groups. He called for increased economic growth, for more education and training to raise the level of skills of our least privileged groups and for an end to discrimination in employment. The President knows that without economic reform there can be no meaningful or lasting social reform.

The challenge of civil rights is part and parcel of the challenge facing our country—the challenge to use our national resources and our human resources to build a better world for our children and for their children.

The Farmers Union stands today with President John F. Kennedy and with you in this great national effort to advance and to protect the human rights of every American.

REPORT ON CIVIL RIGHTS LEGISLATION AT NOTRE DAME UNIVERSITY LAW SCHOOL

This is the report of a conference on problems of congressional civil rights legislation held at the Notre Dame University Law School February 8–10, 1963. By fortunate coincidence, as the report was completed Congress had already before it a civil rights bill backed by unusually strong Presidential support.

This circumstance has had, of course, its difficult side for the preparers of this report, the least of which has been revising an earlier draft in order to take account of the administration's measure. In fact, most of the provisions of the President's proposal (except title II) were debated, at least in general terms, by the conference, and a consensus reached about them.

A more basic difficulty will be apparent when we note that the working premise of the Notre Dame conference, as laid down by Dean Joseph O'Meara in our first session, was that we should frame recommendations without regard to anyone's views of their political chances. This is, therefore, a report of the consensus we reached as to what Congress should pass, not as to what it possibly or probably might pass.

We continue to believe that this was a sound approach. We do, of course, recognize that the legislative decision this year will be made on the administration's bill. Perhaps, nevertheless, what is reported here will be helpful to Congress as it deliberates, and will help the country understand better the problems and the results which may be expected from various legislative approaches to them.

The conference was limited to three subjects: Schools, employment, and voting. We have, therefore, no recommendations or reflections to report on the public accommodations part of the President's program (title II).

This report states the consensus of the conference. The extent of agreement reached through extensive discussion was impressive, and except at a few points the consensus was well nigh perfect. This was all the more notable, because many differing views had been brought to the meetings.

The conferees participated as individuals, not as representatives of their institutions. They included, in addition to Dean O'Meara, Carl A. Auerbach, University of Minnesota Law School; Wiley A. Branton, voter education project; Thomas F. Broden, Jr., Notre Dame Law School; Leslie W. Dunbar, Southern Regional Council; John G. Feild, President's Committee on Equal Employment Opportunity (as observer); Harold C. Fleming, the Potomac Institute; G. W. Foster, Jr., Law School, University of Wisconson; Eli Ginzberg, Conservation of Human Resources, Columbia University; Vivian W. Henderson, Economics, Fisk University; Paul H. Norgren, Industrial Relations Section, Princeton University; John de J. Pemberton, American Civil Liberties Union; Daniel H. Pollitt, University of North Carolina Law School; John Silard, attorney, Washington, D.C.; Michael I. Sovern, Columbia University School of Law; William Taylor, U.S. Commission on Civil Rights (as observer); John H. Wheeler, attorney, Durham, N.C. We had also the benefit of consultation with President Hesburgh, and the gracious, friendly, hospitality of the Notre Dame campus.

INTRODUCTION

The crisis of America's race relations has become almost unbearably intense. and its causes are interlaced with countless characteristics of our history and our social structure. These are propositions for which any elaboration, at this time, would be redundant.

The present crisis is not the first in our history. Crises in race relations, as in the other relationships of men with men, are not necessarily caused by worsened conditions; the opposite may in fact be so. But as long as the relationships enclose and nurture discontent on one or both sides, periodic crises will occur. The present crisis is far less brutal and violent than that of 1917–21. It has probably been accompanied by no deeper or more widespread moral self-scrutiny, religious debate. or intellectual and literary study than went with the racial crisis of Civil War days.

Those crises passed, and after each the condition of Negro Americans was still bad. What is primarily different about the present crisis is that it is not likely to pass until a new equilibrium acceptable to Negroes is reached. Earlier crises ended when white people tired of them; this one will not.

The pressure of this fact, or perhaps the realization of it, has much to do with creating the contemporary emotional urgings of both Negroes and whites, the all too facile bandying about of such concepts as "hatred" and "revolution," and the obsessive overvaluation of the strength of the Black Muslims. On the other hand, prudence, if nothing else, dictates the working assumption that no person has reason to have an attachment to a constitutional system if its processes fail to make real its guarantees.

If Congress had no other reason to act to end the crisis, this would be sufficient: unless the crisis is overcome, the Constitution as we know it will bend. Concepts such as federalism, and universal obedience to the courts, and Presidential deference to the legislative will of Congress, have already been affected. There are reasons at least as good, and some of us will think even better, for congressional action: these have to do with justice, and friendship, and religion. But Congress has a special responsibility to defend and protect the Constitution.

Political science distinguishes between the deliberative and the representative functions of a legislature. Congress is our representative body, and there is no other which can so express and certify the national will. As long as Congress is silent, civil rights has something of a bootleg aspect. Congress has not been altogether silent. The acts of 1957 and 1960 and the poll tax amendments are of value, but at the most they give protection, and a laggard one at that, for but one right. What the country urgently needs, and what American constitutionalism is weakened by the absence of, is an unambiguous registering of the national will in behalf of racial justice, as only Congress in its representatve role can do.

The subsequent pages of this paper are hopefully intended to help Congress in its deliberative role; i.e., in defining and framing its policies. In ths field of civl rghts, and at ths time, Congress by deliberating and enacting will also be representing, supplying the will and the resolution that can put the crisis behind us.

The times require, in other words, not only that Congress act wisely, but that it act—and act with dispatch, and without ambiguity or timidity. But if in its drive to represent the national will, Congress does not act wisely, the outcome could be bitter. Congress passed voting laws in 1957 and 1960 which were not suited to achieve their goals, and have not done so. Their failure has contributed to the present crisis, because those laws brought disillusion on top of high hopes.

In order to act effectively, Congress should be guided by certain principles that include the following:

(1) Congress should legislate not for the appeasement of crisis, but for the solution of it.

(2) Administrative actions, when appropriate and constitutional, are more effective and less piecemeal than judicial remedies.

(3) Where possible and suitable, it is good Federal practice to draw support from State and local governments in the administration of Federal programs.

(4) In some problem areas, the national interest is best served by local solutions. In such problem areas, congressional action is not appropriate when there is a realistic prospect of a prompt solution at the local level.

EQUAL RIGHTS TO PUBLIC EDUCATION

The first point above is especially pertinent in 1963. Congressional action at this time ought to begin with schools. We say this with all the emphasis we can.

There are at least five reasons for this priority.

First, 9 years have not passed since *Brown* v. *Topeka* declared a constitutional right of all American children, a right still wantonly flouted or ignored. In support of it, and in the face of overt defiance, the Presidency was until the Fall of 1957 indecisive and since has been inadequately empowered. Congress has done nothing.

The decision was responded to by 11 Southern States with defiance, lawlessness, and at times near rebellion. In a sense, it is a sign of the basic strength of American society that defiance so intense and widespread was able to be contained without rupture of national bonds. The Federal courts and the Presidency, aided by enlightened opinion in the South, have by now decisively weakened the political resistance. Nevertheless, through evasion or inaction, more than two-thirds of the biracial school districts of the 11 Southern States have as yet made no start toward school desegregation; 99 percent of the Negro children of these States are still in segregated schools; and in 3 States—Alabama, Mississippi, and South Carolina—not even a token start has yet been made.

The Supreme Court's decision of 1954 was received by Negro citizens as a promise and as an earnest of a new life for them in our common country. A very large cause of the current crisis is the disappointment which followed. Our high court had spoken—and was not obeyed. The good will of our people had been invoked—and did not respond.

There is, therefore, a symbolic importance to the schools issue which none other has. In no other area can Congress so clearly and unambiguously represent and register a national decision in affirmation of equality. Furthermore, if Congress were to act in another area, and did not in this one, recalcitrant school districts would have reason to believe that Congress does not disapprove of their policies.

Second, education has an intrinsic value, both for the individual and for the Nation, of unsurpassed importance.

Third, education is basic to the durable achievement of other civil rights. It affects employment opportunities and voting eligibility and the intelligent use of the ballot. It affects housing patterns (and is affected by them). It determines and will determine the quality and temper of Negro communal leadership.

Fourth, there should be no hesitation in saying that our needs go beyond civil rights, and that a better integrated society is a social, political, and moral imperative. The American people need to live more happily with each other. Our public schools weave the web of society as no other institution does.

Fifth, school integration brings forth the hard, but basically important, issues. (The extension of employment opportunities does also.) To desegregate transportation, or restaurants and hotels, or professional associations requires little more than a decision to stop doing one thing and do another. These decisions are socially and morally necessary, but the Negro and white people of this country would both delude themselves if they expected these decisions to go far toward solving our racial inequities. To solve them, or even to begin to do so, the country must see clearly and face the gigantic problems of our disadvantaged people. Whenever school desegregation in a community gets beyond token dimensions, that community will unavoidably confront the cultural wrongs it itself has created, and will, we think, be brought to an awareness that something must be done about them.

To summarize then, school legislation deserves priority because of its symbolic value, because of the intrinsic cultural importance of education, because education is basic to the achievement of other civil rights, and because the integration of schools has profound and beneficial social consequences.

The bill first introduced by Senator Clark and Representative Celler in 1961[1] sought to achieve these objectives. It has provided the leading ideas which have guided discussions since 1961, and which the conferees at the Notre Dame Law School believed basically sound. In important respects, however, we did differ from Clark-Celler.

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[1] S. 1817, 87th Cong., 1st sess.

The principal features of the Clark-Celler approach are (1) the requirement of a desegregation plan by those school districts which use race as an assignment criterion; (2) the filing of the plan with the Secretary of Health, Education, and Welfare, who is empowered to grant financial and technical assistance to aid in carrying out the plans, if he determines that the plans are legally satisfactory; similar assistance would be available to certain other districts; (3) a requirement of "at least first-step compliance" immediately; and (4) power for the Attorney General to bring suits in Federal district courts to compel compliance.

We believe that Congress should prepare an enactment which would embrace the following purposes:

(1) A start must be effected, with provision for Federal enforcement, in the more than 2,000 biracial school districts that have made no beginning.

(2) The completion of the desegrateion process should be facilitated, in accordance with sound educational precepts.

(3) Neither Federal legislation nor administration should impede the initiation of suits by private plaintiffs in Federal courts, or prejudice the outcome of their suits.

(4) Nor should the Federal role inhibit the reaching of local desegregation solutions by local consensus.

Of the above purposes, Nos. 3 and 4 have definite implications for northern school desegregation. Congress cannot at this time, however, wisely legislate to meet directly the northern questions (i.e., segregation not resulting from explicit governmental policy), and should not, therefore, try. Constitutional rights and principles have not yet been sufficiently clarified by adjudication, and professional controversy still somewhat obscures the educational merits of various solutions. Moreover, there is no reason at this date to suppose that local solutions cannot be satisfactorily and readily attained. (See principle No. 4, above.)

Congress should candidly legislate for the southern problem, and the premier objective should be to effect starts. To this end, Congress should impose an affirmative duty on every public school board to operate the schools under its jurisdiction on a nonracial basis. To assure this, formally recorded desegregation plans should be required of every biracial district, not already under court order, where initial assignment of schoolchildren is by race, or where, regardless of assignment policies, no Negro and white children are in fact in school together. The plan should be a document of public record. Its recording should be completed shortly after enactment, and certainly in not more than 60 days; more time is not required: there is nothing arcane about desegregation planning, and there exists an abundance of experience to consult.

The effect of this would be a congressional finding and declaration that "all deliberate speed" means "now."[2] No defendant in a school desgregation case could henceforth plead time.

No purpose would be obviously served by requiring that the plans be filed with any office in Washington. There are good reasons why they should not be. Unless the Federal office were to review and evaluate them, there would be no need for it to be custodian. Administrative review would be unfortunate. What pleased the Secretary of HEW would tend to please a Federal judge, and the rights of a Negro plaintiff to seek redress in a Federal court would become progressively, and merely, formal. His remedy would be through his Washington lobbyist, not through his local lawyer.

The Attorney General must be empowered to intervene in pending school litigation, and, more importantly, to bring suit in the name of the United States to effect prompt desegregation starts, through civil action or other proceeding for preventive relief, including an application for an injunction against school boards depriving or threatening to deprive individuals of their equal protection rights. The affirmative duty should be defined in the statute in such a way as to preserve in full the freedom of action of private plaintiffs,[3] and to give at least tacit congressional recognition to the impossibility of the Attorney General filing suits in as many as 2,000 districts (in the unhappy and unlikely

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[2] Compare the Supreme Court's gloss in *Watson* v. *Memphis*, decided May 27, 1963.

[3] Compare sec. 310 of S. 1731; cf. also sec. 1602 of S. 772, 88th Cong., 1st sess., introduced by Senator Clark.

chance that would be indicated), and the consequent desirability of his bringing suit in the most strongly resistant areas.[4]

The Attorney General should proceed on his own investigation, as he does in voting violations under the Civil Rights Act of 1957.[5] He should not have to await on complaints; the privilege of private counsel for private complainants should be fully preserved and should suffice. Congress has a sepcific constitutional mandate to enforce the terms of the 14th amendment;[6] by a statute such as is recommended here it would do so by affirming the duty of school boards to operate nonracial systems; the Attorney General can and should, consequently, be made responsible to combat violations which he discovers. We need to remember that *Brown* v. *Topeka* is not a limitation on the power of Congress; the Supreme Court proscribed denial of an individual right. This does not inhibit Congress from going beyond to a general protection of the right.

The simple, yet conclusive, reasons for placing this responsibility on the Attorney General are to expedite the desegregation process, bring to bear national authority, and relieve Negro plaintiffs, organizations, and lawyers of some of their heavy psychological and financial burdens.

To do an effective job, the already overstrained staff of the Civil Rights Division of the Department of Justice will have to be strengthened. The present administration has considerably enlarged that staff and its function since January 1961, but has done so in part by using personnel from other divisions. The administration should ask Congress for the money needed to staff adequately the Civil Rights Division, and Congress should provide it.

The right of private plaintiffs to bring suit should not, we repeat, be impaired or diluted by new statutory authority for the Attorney General. The law of school desegregation is evolving through the courts, and in terms of individual rights, not public policies. Whether the Nation would have been better off had it, a decade ago, approached the issue differently, through statutes rather than decrees, is an interesting but now practically irrelevant question. It did not, and now is too late for constructive change. The atmosphere for freely litigating and adjudicating individual claims to rights should be carefully preserved. There are still many unanswered 14th amendment questions, particularly in connection with northern desegregation but also in the South. Hard and fast rules are, of course, impossible, but we would suggest that the Attorney General plan his cases to spread and consolidate judical interpretations already secured, and that the definition of new legal concepts to be sought be left to private plaintiffs and their attorneys.

The authority and the duty to bring suits in behalf of the United States is indispensable and already far too long withheld. Yet the congressional requirement of "plans" is, if anything, even more worthwhile. It would put a positive duty on local people, and the country badly needs to begin thinking of school desegregation in those terms. While we believe that the Supreme Court in *Cooper* v. *Aaron*[7] in 1958 did affirm this duty, nobody speaks the national will as does Congress. There are persuasive grounds also for believing that such a mandate from Congress would be obeyed in a great many school districts, and that much litigation could thereby be avoided.

To give further impetus to the integration process, the Federal Government should offer, on application to the Secretary of HEW, financial assistance to school districts making their first starts, or to districts, whether of the South or the North, revising their systems in the direction of more integration.

Assistance should be limited to specific projects proposed by the local school administrators, and should be strictly limited to projects facilitating the desegregation process. Examples might include programs of teacher preparation, special tuition for Negro students to help overcome the academic handicaps of their inferior schooling, and special training for Negro teachers to help overcome the academic shortcomings of their training. The assistance, which could be either by grant, loan, or both, should be based by the Secretary on a finding that the project as described and planned by the local administrators would make a substantial contribution to the success of desegregation.

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[4] Compare the formula "materially further the orderly progress of desegregation in public education." S. 1731, sec. 307(a)2.

[5] Public Law 85–315, sec. 131(c); cf. also see sec. 108 of S. 1209 (88th Cong., 1st sess.), introduced by Senator Kuchel and others, which would confer on the Attorney General the power and the duty in school cases recommended here. The approach of S. 1209 to this problem is, therefore, much to be preferred over that of the administration's bill.

[6] 14th amendment, sec. 5.

[7] 358 U.S. 1 at 16–19.

The Secretary should be instructed by the statute to adopt as his criterion of "desegregation" a unified school system. Only those projects should qualify which look toward, and are integral parts of a plan toward, the full integration of faculties, administrators, facilities, and the assignment of all students without regard to race; and which envision this accomplishment within a reasonably short period.[8]

Other forms of Federal assistance, not reasonably connected to such technical projects as are mentioned above, should not be offered by Congress. So-called compensatory aid has sometimes been proposed, even to the inclusion of construction costs. We think there is a moral flaw in such proposals, and that they also rest on an unproven, and we suspect unprovable, premise; viz, that integrated schools exceed the cost of "separate, but equal" schools.[9] Furthermore, school desegregation law should not be a means of importing Federal aid to education through the legislative back door for some school districts only. Construction can be adroitly used to freeze or even to reverse the process of desegregation and this is a second reason for not allowing Federal cost assistance.

Several bills before the 88th Congress, including the administration bill, would extend and broaden the functions of the Commission on Civil Rights, and would direct it to become a clearinghouse for information and a supplier of technical advice and assistance to those responsible for school desegregation (and other civil rights matters). As stated in S. 1117 and H.R. 5456, the CCR would "serve as a national clearinghouse for information, and provide advice and technical assistance to Government agencies, communities, industries, organizations or individuals in * * * the fields of voting, education, housing, employment, the use of public facilities, transportation, and the administration of justice."

We think there is much merit in the proposal, though as pertains to education the respective roles of the Commission and the Department of Health, Education, and Welfare should be carefully distinguished.

Finally, Congress should, of course, repeal that section of the Morrill Act[10] which countenances segregated land-grant colleges. The provision is anachronistic, and we believe of no legal standing or force now; consequently, we think the administration has been lax by its continued observance of it. Congress should, nevertheless, remove this stain.

Moreover, probably the largest Federal investment in education is represented by the vast Federal research programs. In these various programs, Congress has imposed no dictates on the President or his subordinates as to choice of recipient. It is and has been the Executive which often chooses to spend funds at segregated institutions, and it is the Executive who has the responsibility to stop doing so.

EQUAL EMPLOYMENT RIGHTS

Private property rights have historically included an employer's right to select his employees. Even with complete legal freedom, however, employers have been strongly influenced in their hiring policies by the pressures of popular opinion and custom, and by the prejudices (or supposed prejudices) of customers and other employees. Such restrictions on the employer's freedom to hire as he pleases do not need to be organized in order to be effective. In contrast, members of minority groups can exert influence on the employer only by organizing (e.g., a boycott) or with the assistance of law.

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[8] Although otherwise the technical assistance provisions (secs. 301–306) of the administration's bill seem to us soundly planned, they do rest on a definition of "desegregation" (sec. 301b) which may well be soon obsolete. There are cases pending, some for a long while, which go beyond the bill's definition as "assignment * * * without regard to * * * race." Several northern cases seek, in effect, a finding that the 14th amendment right is a right to attend a biracial school. But there are also cases in the South which go further than the assignment question and which argue that the 14th amendment confers a right to attend a school system which is organized and administered, throughout, without regard to race.

[9] There might be a case for compensation had the South in fact provided equal schools. The logic would be that Southern States had acted on the understanding that *Plessy* v. *Ferguson* was the law of the land, and therefore merited assistance when the constitutional issue was settled to the contrary in 1954. Whatever the force of this argument, it is lost both by the failure to provide equality between 1896 and 1954, and by noncompliance after 1954.

[10] And should do likewise with similar provisions of law in other fields, such as the Hill-Burton Act. These goals would be realized by sec. 601 of the administration bill.

Federal law has for some years restricted the employer's freedom to discriminate against union members, to hire children, to employ women on prejudicial terms, and to pay substandard wages or to work overlong hours.

With this history, there is no obvious reason why the question of the rights of private property should again be debated. It would seem that unless one were prepared to argue for the repeal of these other restrictions on the employer's freedom, he could not legitimately contend for a right to discriminate on racial or creedal grounds.

On the other hand, racial and creedal discrimination does in a unique way involve the prejudices not only of the employer himself but of his customers and other employees. Very probably, both the extent and the durability of this prejudice are exaggerated. But regardless, when the employer's prejudice is reinforced by that of customers and fellow workers, the economic situation of the minority group member is especially hopeless, and especially deserving of legal protection. A democratic government has no higher task than the protection of the weak.

The Government of our democracy has indeed impelling reasons to combat employment discrimination. These may be summed up under the three heads of developing talents and skills, enlarging national purchasing power, and the continuing obligation of America to build a open, fluid society.

There is little need to dwell here on economics. The drastic and rapidly recurring transition in technology and in distribution methods, the imperative of an expanding market in order to sustain economic growth, the pressures of population, and the steady obliteration of regional economies all point to an inexorable need that people be equipped with marketable skills and talents and that they be enabled to earn well in order to buy well. Our national self-interest coincides with Negro aspirations for employment opportunities.

A sound democracy must be a society open to talents. In simpler days, of industrial adolescence, abundant land, and scarce people, government had only to leave alone in order for talents to flourish and find their levels. Modern government has to hold back and clear away the weeds and the clutter of a matured and complicated society that choke some our people from the chance to develop themselves. Job discrimination is a particularly obnoxious growth, and one which is practically insuperable through individual effort. And as Mr. Robert Weaver has said, "Discrimination in housing and public places and in education is degrading and insulting. But discrimination in employment robs a man of the daily bread for himself and his family." [11]

No one should suppose that an antidiscrimination law will in itself end the employment hardships of Negroes. It will not. We have an enormous problem of disadvantaged people, embracing perhaps a tenth or even more of our citizens who are undereducated, wrongly trained, and culturally distorted. These people, who are of all races, are poorly prepared to accept employment opportunities, and their rescue from inaptitude is a mammoth national task which nearly all governmental bodies have as yet combined in shirking. President Kennedy, in his message of June 19, 1963, coupled manpower training with civil rights. Congress should give unstinted consideration to this part of the message, and to the bills now before it to carry out the training program.

Yet if nondiscrimination is not a specific cure, discrimination has been a specific cause. It has to be removed, in schools, in employment, in housing, and at the polls, or else there can be no general progress in the well-being of our disadvantaged people, or their ability to add to the common good.

We can conveniently look at the employment question under several categories:

(1) Federal employment.

(2) Employment in interstate and foreign commerce.

(3) Employment by Federal contractors.

(4) Employment by States and local governments.

(5) Employment by State and local governments, and by private institutions, for work financed by Federal funds.

(1) There is no need for Congress to legislate regarding discrimination in Federal employment. The President has sufficient authority to set standards in the Civil Service, and he has the clear responsibility to prevent discrimination. President Kennedy has gone further, and the present administratio has conscientiously and vigorously made a special effort to recruit and place Negroes in nontraditional jobs, and to hire in larger numbers. Much progress has, accord-

[11] As quoted in the New York Times, June 5, 1963.

ingly, been made toward fairer representation, and toward enhancing the aspirations of Negroes by the visible evidence of real opportunities. The President has only persuasive authority over certain independent agencies, but that is usually enough; if he should find that it is not, he could report his difficulties to Congress. In Federal employment, the responsibility is the President's, and Congress should not dilute it by presumptively acting.

(2) Acting under the commerce clause, Congress should ban discrimination by all businesses engaged in or affecting interstate or foreign commerce.[12] The law should contain a prohibition against discrimination on account of race, color, creed, or national origin, and a complaint procedure available either to the complaining individual or an organization acting in his behalf and at his request. The prohibition should extend not only to discrimination in hiring, but also to discrimination commissions now operating, as well as that of the President's dismissal; compensation; selection for training, including apprenticeship; membership in employee organizations; seniority rights; and access to all plant or office facilities.

The responsibility for administering the law should be vested in the Department of Labor. We think this preferable to a commission-type administration (an "FEPC") because it would permit vigorous enforcement through established regulatory procedures. Enforcement of fair employment is a natural adjunct to the Labor Department's enforcement of wages and hours standards or other federally imposed standards on employers.

This means that the Department should not only act on complaints, but should by appropriate regulations, establish suitable enforcement, inspection, and educational programs. Enforcement should include the power to order specific alterations of practice, and to issue cease and desist orders.

A complaint procedure is half meaningless unless it is, as it usually is not, expeditious. Congress should consult the experience of the various State antidiscriminatio commissions now operating, as well as that of the President's Committee on Equal Employment Opportunities. One suggestion that Congress might consider is a provision that all complaints be heard initially by authorized regional or district officials, or by specially assigned officials in case of overcrowded dockets; that a decision must be given within 30 days of filing of complaint; and that in the event of employer appeal against a decision, the individual should, during the appeal period, have the benefits of the examiner's finding.

We think there should be no elaborate appeals procedure available either to the employer or the individual. Appeals should go directly from the examiner to an impartial appeals board, and its decision should be final, subject only to review by a Federal court of appeals confined to questions of law and due process. A similar appeals procedure would suffice for contesting the orders of an inspector enforcing the Department's regulations.

An interesting question is the relationship of a Federal fair employment program to the State programs now operative, with enforcement powers, in 20 States.[13] We think Federal programs should not preempt satisfactory State programs, even for firms in interstate or foreign commerce, unless there is a clear-cut administrative advantage. This should not be beyond the skill of legislative draftmen to provide, nor should cooperative administration be beyond the ingenuity of Federal and State officials. An approach to a like question is taken by the National Labor Relations Act, as amended, which expressly negates an inference of Federal preemption in those situations where the Federal agency has not assumed jurisdiction, and thereby permits parties to obtain relief under State law, Washington has enough to do without doing a job that the States can do as well or better. It may well be that both employer and minority group member would prefer a State administration close at hand, to remote and impersonal Federal.

(3) Employment by Federal contractors is a special case. Appropriately, Federal contractors should, in virtue of their relationship to the Government, make a special contribution to the national need to utilize and develop fully our manpower. The President's Committee on Equal Employment Opportunity has diligently established a compliance system under Executive Order 10925 and, operating on the base of a statute applicable to all interstate commerce, the

[12] See also below, p. 23.

[13] Alaska, California, Colorado, Connecticut, Delaware, Illinois, Kansas, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Washington and Wisconsin. Antidiscrimination laws, with little or no enforcement power, exist also in Idaho, Indiana, and Kentucky.

Committee could drop its policing functions and concentrate on the much discussed but rather nebulous "affirmative" requirements of the Executive order. It could, in other words, demand from contractors, and aid them in effecting positive programs to bring minority group members into full participation in the national work force, on the premise that firms doing business with the Government enter thereby into a partnership of national goals. Of the various techniques the Commitee and, under its guidance, Federal offices have already devised, we are especially impressed by the Defense Department's staff of intergroup relations specialists, working in the field with contractors. No separate legislation seems required, the President having clear enough authority through his procurement power. Certainly, however, the President should ask for and Congress should grant funds necessary for the Committee, instead of using funds, as at present, appropriated for other purposes; if a statutory foundation for the Committee would facilitate this, that legislation should pass.

Furthermore, by control of appropriations both for the Committee and—more importantly—for the statutory programs over all employment in interstate and foreign commerce, Congress would be in a position to terminate. This is as it should be. We should not suppose an everlasting need for antidiscrimination measures. It may be an enduring part of human psychology to pay as little as one can for as much as one can get, and therefore a wage and hour law will always be useful. But to believe that racial prejudice is similarly basic to human nature is morally self-defeating. Our conviction must be that once the discrimination barriers are broken, and minority members are equipped to hold their own, there will be in a free society neither the desire nor the possibility of re-erecting the old walls.

(4) Does employment discrimination by State or muncipal bodies fall under the ban of the equal protection clause? The question has not been adjudicated but the trend of recent decisions is clearly in that direction.

(5) A quite different question is presented by State or local programs financed in whole or in substantial part by Federal dollars. The temptation to discuss this issue at length is considerable, for some of the racially discriminatory uses of Federal money are shocking, through a great variety of outlets including but unfortunately not limited to the National Guard, the U.S. Employment Service, Hill-Burton hospital construction, the several Federal highways programs, the multitudinous Federal farm offices, air terminals, and many others. But many words might serve only to obscure the simplicity of the matter. It ought to be axiomatic that wherever money from the common treasury goes within this country, the Constitution goes along. It is unthinkable that the use of Federal money to favor some of us and disfavor others of us could be rationally defended. This is so clear that to many it is not at all clear that any legislation to this end seems needed: the President, it would seem, has no right to spend money which will yield racial discrimination. The hard job of enforcement would be made more feasible, however, by congressional action. A prohibition on discrimination by State and local governments or their contractors or agents, on all projects financed in whole or in substantial part by the Federal Treasury, should be included in the proposed fair employment act,[14] and administered by the Department of Labor, with the added sanction of a funds cut-off to insure compliance.

VOTING RIGHTS

The civil rights acts of 1957 and 1960 were addressed principally to voting rights. That these first civil rights acts in four generations were concerned with voting, evidences its centrality among our civic values as well as our civic shortcomings. The problem of voting rights has been long and familiarly before us, and has been thoroughly documented by the U.S. Commission on Civil Rights;[15] further description here would be superfluous.

From the history of the last few years, some conclusions and inferences can be drawn which we state seriatim:

(1) With the exception of a few pockets of discrimination against American Indians and Mexicans the denial of voting rights is a problem peculiar to certain

[14] See above, p. 19. Sec. 601 of the administration's bill could accomplish this end. The President's Executive Order 11114 of June 22, 1963, also will help.

[15] See "Report of the U.S. Commission on Civil Rights, 1959." "Voting, 1961," USCCR report. "Hearings Before the USCCR, Voting, 1959" (the Alabama hearings). "Equal Protection of the Laws in North Carolina," USCCR, 1962. See also "Civil Rights—1959." hearings before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, U.S. Senate, 86th Cong., 1st sess., pts. I–IV.

areas in Southern States and to their Negro residents. The problem is not even regional in scope: in extensive areas of the South and the most populous ones at that, Negroes today register and vote freely. Legislation of general application, such as the administration's literacy bill of 1962,[16] would supersede State laws all over the country in order to reach abuses that are statewide in at most only two or three States, and which are virulent in parts of not more than three others.[17]

(2) Voting discrimination and low Negro participation are not always equivalent. In the States of Arkansas, North Carolina, Tennessee, Texas, and Virginia, where there are today only isolated and passing discriminatory practices, Negro participation is low but is remediable by education and organized effort; the same is true of large areas of Florida, Georgia, and South Carolina, and scattered areas of the other three Deep South States. The evil of discrimination is confined, in other words, to certain communities of the Deep South where the constitutional prohibition against voting discrimination is only flouted and efforts to obtain or to exercise voting rights are met by acts of intimidation, harassment, and physical violence, sanctioned and sometimes even participated in by local authorities and law enforcement officers.[18] These are, and should rationally be regarded as, outlaw communities. Our Federal system will be less seriously challenged by Federal power brought to bear directly on these communities, than by Federal laws which supersede State laws everywhere.

(3) This is not meant to preclude Federal regulation of elections, or the establishment of Federal standards when, in the judgment of Congress, they are necessary or desirable. There is, we think, outstanding merit in the bill introduced by Senator Hart at each Congress since 1959.[19] Senator Hart's bill authorizes the Federal administration of registration and primary and general elections for U.S. Senators and Representatives in any district where a Congressional Election Commission determines that unless such election is conducted by the Commission, persons having the qualifications requisite for electors of the most numerous branch of the legislature of the State in which the congressional district is located are likely to be denied their right to cast their votes and to have them fairly counted. On the sound premise that Congress has full authority under article I, section 4 of the Constitution to regulate elections of its own Members, the proposed Commission would act solely at its discretion and without any recourse to the courts. It would, however, follow State law in registering eligible voters.

(4) The Hart bill goes to the key issue, as the administration's 1962 literacy bill did not. The tool of discrimination is not the literacy laws of Southern States, but their immoral and illegal administration, coupled with the physical intimidation and economic coercion of Negroes. Nor would the proposed sixth-grade literacy presumption of the administration's 1963 voting bill[20] reach the extra-legal threat of violence or economic reprisal, and there is every prudent reason to suppose that communities which now illegally administer literacy requirements would resort to these extra-legal methods if their practices were set aside by a Federal rule. Enactment of the sixth-grade presumption would provide a salutary device, but we caution against overly optimistic expectation of its value.

(5) In 1959 the Commission on Civil Rights proposed that Federal registrars be appointed by the President in counties found by the President to practice discrimination.[21] Congress chose, instead, in the Civil Rights Act of 1957 to invoke the judicial process. Experience does not suggest that this was wise. Voter registration is, after all, a ministerial act. The court's proper and necessary function is to protect individuals from illegal treatment by the functionnaires commissioned to register their names. To ask the courts to do more than this, to ask them—as the act of 1960 does—to look into the complex whole

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[16] The Senate rider to H.R. 1361, 87th Cong., 2d sess.

[17] At least two bills are before the 88th Cong., 1st sess., which would implement the 14th amendment by reducing the House representation of States depriving eligible persons of the franchise: S. 1644 introduced by Senator McNamara; and H.R. 6861, introduced by Representative Stratton. To the same end is *Lampkin* v. *Hodges*, filed May 28, 1963, before the U.S. District Court for the District of Columbia.

[18] See report of the Mississippi Advisory Committee, "Report on Mississippi," January 1963, USCCR report; Voter Education Project press release of Mar. 28, 1963 on 64 Mississippi atrocities.

[19] S. 1281, 88th Cong., 1st sess.

[20] S. 1731, sec. 101b. See also the administration's earlier bill, S. 1283, 88th Cong., 1st sess.

[21] Report of the USCCR, 1959, p. 141.

of a county's or State's practices and ascertain what pattern exists, to ask them to supervise the registration of deprived persons or even to register them directly, all this is a heavy and unnatural load on the judicial process. The acts of 1957 and 1960 were intended to facilititate Negro registration, but they were poorly designed for that purpose. It is sufficient to note that of the 40 voting cases filed under the acts of 1957 and 1960, only 19 have reached decision, and of the 30 cases filed since January 20, 1961, only 9 have been decided.

We seriously question, therefore, whether congressional effort should be expended on the further refining of a basically defective approach. The administration's present effort to do so (S. 1731, sec. 101c) seeks by extraordinarily, almost monstrously, complicated means to make judicial administration perform a ministerial service. The effort should be to get the voting question out of the courts, not merely deeply into it.

(6) The acts of 1957 and 1960, imperfect as they are, do provide legal means for Federal suppression of the grosser violations of the 14th and 15th amendments. The Department of Justice has enforced them conscientiously and, with additional lawyers, could do yet more. (Amendment of the laws would be far less helpful than would appropriations making possible more attorneys in the Civil Rights Division.) As previously said, voting discrimination occurs now, with but few exceptions, only against Negroes and only in some localities of the South. By their defiance of the constitutional order, these places are virtually outlaw communities. New and more refined legislative remedies are not required to reach this blatant disregard of rights. To contain and disarm lawlessness, a clear Federal presence is required at the first outbreaks. We think the Attorney General has the power, in the face of determined lawlessness supported by an acquiescent or conspiratorial community, to send Federal marshals and agents of the Federal Bureau of Investigation for on-the-spot protection of the exercise of Federal rights. Such marshals and Federal agents should be deployed in accordance with principles normally governing in law enforcement, in numbers and with authority adequate to deal with all anticipated exigencies, including authority and instructions to enforce compliance with Federal law and to make arrests for violations.

Moreover, the Attorney General may seek through the courts appropriate orders to prevent any parties from interfering with the registration or voting process.[22] We are, therefore, glad to note that the Department of Justice in *U.S.* v. *Greenwood*, now pending before the Federal district court of northern Mississippi, has taken the position that freedom of assembly in connection with voter registration is a right within the power of the Attorney General to make secure.[23]

CONCLUSION

There is an urgent need for bringing Congress into explicit support of racial equality. Unless and until this is done, the national decision in favor of equality is clouded and imperfect. The voting legislation of 1957 and 1960 has not achieved this end. It reaches only the issues of discriminatory application of State laws, or vicious interference with the exercise of the Federal voting right. The acts of 1957 and 1960 fall short of a congressional affirmation of equality as an attribute of National and State citizenship.

For reasons which are now a part of history, but also for reasons of intrinsic value the first congressional action should, above all, include a strong, well-designed school desegregation law. We propose that this have the following elements:

(a) "Desegregated schools" should be defined as those which accord each child the right to attend a nonracial school system.

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[22] The argument made above in paragraph 6 was stated earlier by the Notre Dame Law School Conference in a preliminary statement submitted to the President on February 12, 1963, and subsequently inserted by Senator Douglas in the Congressional Record for February 19, at page 2388. The statement urged a more extensive use of executive powers to cope with voting discrimination, and the employment of additional methods to expedite cases and to bring them to satisfactory results. The statement was documented at the request of his conferees by G. W. Foster, Jr., professor of law at the University of Wisconsin, in a memorandum submitted to the Civil Rights Division on March 15, 1963.

[23] Senator Javits introduced a bill (S. 1693) on June 11, 1963, which would give statutory authorization for injunctions to prevent deprivation of rights by officials or private persons in Albany- or Birmingham-type situations that are not clearly related to voting rights. Comments by distinguished law professors regarding the constitutionality and need of the bill are printed in the Congressional Record for June 11 at pp. 9970–9972.

(b) The primary aim of legislation, at this time, should be to effect starts in those biracial school districts of the South which have made no beginning.

(c) To this end, each school board having jurisdiction over such a district would be required to prepare and make public a desegregation plan.

(d) Further, the Attorney General must be authorized to bring desegregation suits in the name of the United States, and to intervene in cases brought by private plaintiffs.

(e) And further, technical assistance from the Department of Health, Education, and Welfare to facilitate desegregation should be available to school districts, South and North, for projects specifically related to the desegregation process.

(f) The right of private plaintiffs, through counsel of their choosing, to bring desegregation suits should be carefully preserved.

The Notre Dame conference considered also the fields of employment and voting.

Congress has waited long to act in enforcement of the 14th amendment. When it at last does so, it should direct its action toward fundamental causes of racial inequity. The President's proposals for manpower training go to this problem. But without effective legislation to ban job discrimintion, they will not be enough. A fair employment law is required.

The law should be administered by the Department of Labor (not by a new commission), and should cover all phases of the employment process of firms engaged or affecting interstate and foreign commerce. The law should reach also employment, of all descriptions, carried on by State or local governments and by private institutions for work financed in whole or in part by Federal funds.

We recommend further that, by several means, the law should rely on administrative regulations rather than quasi-judicial methods for enforcement. We think that this can be realized by incorporating the administration into the Department of Labor and bring the whole structure of the Department into responsibility for the work.

We propose that the President's Committee on Equal Employment Opportunity be continued, and that it press strongly to bring governmental contractors into partnership with the National Government through affirmative actions that specially contribute to the development of job skills among Negroes and other minorities, and their full utilization.

In the third field—voting discrimination—the Notre Dame conference strongly believes that additional legislation is not a sufficient remedy.

The problem is neither nationwide nor regionwide. The condition which requires Federal attention is the lawlessness that exists in a relatively small number of outlaw communities of the Deep South.

This condition does not pose an issue of federalism. Federalism is a system of divided power among governments, and governments are instruments whose whole purpose is to establish an order of law. In these outlaw communities where citizenship rights are flagrantly destroyed, there is no law to respect.

We have here, in short, a problem of enforcement, and the President's power is adequate, strengthened by the acts of 1957 and 1960, to create conditions which permit every citizen, freely and without fear, to register to vote, to cast his vote, and to have it honestly counted.

This is the centennial year of emancipation. It is also the year when Negro patience with systematized social deprivation has finally broken. It is the year for Congress to act.

STATEMENT BY HON. OTTO E. PASSMAN, A U.S. REPRESENTATIVE FROM THE STATE OF LOUISIANA

Mr. Chairman, I make no pretense at being an authority in matters of legal and constitutional interpretation, but I do lay claim to possession of a reasonably sound understanding of the fundamental concepts underlying our American system of government, as handed down to us by our Founding Fathers. Therefore I am moved to observe on this occasion that the so-called civil rights proposals now under consideration by this committee would have the effect, if enacted into law, of dangerously undermining, if not actually overturning, the system of personal liberty which is basic to the American way of life.

There is no denying the fact that Government in our great Nation has moved, and is continuing to move, further and further away from the people. And this

so-called civil rights legislative package is a clear-cut example of centralized Government in Washington threatening to destroy our constitutional Federal system, and doing so, shamefully, through obvious responses to political expediency.

Mr. Chairman, certainly it must be clear to the members of this committee, each one of whom is learned in the law, that if the Congress adopts these measures, which have been presented by the administration, the Federal Government would take on extremely dictatorial powers. I cannot believe it is the will of the American people—or of the members of this committee and the Congress as a whole—that a network of special privileges for one minority, created at the expense of the traditional freedoms of the majority, should be written into law.

I ask you, would it be in accord with the concepts of American democracy which we have known since the ratification of our Constitution for a Federal agent to tell a grocery-store owner the persons he must serve? Should a restaurant have to submit to periodic checking so the Federal Government might determine the quality of its services to member of a particular race? Should a contractor be unable to employ a man for a job without gaining approval of a Federal bureaucrat? Of course not, but, as I read the administration's proposals, those are the types of things we might expect to come about if these so-called civil rights measures are given congressional approval.

Under the proposed program, Mr. Chairman, if, say, a nonwhite man should be fired from a job, could it not amount to what is commonly termed a "Federal case"? Might not a country club, for example, that refused to admit a nonwhite person as a member be required to show cause why it should not lose its license to operate as a club? Would not a barber be prohibited from deciding which customers he wanted in his shop? Could not a homeowner who refused to sell his house to a colored person be subjected to punitive action? Certainly such actions as these are hardly conceivable in America; but, according to my understanding of the totalitarian "civil rights" plan that is before the committee, those are the kinds of developments that would, or surely could, result from passage of such laws.

I also ask you, Mr. Chairman, and members of the committee, should control over our schools be placed in the hands of the Attorney General—and I am thinking not only of the individual who fills that post today, but any Attorney General? May the time never come when such a grant of power is made in America, although it seems obvious to me that this is what the administration is seeking.

Let us not surrender to mob rule in our beloved country, Mr. Chairman. Let us not, for any cause or reason, be a party to the liquidation of constitutional government. Let us not, I implore you, strip from the majority of our citizens the historic right to choose their associates, to select their customers, to hire their employees, to run their schools, and to otherwise live in a state of liberty. Let us not only refuse to do these things, Mr. Chairman, but let us return to the fundamentals of our Constitution as written to assure the continuation of our representative republic.

I have deliberately refrained, Mr. Chairman, from engaging in a discussion of the details of the "civil rights" package; but, as I understand this program, it would, among other things, make it mandatory for all retail establishments, hotels, restaurants, and places of amusement to be open to all persons, with the owners and managers denied the right to choose the customers they serve. It would, as I read the proposed bill, give the Attorney General the right to initiate school integration suits wherever he pleases. It would provide for supervision of all construction in which Federal funds are used. It would create an agency to determine the pattern of social relations in our Nation's communities. It would spell out how every cent of Federal funds is to be removed from any project that is not totally racially integrated. And, finally, it would tear down the constitutional rights of the States to prescribe the qualifications for voting.

Now, Mr. Chairman, let me assure you that the conclusions I have reached and the views which I express are as an American first, with any and all other considerations coming afterward. And I might add that such is the case with the overwhelming majority of Americans who are southerners. The very fact that American southerners live closely with the racial problems enables our great area's intelligent people to see—to understand—that in the matter in controversy the race problem itself is actually secondary. It pales into insignificance, in fact, in comparison with the real issue—which is individual freedom as opposed

to an all-powerful central government. So I say to you, Mr. Chairman, it is my fervent hope that this committee, reflecting the inherent good sense of the American people, will decline to approve the so-called civil rights proposals now being considered, which would take away from the people many more rights than they would grant.

STATEMENT OF HON. ALBERT H. QUIE, U.S. REPRESENTATIVE FROM THE STATE OF MINNESOTA

Mr. Chairman, before I proceed, I want to take this opportunity to congratulate the members of the Judiciary Committee on the fine and thorough way in which you approach your tasks.

I will keep my comments on this important legislation brief since I am well aware that you gentlemen will receive extensive testimony on the issue. However, civil rights legislation is important to all of us. The fact that I have joined with my colleagues in introducing this bill is evidence of my concern.

Recent developments throughout the United States offer ample example that additional steps must be taken in the field of civil rights. We are all aware that the vast majority of these events occurred in the southern part of our country and in the industrial centers in the North and West. In many ways, the developments are simply signs that our Nation is in the midst of a crucial transition. Whether that transition will be peaceful or violent depends largely on us.

I do not mean that it depends only on the people who would like to either stop or slow down the transition. Neither do I mean that it depends only on the people who think that the transition is taking place too slowly. The responsibility also rests on the many people outside of either group.

The First Congressional District of Minnesota, which I represent, is not faced with the dramatic adjustment of changing race relations. However, it is vitally concerned with the nature and outcome of that adjustment. We consider both of the groups that are directly involved in this basic adjustment as our friends. We hope that above all, the transition will be orderly. If by accepting the role of the understanding middleman the civil rights of many citizens will improve and national peace will continue, we will gladly accept that role.

It is my belief that this bill will aid in providing orderly progress in civil rights. It is positive and realistic. It is comprehensive. It is based on the twin realization of what should be done and what can be done.

In dealing with civil rights, it is the responsibility of all of our Nation that moderation prevail and that lasting progress result. I believe that this bill will help fulfill such a responsibility.

CITY AND COUNTY OF HONOLULU,
OFFICE OF THE CITY CLERK,
Honolulu, Hawaii, July 5, 1963.

Hon. JOHN W. MCCORMACK,
Speaker, U. S. House of Representatives,
Washington, D.C.

SIR: I am enclosing a certified copy of resolution No. 206 (1963), commending Hon. John F. Kennedy, President of the United States of America, for his forceful program on civil rights, which was adopted by the city council on July 2, 1963.

Respectfully,

EMPEROR A. HANAPI, *City Clerk.*

RESOLUTION

Whereas the United States of America was founded on the principles of liberty, equality, and justice for all, regardless of race, color, or creed; and

Whereas the eyes of the world, especially of the new nations of Africa and of the nations of the Communist world, are trained on us to see how truly we believe in our own founding principles; and

Whereas our President has implemented these principles by sending to Congress a comprehensive bill intended to end discrimination in accommodations, employment, social intercourse, education, and other particulars; and

Whereas the people of Hawaii wholeheartedly join our President in saying, "The time has come for the Congress of the United States to join with the executive and judicial branches in making it clear to all that race has no place in American life or law": Now, therefore, be it

Resolved by the Council of the City and County of Honolulu, That the Honorable John F. Kennedy, President of the United States be, and he is, hereby hereby commended for his forceful program on civil rights; and be it further

Resolved by the Council of the City and County of Honolulu, That the Honorable John F. Kennedy, President of the United States be, an dhe is, hereby assured of the fullest support of the people of the city and county of Honolulu in his civil rights program; and be it finally

Resolved, That the clerk be, and he is, hereby directed to transmit copies of this resolution to the Honorable John F. Kennedy, President of the United States of America, and to the President of the Senate and Speaker of the House of Representatives of the Congress of the United States of America.

Introduced by:

Ernest N. Heen, Herman G. P. Lemke, Clesson Y. Chikasuye, Yoshiro Nakamura, Matsuo Takabuki, Masato Doi, William K. Amona, Ben F. Kaito, Richard M. Kageyama, *Councilmen.*

Date of Introduction: July 2, 1963, Honolulu, Hawaii.

CERTIFICATE

I hereby certify that the foregoing is a full, true, and correct copy of original resolution No. 206 (1963) on file and of record in the office of the city clerk. I further certify that the resolution was adopted by the Council of the City and County of Honolulu on July 2, 1963.

Given under my hand and the seal of the City and County of Honolulu this 5th day of July 1963.

EMPEROR A. HANAPI, *City Clerk.*

STATEMENT OF KITTY L. REYNOLDS, 1233 SOUTH OAKCREST ROAD, ARLINGTON, VA., IN OPPOSITION TO CIVIL RIGHTS BILL H.R. 7152

The first question to ask about any legislation: Is it constitutional? After reading this bill I arrived at the conclusion that whoever drafted it had no concept of the American tradition of rights. This bill would not only destroy our constitutional rights, but our natural rights as well. Though the Declaration of Independence is not the law of the land, and "inalienable rights" does not appear in the Constitution, our Government was founded with this frame of thought in the foreground. This concept does not ascribe authority for these rights to the Government.

This was brought out by the Attorney General in his speech at Independence Hall on June 21. He stated: "The Constitution was never meant to specify every detail, every individual right in the relations of man to man in this country. It was intended to set forth certain duties of Government, certain restrictions on Government; nowhere in its wording does it pretend to tell us, as individual citizens, how to treat our neighbor."

While the Attorney General was using this to make a point in favor of legislation on civil rights, I am using it to show that our inalienable rights spoken of in the Declaration of Independence are inherent rights.

Our form of Government was instituted for the sole purpose of preventing a person (or a gang of persons, even a majority) from invading the rights of any person or persons coming under its protection. In order to secure these rights, the Bill of Rights was added to the Constitution. They tell the Government what it cannot do. This is the essence of Americanism—the Government is itself enjoined by this concept from using its monopoly of power to invade the God-given rights of the individual.

What are these inalienable rights? They are the rights to life, liberty, and the pursuit of happiness, which is equivalent to the rights of life, liberty, and property. Unless a man is free to own and enjoy the fruits of his labor, he has no liberty.

Under injunctive relief provided in the bill, we would be under a police state with agents swarming over our land. As the Declaration of Independence reminds us: "He has erected a multitude of new offices, and sent hither swarms of officers to harass our people and eat out their substance."

The public accommodations section of the bill would force our people into an involuntary state of servitude. Section 202 (3) provides that all persons shall be entitled, without discrimination or segregation, the full enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of

the following establishments: any retail shop, department store, market * * * which keeps goods for sale, any restaurant, lunchroom, lunch counter, or other public place engaged in selling food for consumption on the premises, and any other establishment where goods, services, facilities, privileges, advantages, or accommodations are held out to the public for sale, use, rent, or hire.

This covers about everything, and would, of course, include barbershops, beauty parlors, and massage parlors.

Under section 301 the Federal Government would monitor all of the public schools. It gives the Commissioner broad powers of investigation, authorizes him to render technical assistance in the preparation and implementation of plans for the desegregation of public schools; and it gives him the authority to make grants to cover the cost of giving teachers and others, inservice training in dealing with problems incident to desegregation or racial imbalance in public schools.

The reference to racial imbalance, I presume, means that children would be hauled from one school district to another at taxpayers' expense. Notwithstanding the fact that the Supreme Court has not said that there could be no segregated schools. The Supreme Court said that, no child could be denied admittance to a school on account of race. This bill would integrate all of the public schools.

There is nothing in this section to show what the cost of the proposed program would be to the taxpayers.

Title IV provides for the establishment of a Community Relations Service, headed by a Director, appointed by the President at a salary of $20,000. The Director is authorized to appoint such additional officers and employees as he deems necessary to carry out the purposes of this title. He may offer services in cases of disputes or difficulties whenever in his judgment peaceful relations among the citizens of the community involved are threatened thereby, and he may offer services either upon his own motion or upon the request of an appropriate local official or other interested person.

There is no indication as to how many employees would be necessary to carry out this program, or how much it would cost the taxpayers.

A reference is made in section 201 to the burdens imposed on interstate commerce in the practice of discrimination by businessmen, but no consideration is given to the effect there would be on the free flow of commerce if these bills were passed. Governor Ross Barnett prophesied that this legislation, if enacted, would put hundreds of thousands of white businessmen in the streets.

Association without discrimination is the rule of the prison. A law which prescribes social integration on any score, transgresses a natural right of man.

Abraham Lincoln said: "You cannot bring about prosperity by discouraging thrift. You cannot strengthen the weak by weakening the strong. You cannot help the wage earner by pulling down the wage payer. You cannot further the brotherhood of man by encouraging class hatred. You cannot help the poor by destroying the rich. You cannot keep out of trouble by spending more than you earn. You cannot build character and courage by taking away man's initiative and independence. You cannot help men permanently by doing for them what they could and should do for themselves."

During this civil rights battle I have observed several irregularities which I think should be called to the attention of the committee.

The President of the United States, for the past several weeks, has been having conferences at the White House with groups of Governors, educators, religious leaders, lawyers, hotel, theater, and restaurant owners, union leaders, businessmen, and leaders of women's organizations in order to discuss civil rights problems. The purpose of these conferences, of course, is to enlist support for his civil rights program.

The office of the President of the United States carries with it much prestige and power. An invitation to the White House is within itself impressive. Is there any doubt that what the President had to say to these groups would have an influence on their thinking? In fact they might all become pressure groups for this legislation.

It is my opinion that what the President has done is unethical.

A jurisdictional dispute arose over whether the public accommodations section of the civil rights bill should be handled by the House Committee on the Juudiciary or by the House Commerce Committee.

Mr. Harris, chairman of the Commerce Committee had proposed that his committee study and hold hearings on the public accommodations portion of the

bill—just as had been done by the chairman of the Senate Commerce Committee. His proposal was turned down. Could this not be termed rank discrimination—discrimination against white southerners? The House Commerce Committee, unlike its counterpart committee in the Senate, has several high-ranking southern Democratic members.

In glancing through the papers for the past few days, I quote some of the headlines: "Danville Jails 60 After King Incites New Demonstrations," "Police Patrol Savannah After New Racial Clash," "Wilkins Can't Assure Order on August 28," "NAACP Set To Picket Negro Judge in San Francisco," "Negroes Plan Two Drives in Lynchburg," "Dr. King Says March Is Not To Intimidate," "Racial Violence Flares at Savannah," "Guard Sent Back to Cambridge," "Five Men Shot During Night of Violence," "Five Wounded in Brooklyn in Teen-Gang Shooting," "Youth Mobs Loot Savannah Stores."

These demonstrations have been going on all over the country, and these demonstrations have been upheld on the grounds that the people have the right to assemble and petition their Government. However the right of assembly under the first amendment is limited in that it must be a peaceful assemblage.

When these demonstrations break out in violence, there is no longer a right of assembly.

These riots which are breaking out all over the United States all follow the same pattern—that of Communist subversion.

Benjamin Gitlow, for 11 years a member of the Communist Party wrote a booklet entitled "The Negro Question—Communist Civil War Policy," from which is quoted the following excerpt:

"* * * But what is much more important is the fact that the Communists are deliberately maneuvering among the American Negroes to create agitation for the outbreak of racial violence, to such an extent that it can be turned into a civil war—a civil war on a racial basis involved with profound political and revolutionary consequences. In such a civil war, should they succeed in fomenting it, the Communists hope to so undermine the American Government and our social structure that they can take over power. In the racial civil war they envisage, they are sure Negroes will be in the front ranks, the shock troops of the Communist revolution."

An article in the Citizen magazine by Dr. Revilo P. Oliver, professor of classical languages at the University of Illinois on the Black Muslims, gives us some food for thought as follows: "The Black Muslims, in short, fit perfectly into the Communist technique of using 'scare-heads,' and, if they did nothing more, would fully justify whatever investment may have been made in them. The Black Muslims preach the extermination of white men. The fruit of Islam is composed of young and vigorous Negroes, who are admittedly trained in judo and similar techniques, organized militarily, drilled regularly, and sworn to absolute obedience to their officers: The only real bond of faith among Black Muslims is a fanatical and total hatred of Christianity and of the white race."

Manning Johnson and Joseph Z. Kornfeder gave lengthy testimony before the Joint Legislative Committee of the State of Louisiana in March of 1957, on the Communist use of the Negro. The hearings are entitled "Subversion in Racial Unrest" Kornfelder helped to organize the Communist Party in the United States, and was put in charge of Communist Party activities among the Negroes.

The Constitution, with its Bill of Rights, guarantees all the civil rights necessary. I wish to express my opposition to H.R. 7152, as I construe the bill, it will make slaves out of freemen.

KITTY L. REYNOLDS.

STATEMENT OF HON. KENNETH A. ROBERTS, A U.S. REPRESENTATIVE FROM THE STATE OF ALABAMA

Mr. Chairman, I appreciate the opportunity of appearing before this distinguished committee. I well realize the great interest that has been expressed and the desire of numerous witnesses to testify on this all important subject of civil rights. I would be remiss in my duty as a representative of the people of the State of Alabama if I did not appear before you to express my total and complete opposition to this legislative proposal.

Mr. Chairman, it is my earnest conviction that any additional legislation in this field is both unnecessary and unwarranted. I further believe that if this matter is left in the hands of State governments that the issues can and will

be resolved. I believe that the Constitution as intended by our forefathers provides this right to the individual States. I honestly believe that the designers of the Constitution would turn over in their graves if they knew of the liberal interpretations that have been given to this document in recent years.

The continued liberalization of the Constitution and additional legislative action in the field of civil rights will, in my way of thinkng, ultimately result in a police state.

The trend that the administration is now following indicates just that. If one just analyzes the Executive orders that have been issued and the directives and regulations that have been issued by the executive departments such analysis will confirm my opinion.

Mr. Chairman, I do not desire to take the time of the committee to go into the various sections of the proposed bill and to discuss the many ramifications of them for I can say in summary that the enactment of any of the sections or any portions of the bill is contrary to my thinking and contrary to the thinking of not only the fine people of the State of Alabama but the thinking of many, many individuals throughout the length and breadth of America.

I appreciate as always, Mr. Chairman, the courtesy you and the committee have accorded me. I leave you with one thought in mind—please preserve our democracy—do not recommend any legislation that will place it in jeopardy.

STATEMENT OF HON. JOHN J. ROONEY, A U.S. REPRESENTATIVE FROM THE STATE OF NEW YORK

Mr. Chairman and distinguished members of this subcommittee of the House Committee on the Judiciary, I am most grateful for this opportunity to say a few words in behalf of my bill H.R. 7226, the civil rights bill.

This legislation, which incorporates the President's recommendations on providing justice and equality for all citizens of the United States, is indeed long overdue. Even though the response of the American people to the appeal to conscience which the President made a few weeks back has been reassuring, and renewed local efforts have indicated progress, Federal action must be taken if we are to have complete equality of opportunity for all U.S. citizens as provided by our Constitution.

Civil rights is the Nation's most vital domestic problem, and it is important that a program be enacted promptly which is both effectual and enforcible. The administration's bill is the first step toward complete elimination of discrimination and segregation in a country which shall be free for all citizens, regardless of race, color, or creed.

We are rapidly moving ahead in the fields of space exploration, medical research, and electronics; our living standards today are way above those of any other country in the world, yet in the field of human relations there are too many of our citizens who are denied the right to vote, who are denied equal accommodations in public facilities, who are deprived of equal educational opportunities, and who are discriminated against because of their race or color.

The laws which founded our country were based upon freedom and I feel that it is highly important at this time that we as elected representatives should insure these rights for each and every citizen. The enactment of this legislation would most certainly serve the national interest and would reflect in every detail the principles of equality and human dignity to which our Nation subscribes.

TESTIMONY OF HON. BENJAMIN S. ROSENTHAL, A U.S. REPRESENTATIVE FROM THE THE STATE OF NEW YORK

Mr. Chairman, at the very outset of my testimony today I would like to include the wise and forthright words on the situation in Birmingham, Ala., that were uttered yesterday by the President at his news conference.

Near the conclusion of the conference, the President said "* * * there is an important moral issue involved of equality for all our citizens, and * * * until you give it to them, they're going to have these difficulties, as we've had this week in Birmingham. The time to give it to them is before the disasters come, and not afterward * * *." The President has expressed in these words the thrust of my testimony today, for I am convinced that the legislative proposals under con-

sideration by this subcommittee would, if quickly enacted and given effect, have an enormous effect in reducing racial tensions North, South, East, and West.

When tempers are hot, as they are in Birmingham today, and when there is violence in the streets, of course the immediate effort must be directed to averting bloodshed. But when the protesting crowds have been dispersed, substantial steps must be taken toward assuring equality of treatment and opportunity, or else there will be renewed mass protests and demonstrations, as there should be.

As law-abiding American citizens who deplore disorder and lawlessness, we must nevertheless acknowledge that the Negro citizens of Birmingham are acting in a tradition of true Americanism, for history reminds us that the colonial people who founded this Nation also massed in the streets to demonstrate the insistence of their demands for equality and freedom. We know, too, that many worthy citizens of Boston, New York, and Philadelphia considered the protesters of their day to be pushy rabble who wanted too much, too soon.

All they wanted in 1776, Mr. Chairman, was equal justice under the law; and that is what all the citizens of these United States ask for in 1963, a century after the abolition of human slavery in this democracy. The bills under consideration by your subcommittee would assure equal justice, equal opportunity, and equal treatment for all Americans, regardless of the color of their skin, the faith of their fathers, or the country of their birth.

This issue of civil rights legislation is hardly a new one. Since 1944 both Democratic and Republican Party platforms have advocated an overhaul and reinforcement of the existing machinery.

The creation of the Civil Rights Commision was, in my opinion, a step forward in the right direction, and by bringing study and publicity to bear upon these problems in the field of civil rights, the Commission has had an educational influence on all phases of public opinion. There is still much to be done to insure equal protection under the laws of our Constitution, and for that reason I have introduced legislation, pending before this subcommittee, to make the Commission a permanent agency of the executive branch of the Government. As such, it can continue to pursue vigorously the moral heritage of our people, by reminding us unremittingly of the unfinished business of our democracy—the positive assurance that every citizen may freely and proudly exercise these civil rights guaranteed to him by the Constitution.

I would also like to speak in support of another bill I have introduced, one of several similar bills pending before this subcommittee, which protects the franchise of each and every citizen of this country. The right to vote has often been described as the very heart of our democratic way of life, and I know of no one in and out of public office who would take issue with this proposition. Endowed with that right, men and women immediately acquire dignity and status. Take it away and you open the door to totalitarian philosophy.

Responsible leaders of Government, however, must make certain that qualified persons are not denied this constitutional right. We must do everything within our power to enlighten and inform the citizenry that this fundamental right carries with it the crucial responsibility that it must be exercised if we are to enjoy the fruits of a full and free society.

Our Constitution is one of the greatest documents in the history of the world, and guarantees the protection of his life, property, and civil rights to each and every citizen, regardless of his race, creed, color, or national origin. It is morally right that freedom apply equally to all Americans, and if we are to continue to uphold the highest standards of justice, we must enact legislation which will show the world, more dramatically than any word or gesture, that we are equal to our mighty heritage of freedom, and worthy of our responsibilities of leadership.

I urge you to enact strong and meaningful civil rights legislation, and I shall appreciate your consideration of my bills, H.R. 6121 and H.R. 6122.

Thank you, Mr. Chairman, for giving me this opportunity to appear before your subcommittee in support of these measures.

STATEMENT OF HON. RICHARD S. SCHWEIKER, U.S. REPRESENTATIVE FROM THE STATE OF PENNSYLVANIA

Mr. Chairman, I appreciate the opportunity to express to this subcommittee my strong support for prompt enactment of meaningful and effective civil rights legislation.

I sincerely believe our Nation cannot afford to delay longer in making certain that full rights are accorded every citizen, regardless of race, creed, or color. Tragically, a full century since the signing of the Emancipation Proclamation has not yet provided equal opportunity for Negroes in voting, education, employment, housing, the administration of justice, and public accommodations.

The more glaring evidences of this problem have been brought dramatically to our attention in recent months in stories datelined not only in the South but also in the North. We from the northern part of this Nation must not hypocritically lull ourselves into believing this is a sectional problem confined to the South. Such most certainly is not the case. With increasing regularity, our Nation has seen outward manifestations of the fires which have been smoldering so long in the North as well as the South. My own State within recent weeks has witnessed demonstrated unrest in the "City of Brotherly Love."

Many have been looking at how far Negroes have come in the past two decades. Negroes, on the other hand, are looking at how far they still have to go. They see the snail's pace of school desegregation, although 9 years has passed since the Supreme Court decided *Brown* v. *Board of Education*. They see limited employment opportunities, a disproportionately high rate of unemployment, exclusion from some public accommodations, and de facto school segregation in the North, equally as damaging to the personalities of their children as the legally enforced segregation condemned by the Supreme Court in 1954.

In sharp contrast with the swift rise to independence of the Africans in the world is the painful fact that American Negro citizens, after patiently employing the slow procedures of litigation to enforce their rights, and after numerous Supreme Court pronouncements reaffirming these rights, still find that the burden of proof remains upon Negroes and the burden of bit-by-bit implementation has remained on the courts.

The increasing determination of Negroes to exercise their rights, the moral and legal justification of their cause, the intransigency of some local authorities, and the apathy of the citizenry and the Federal legislative and executive branches, have encouraged the Negro to take his case directly to the Nation. To a large extent, his actions are not unlike those in past years of groups such as women seeking to vote and labor seeking to establish its right to organize and bargain collectively.

The civil rights problem is not one which our leaders and our people can continue to view with complacency. The urgency is alarmingly apparent. No longer should we deprive a group of citizens of the rights which most of us have taken for granted. The Negro is entitled to no more rights than his fellow citizens, but certainly he should be accorded no less.

It is high time that the leadership and the citizenry of our Nation face up to the fact that we have a long way to go in civil rights and that we cannot take long to travel the distance. The problem cries out for quick decisive solution. The gravity of the situation is such that every citizen should be aware of the problem and searching his soul for the answer.

In the belief that an important part of that answer must be supplied by this Congress, I introduced on June 4, with a number of my colleagues, two bills (H.R. 6778 and H.R. 6779) to enact a Civil Rights Act of 1963 and an Equal Rights Act of 1963.

The Civil Rights Act of 1963 would give permanent status to the Civil Rights Commission and provide additional authority to the commission to investigate violation of voting rights. Completion of the sixth grade would be presumed to provide sufficient literacy to vote in Federal elections.

The bill grants the Attorney General authority, upon written complaint, to institute civil proceedings in behalf of anyone denied admission to a public school because of race or color. A Commission on Equality of Opportunity in Employment would be created with authority to investigate charges of discrimination by businesses, labor unions, or employment agencies engaged in performing Government contracts or supported by Government funds. In addition, State and local educational agencies could request financial assistance for pupil placement and administrative services to carry out desegregation programs.

The Equal Rights Act of 1963 would prohibit racial segregation or discrimination by businesses authorized by a State or political subdivision to provide accommodations, amusement, food, or services to the public.

The Attorney General would be authorized to seek legal redress in district courts of the United States to prevent the loss of an individual's right to equal protection of the laws without regard to race, color, religion, or national origin. Such action could be instituted upon written complaint of the individual involved,

if he were unable to effectively seek legal protection in his own behalf because of financial limitations or threat of physical or economic reprisal.

Negro Americans, understandably, are especially desirous that meaningful public accommodations legislation be passed. The particular proposal appears to have evoked the greatest public opposition. Some objectors are sincere in their protestations that such legislation, based upon the commerce clause, is unwarranted Federal intervention; others have merely seized upon this as an excuse for continuing to deny to the Negro the opportunity enjoyed by white citizens.

The concept of nondiscrimination in public accommodations has a strong foundation in English common law; all accommodations opened for public use are open for all the public to use. Few would dispute that English common law has had a significant impact upon the constitutional and legal framework within which our Nation operates.

Much has been heard recently about the advantages of basing public accommodations legislation upon the 14th amendment, rather than upon the commerce clause. I strongly prefer this approach. The 14th amendment is a positive affirmation of the rights possessed by Negroes. The commerce clause is negative in nature, imposing restrictions and telling businesses what they may not do.

A second major advantage of basing this legislation upon the 14th amendment would seem to be the comparably greater speed with which the measure could be enforced. Fewer court test cases would be required than under the commerce clause approach, because the criterion would be simply whether or not State authorization or action was involved. Under the commerce clause, virtually each type of business might be subjected to a separate, lengthly court case to determine whether that particular business had a substantial effect upon interstate commerce.

I appreciate the prompt, careful consideration being given by this subcommittee to the pressing civil rights problem. I regret that the citizenry of this Nation, despite the gravity of the problem, apparently remains to a large extent apathetic regarding the solutions.

The small volume of mail on this issue in my office, and I understand in many others, indicates that all too many citizens are continuing to just sit back and hope the problem will be resolved. Needless to say, I find this distressing. For no matter the form taken by legislation this year, there will still remain much to be done by every individual if we are to achieve a solution to this most importtant of human problems facing our Nation.

It is disturbing to find that a great many more of our citizens are motivated to actively consider and write in opposition or support of such admittedly important matters as income taxes, railroad rates, humane treatment of animals, and Government spending than about the urgent civil rights problem.

Realize it or not, each citizen has an enormous stake in the solution of this problem because each has a vested interest in the future of our great country. I fervently hope, not only that the Congress will enact long overdue, effective civil rights measures, but also that people in all parts of the country will no longer remain apathetic to the pressing need for action.

STATEMENT OF HON. GARNER E. SHRIVER, A U.S. REPRESENTATIVE FROM THE STATE OF KANSAS, ON H.R. 3142

Mr. Chairman, it is urgent that this Congress be given the opportunity of considering legislation which will assure further progress in the field of civil rights. Specifically, I would urge your subcommittee to favorably recommend H.R. 3142, a bill to amend the Civil Rights Act of 1957, which I introduced in the House of Representatives on January 31, 1963. This is a measure similar to those introduced by eight of my colleagues who serve with me on the Committee on the Judiciary.

This is a bill which offers a constructive and moderate approach to an extremely complex and extremely difficult problem.

Briefly, this legislation would make the Civil Rights Commission a permanent agency with additional authority to investigate vote frauds, including the denial to have one's vote counted.

There are those who believe that we should merely extend the life of the Commission, on a temporary basis, for 2 or 4 years. If we are to follow such logic in the area of civil rights, perhaps we also should give "temporary" status to the Department of Defense or the Department of Health, Education, and

Welfare. We all have hopes that some day we shall have no fear of war, and that matters of health, education, and welfare will be no concern of the Federal Government.

We also can hope that the time soon will come when all those rights guaranteed by the Constitution to all men, regardless of race, creed, or color, will be a reality.

We must be realistic, however, and recognize the important functions which have been performed by the Civil Rights Commission since its establishment in 1957. It has a necessary role to perform in the years ahead.

During the past 2½ years much of the Federal action in the civil rights field has been by Executive order. We always must remember that ours is a government of laws and not men—or men with dogs and water hoses. It is not sufficient to have the Executive pick and choose among many instances of injustice, as to those in which he will intervene with the great power of his Office and those other instances in which he will stand aside for reasons of his own. Our Constitution guarantees equal protection under the law.

This is a necessary bill. It augments the spirit of the U.S. Constitution and the principles of our free society. The right to vote, the right to public education, and the right to equal employment opportunity can be strengthened by the provisions of this legislation.

While the major effort to assure civil rights must be made by private individuals and groups, and by local and State governments, the Federal Government has a heavy obligation as well. I respectfully urge this committee to act now, and recommend favorably, this bill which will help the Federal Government to meet its obligations to all Americans.

STATEMENT BY SOUTHERN REGIONAL COUNCIL, INC., ATLANTA, GA., JUNE 25, 1963

THE CIVIL RIGHTS CRISIS: A SYNOPSIS OF RECENT DEVELOPMENTS

(This is a synopsis of racial protest and reaction in the South from April 1963 through June 24, 1963, prepared by the Research Department of the Southern Regional Council. It is neither a press release nor a detailed analysis of recent events. It is meant to serve only as background information. Additional data or corrections are invited.)

Alabama

Attalla.—April 24: William Moore, a Baltimore postman hiking to Jackson on a one-man civil rights crusade, found murdered near here. His bullet-pierced body, still carrying antisegregation signs, was discovered along U.S. Highway 11.

Alabama-Georgia border.—May 3–10: Freedom marchers arrested as they entered Alabama to continue ill-fated march of William Moore. Found guilty of breach of peace charges in Fort Payne, June 3, fined $200 each and court costs. Their attorneys filed immediate notice of appeal.

Anniston.—May 12: Negro homes and a church fired into by a carload of whites. Former Ku Klux Klan member convicted for shooting into church (May 30), sentenced to 180 days in jail. City commission formed biracial committee of four Negroes, five whites, May 18.

Birmingham.—April 3–June 21: Weeks of mass Negro demonstrations in which thousands were arrested ended May 10, when a truce was reached between prominent white businessmen and Negro leaders. Truce almost came apart May 11–12, when a riot broke out following two bombings of Negro property. Federal troops were alerted, remained near city until May 31. Initial steps taken in June to implement desegregation agreement included dropping of racial barriers in the fittingrooms of major downtown department stores and promotion of some Negro employees. Though unrelated to the agreement, three of city's four public golf courses slated to reopen June 29.

Gadsden.—June 18–21: More than 450 Negroes, many of them children, arrested June 18 for defying an injunction against sit-in demonstrations. Forty-two more arrested June 21. Several downtown churches accepted Negroes for services without incident June 16.

Mobile.—June 1: Sheraton Hotel announced it will desegregate.

Montgomery.—May 27: Montgomery Advertiser-Journal announced that papers will cease to print Negro editions, incorporate Negro news with white news, effective immediately.

Arkansas

Fayetteville.—June 17: Local restaurant association began a 60-day desegregation test.

Hot Springs.—April 4: Negroes attempted to integrate local bathhouse, four arrested.

Little Rock.—June 3: Arkansas Supreme Court ruled unconstitutional four State laws that NAACP contended had been adopted to suppress its activities. Theaters desegregated the following week.

Pine Bluff.—April–June: 1,300 Negroes participated in a march protesting all segregation (April 1). Thirty-nine arrested April 25 in demonstration to integrate local theater. Four Negroes served at Woolworth's and Walgreen lunch counters May 5. Biracial committee formed in early June.

Florida

Bradenton.—Plans have been announced to picket stores and theaters.

Cocoa.—Late May–early June: Peaceful picketing of restaurant and hotels. Mayor has been meeting with owners.

Daytona Beach.—June 1–9: At least 7 street demonstrations, also picketing and sit-ins, involving in one instance over 100 persons, at least 12 arrests. Targets are theaters, hotels, recreation facilities and restaurants (beaches and some lunch counters are desegregated). Mayor has formed a biracial committee.

Gainesville.—June 2: Attempt of Negroes to buy movie tickets led to gathering of 1,000 persons, some violence, 1 shooting, and mayor formed biracial committee during the 4-hour disturbance. Picketing of theaters and stores, subsequently peaceful, continued.

Melbourne.—No demonstrations. Mayor has named biracial committee.

Miami.—May 25–June 1: Peaceful picketing of chainstores for employment. All municipal facilities are desegregated. No demonstrations.

Palmetto.—Plans have been announced to picket stores and theaters.

Orlando.—June 8: City government forming a committee to meet demands and avert demonstrations, none to date.

Sarasota.—June 1: Picketing stores and theaters, peaceful, continuous to date.

St. Petersburg.—Theater picketing threatened. No demonstrations. Has biracial committee.

Tallahassee.—May 23–June 8: Large scale (75 pickets first day) demonstrations began, primarily aimed at theaters, but also chainstores (for employment). By May 28, 29, 30, protest marchers numbering 300 and 400, 500 arrests in 3 days, tear gas used. During the first week of June court upheld the right to picket, limited number of pickets. Picketing subsequently continuous and with police guard.

Tampa.—Has had a biracial committee for some time, most facilities are desegregated, employment demands being met. No demonstrations.

Winter Haven.—June 1–7: Swim-ins, hostile white crowds, beaches closed.

Georgia

Albany.—May 7–June 24: Picketing and boycotting began May 7, with Negro employment the goal and lasting for 3 consecutive days, then sporadically through May 25, with over 100 arrests. On June 14, after Negro leaders had legally contested the sale and lost, the city sold one pool and tennis court to James Gray for $72,000, kept others closed. Early in day of June 19, 47 Negro ministers issued manifesto asking peaceful negotiation of differences. Late in day of June 19, 20, and 21, gathering to march and demonstrate, at least 140 Negroes were arrested, there was some violence. Negro stores were closed.

Atlanta.—April 12–June 24: After first sit-in attempt April 12, Atlanta had demonstrations—sit-ins, a prayer march (estimated 200 participants), kneel-ins, picketing—on at least 32 days from April 27 to the present, with at least 103 arrests. Demonstrations were usually in small groups, by June 7 drawing some crowds of hostile whites and occasionally one stabbing. Targets were restaurants and cafeterias. Highlights: Two Negro Metropolitan Opera singers denied restaurant service May 5; Journal and Constitution dropped racial designations from obituaries, want ads, and amusements; and a nightclub integrated second week of May; students agreed to suspend demonstrations for bond issue vote May 15; chamber of commerce made public statement urging desegregation of accommodations May 29; city pools opened integrated June 10; 14 leading motels and hotels announced integrated policy June 20; leading restaurants expected to follow suit week of June 24. Some churches which previously turned away Negroes have admitted them to services. Mayor has met with Negro and

white leaders without an official committee. Atlanta has a private staffed council on human relations.

Augusta.—April 5: A group of young people picketed municipal recreation facilities.

Brunswick.—June 20: Howard Johnson motel desegregation.

Columbus.—Demonstrations threatened, none to date.

Macon.—April 2 and 3: Two rows initiated by whites resulted in one stabbing, two arrests in integrated park. Mayor declined to close park, his mailbox bombed April 6. April 22, five Negro girls sat in at segregated (some are integrated) lunch counter and were arrested. Has a Negro committee which has negotiated with whites with some success in past.

Marietta.—By mid-May reported to have a biracial committee. No demonstrations.

Rome.—April 2: Sixty-two high school students stood trial (51 of age received sentences) for lunch counter sit-ins of previous week, the first such activity in the northwest area of Georgia. June 12, 13, 14: 15 students sat in again.

Savannah.—June 3–June 24: Current wave of demonstrations—marches, picketing, sit-ins, began June 3, continued daily through June 14, when the city announced some restaurants, theaters, and hotels had agreed to desegregate. (On June 4, three movies had desegregated for a few hours, then resegregated after a protest demonstration by whites.) June 13—Negro homes shot into. When owners reneged, demonstrations resumed June 18, 19, 20. Over 1,000 arrests in 2½ weeks. Four restaurants have been granted injunctions against demonstrators on their property. Mayor has been meeting with a recognized biracial committee formed during the month. June 20—Howard Johnson's desegregated.

Kentucky

Louisville.—April 9–May 16: The 11-member Louisville Human Relations Committee submitted to the board of aldermen on April 9, an ordinance outlawing racial discrimination in public business places. The ordinance provided for fines up to $100 for violations. After three convictions, the city could get an injunction against the violators which could lead to jail sentence for contempt of court. The ordinance was passed on May 16, to go into effect in mid-September. The new ordinance will include all remaining restaurants, barbershops, pool halls, and any other segregated public facilities. Public schools, parks, swimming pools, hotels, theaters, and 268 of 410 restaurants have been desegregated in the past 8 years, the restaurants 2 years ago after mass demonstrations and a Negro shopping boycott.

Louisiana

Baton Rouge.—May 28–June 4: City created a biracial committee, the first such group to be appointed in Louisiana (May 28). Committee met for first time May 31, following a march by 21 Negroes around the State capital (May 29), and a sit-in (May 30). Negroes agreed to a 30-day truce June 4.

New Orleans.—April 3: Louisiana State University—medical school cafeteria closed following a walkout by Negro employees after a Negro premed student was refused service.

April 26: State Attorney General Jack F. P. Gremillion declared there is no law in Louisiana which prohibits Negroes from occupying hotels or motels. But no hotels or motels accept Negro guests at the present time, with the exception of the airport hotel at New Orleans airport.

Shreveport.—June 1: Negro demonstration held.

Winnsboro.—May 30: Beaten by whites, a Negro teacher resigned his post.

Mississippi

Clarksdale.—May 4–June 22: State NAACP President Aaron Henry's drugstore was damaged by an explosion which ripped a hole in the roof; no one injured (May 4). A similar firebomb was tossed into Henry's home April 12 during a visit there by Negro Congressman Charles L. Diggs, Democrat of Michigan, Negroes threatened to broaden their boycott of downtown merchants May 26, unless biracial talks were held. Henry announced the launching of a series of spot picketing and demonstrations in the city (June 22).

Greenville.—May 25: City council voted unanimously to consider the possibility of forming a biracial commission.

Jackson.—May 27–June 24: After talks between 13 Negro leaders and Mayor Allen C. Thompson broke off, a series of demonstrations began May 28, resulting

in more than 600 arrests by June 6, when a State judge issued an injunction barring further demonstrations. Same day two Negro men integrated the municipal golf course, teeing off without incident. Local NAACP Leader Medgar W. Evers murdered June 12. Following his funeral services June 15, Negroes clashed with police in downtown area; Justice Department Attorney John Doar helped bring demonstration under control. Next day four young Negro women were admitted to a white Protestant church without incident. Mayor Thompson announced June 18 that city will hire six Negro policemen, Negro school-crossing guards, and seven Negro sanitation workers. A 42-year-old fertilizer salesman, Byron de la Beckwith, of Greenwood, was charged with the murder of Medgar Evers June 23. Jackson District Attorney William L. Waller said June 24 that he will seek the death penalty for Beckwith.

Lexington.—May 8: A Negro who attempted to register to vote reported that white men threw "Molotov cocktails" into his home about 3 a.m.; no one was injured.

McComb.—May 15: Injunction against CORE forbidding it to back sit-in demonstrations at local bus station struck down by Fifth Circuit Court of Appeals.

Winona.—June 9: Two Negro women and a 15-year-old girl beaten by police at the local jail after trying to use the white facilities at town's bus station. The women, who were released a few days later, have been active in voter registration work in Mississippi.

North Carolina

Asheville.—Mayor's biracial committee of 12 formed this spring. Five lunch counters and three drive-in restaurants desegregated in late June.

Charlotte.—April 19–May 30: Proprietors of segregated hotels, restaurants, and theaters warned of mass picketing unless they agreed to desegregate (April 19). Chamber of commerce urged immediate desegregation of all public facilities May 23, and eight major hotels and motels dropped all racial barriers 4 days later. A permanent biracial committee was formed by the mayor in May.

Chapel Hill.—May 24–25: Chamber of commerce issued statement opposing discrimination May 24. Two hundred and fifty Negroes demonstrated next day.

Concord.—June 7: Biracial committee appointed. Seven drugstores and nine restaurants desegregated.

Durham.—May 18–June 5: 1,400 were arrested during demonstrations May 18–20. Temporary truce agreed upon May 21, with the appointment of a biracial committee by the mayor. City council desegregated swimming pools May 30. Twelve motels and hotels, 55 restaurants desegregated June 4. Following day mayor's biracial committee announced that 31 retail businesses and several industrial concerns wound institute or continue practice of hiring and promoting without regard to race. Public accommodations ordinance currently being considered. Charges against some 1,400 students arrested were dropped.

Enfield.—May 30: Local theater picketed.

Edenton.—April 5: Three Negroes arrested for picketing a theater in March were acquitted.

Fayetteville.—May 14–June 19: Police dispersed mobs of Negroes and whites with tear gas May 14. Demonstrations lasting over a week began May 19, with some 1,500 persons participating in daily marches. Mayor's coordinating committee recommended immediate desegregation of restaurants and theaters May 27. Demonstrations resumed June 11, continued several days. Nine-man biracial committee appointed by mayor following week. Twelve motels and hotels desegregated June 19.

Goldsboro.—Four parades of demonstrators staged during week of May 30.

Greensboro.—May 10–June 23: Mass demonstrations began May 10, resulted in the arrest of some 440 persons by May 15; 420 arrested May 19 for sitting in at a Howard Johnson parking lot. Demonstrations continued through May 24, with approximately 1,500 arrested. Mayor appointed a 16-member Committee on Human Relations May 22 and 2 days later city's governing body unofficially endorsed an 11-point resolution urging integration of businesses. Truce arranged May 25, but demonstrations resumed June 2. Official end of truce came June 6, was marked by another demonstration in which 278 were arrested. S. & W. cafeteria desegregated during week ending June 22. Earlier four indoor theaters had tentatively agreed to desegregate.

Hickory.—June 6: Mayor formed a biracial Community Relations Council.

High Point.—May 28–30: Mass demonstrations began May 28, mayor's biracial (11-member) committee appointed 2 days later.

Lenior.—May 24: Mayor appointed five-member biracial committee.

Lexington.—June 3–6: Mayor Sink appointed biracial committee of 10 members. June 3, 15 or more Negroes requested and received service at drugstore lunch counter June 5; but they were turned away at theater and bowling alley. Demonstration by approximately 50 Negro students met by antidesegregation group of 500 whites; 1 person killed and 7 arrested June 6. The First Methodist Church recently admitted Negro worshipers.

Lumberton.—June 6: Mayor Hedgpeth appointed triracial committee of Indian, Negro, and white members.

Monroe.—Mayor's biracial committee of 12 members formed sometime in May.

Mount Airy.—May 30: 3 Negroes served in a drugstore.

Oxford.—June 16: Truce declared after previous demonstrations.

Raleigh.—April 4–June 5: Demonstrations began April 4, continued for over a month. By May 10 some 250 had been arrested. Following day 1,000 demonstrated; May 14, 750 marched, were mocked and cursed by about 200 whites, 347 were arrested, with 15 charged with assault and 1 for carrying a concealed weapon. A 15-member biracial committee was appointed by the mayor May 14, and the Raleigh Merchants Bureau adopted a resolution same day urging its 400 members to serve all persons. Demonstrations continued through June 3. Some 76 food and amusement concerns desegregated June 5.

Roxboro.—June 23: Mayor appointed a 20-member biracial committee.

Statesville.—June 9: Some restaurants and cafeterias voluntarily desegregated.

Thomasville.—May 10–June 1: Spontaneous sit-in by a group of teenage Negroes at a restaurant May 10 followed by planned demonstrations beginning May 24. Two days later Negroes called off demonstrations until June 1, but 300 demonstrated May 30. City-owned pools opened on an integrated basis June 1; no incidents.

Wadesboro.—June 5: Windows of two business establishments, including one restaurant which had recently desegregated, were shot out in a predawn shooting spree; no injuries.

Wilmington.—June 7: Some 75 high school students staged a protest demonstration at cafeterias and theaters; a biracial committee is studying the problem.

Winston-Salem.—May 21–June 5: About 25 students picketed theater May 21, and mayor appointed an 18-member biracial committee. Demonstrations continued through May 27. Fourteen of fifteen major restaurants, many smaller restaurants, and all hotels and motels desegregated June 5.

Oklahoma

Oklahoma City.—May 31–June 4: Following sit-ins May 31 and June 1, Bishop's, a local restaurant, agreed to desegregate, was joined June 3 by city's largest downtown cafeteria. Three city hotels desegregated June 2, were joined by one other and 20 suburban motels June 3. City council approved appointment of a 15-member Community Relations Commission June 4. Two days later the board of managers of the central YMCA recommended that Negroes be allowed to rent rooms at the downtown YMCA.

South Carolina

Charleston.—During the week of June 17–22, Kress, Woolworth and W. T. Grant department stores desegregated their facilities, 2 weeks after marches, sit-ins, stand-ins, and picketing. No official biracial committee has been formed as yet. Local groups have announced that pressure for additional desegregation will continue.

Columbia.—June 7: City council began meeting with Negro leaders.

Greenville.—On May 27 city officials met with Negro leaders, and on May 28, in less than 15 minutes, city council repealed segregation laws but passed a "trespass" city ordinance making it unlawful not to leave a business after being asked to do so by the owner. The new law does not mention race.

On June 3, 11: Lunch counters were voluntarily desegregated, 2 weeks after the Supreme Court made a Greenville case the key to a series of sit-in rulings by overturning the trespass convictions of 10 Negroes arrested at a lunch counter in 1960. Small groups of Negroes ate in the 11 places without incident.

Greenville is the second South Carolina city to desegregate lunch counters, Columbia having opened some lunch counters on a nonracial basis last August. The Greenville stores affected were: S. H. Kress, W. T. Grant, H. L. Green,

Walgreen Drugs, Eckerds Drugs, and Belk-Simpson; in shopping centers, the K-Mart discount store and a Woolworth and Walgreen store. Desegregation was effected by a committee of variety and drugstore, and restaurant operators.

Rock Hill.—June 1–16: Negroes demonstrated in front of drivein restaurant.

Spartanburg.—June 1: Unofficial meetings were held to consider desegregation. On June 5 most downtown lunch counters and restaurants desegregated and Negroes ate in several places without incident.

Sumter.—A suit to integrate the Carnegie Public Library (class action) was filed June 5 in U.S. district court by the three Negro plaintiffs.

Tennessee

Chattanooga.—June 7: Following a series of demonstrations by Negroes at four local restaurants and one theater, mayor appointed a biracial committee, and Negro leaders agreed to a truce.

Clarksville.—May 28–June 7: 300 Negroes sought service in a drive-in restaurant, were turned away (May 28). All public parks and pools desegregated June 7.

Knoxville.—May 9–28: Demonstrations began May 9, resulted in arrest of about 100 by May 11. Three hospitals agreed to desegregate May 19, and mayor appointed a biracial commission same day. Two thousand citizens signed a petition May 22, to desegregate all public facilities; petition sponsored by chamber of commerce. Four leading hotels and two motels voted to desegregate May 28.

Maryville.—June 24: A mountain training camp sponsored by CORE was found burned to the ground; no injuries reported. Camp had been raided by sheriff's deputies previous week; 28 whites and Negroes arrested.

Memphis.—May 1–June 10: Normad Corp. announced May 1, that it will build an integrated motel. All first-class hotels and motels desegregated May 20, followed by desegregation of all public recreational facilities May 30, except swimming pools (as a result of Supreme Court decision May 27). Voter registration drive began June 10. Has permanent biracial committee.

Nashville.—May 8–June 5: Following demonstrations May 8 and 9, a clash between Negro students and white hecklers May 10, another demonstration May 13 in which two persons were hospitalized, a permanent biracial metropolitan human relations council was appointed by the mayor May 16 "to recommend actions by the business community." City parks and wading pools opened to all on June 5. Earlier (May 13), seven motels and hotels, eight restaurants desegregated.

Texas

Dallas.—June 2: South's first integrated hospital opened here, will have completely integrated facilities including an open staff of Negro and white physicians. Following day insurance executive George L. Allen became the first Negro named to an important city hall appointive body, the city planning commission.

Denton.—April 6: 50 Negro and white students from North Texas State University, picketed in the downtown area, carrying banners calling for the integration of local theaters.

Houston.—June 10: All city pools and municipal facilities desegregated.

Virginia

Alexandria.—May–June: City council banned discrimination in all municipal public facilities May 27, and instituted a merit hiring and promotion program for all city employees regardless of race. Movie theaters and some bowling alleys quietly desegregated June 14.

Arlington.—April–June: County board established in Arlington County Human Relations Council in April. Arlington City Council eliminated all mention of race on job questionnaires June 3.

Charlottesville.—May 25–30: Sit-ins began at La Paree restaurant May 25, but the main target became Buddy's restaurant near the University of Virginia, with groups of about 50 Negroes and whites demonstrating through May 30, when a local Negro leader was beaten up by two white men and hospitalized. The "stand-ins" were temporarily called off as a result of this incident. City's first Negro policeman was appointed in the midst of the demonstrations in which five persons were arrested. Efforts are being made to form a biracial committee, but have been unsuccessful this far.

Danville.—May 31–June 22: 56 Negro youths started demonstrations to force hiring of a Negro policeman. Demonstrations continued through June 10, when 50 Negroes were arrested and a rally broken up by police using firehoses; about 45 persons were injured. City passed ordinance June 14 limiting number allowed to participate in demonstrations to 6; the following day 35 more Negroes were arrested. Ten leaders in the demonstrations, including three whites, were indicted by a special grand jury June 21 on a criminal charge of inciting to riot. Police seized three other leaders who had taken sanctuary in a local church June 22. Thus far, about 150 persons have been arrested. June 19, 29 demonstrators broke 3-day truce by marching downtown; all were arrested. Mayor Stinson announced 10 Negroes had been assigned to white schools. Motel operators met to discuss desegregation.

Farmville.—May 18: Small sit-ins staged, with no violence and no arrests.

Hampton.—April–May: A petition of 1,000 signatures was sent to mayor April 1 charging "racial discrimination" and police intimidation" after Hampton Institute students; 10 of whom were arrested, attempted sit-ins. An 11-member biracial council on community relations was formed May 18.

Lawrenceville.—May 29–30: Students quietly picketed downtown lunch counters.

Lynchburg.—May–June: Patterson's drugstore announced May 22, following prolonged sit-in demonstrations, that it would serve anyone. Following week 10 restaurants voluntarily desegregated. In early June, two movie theaters and two bowling alleys also voluntarily desegregated.

Martinsville.—June 7: Martinsville Henry County Christian Civic League called on local business leaders to voluntarily desegregate public facilities and employment, and requested city council appoint official biracial committee.

Norfolk-Portsmouth.—Late May: Major movie theaters agreed May 25 to lower all racial bars after private meetings between white businessmen and Negro leaders. Norfolk city council asked mayor to form a biracial committee May 28.

Petersburg.—April 25: Three Virginia State College students fined $25 and given 30-day suspended sentences for picketing.

Richmond.—May 28–June 18: Parker Field, local athletic stadium quietly admitted nine Negroes to previously all-white section. All downtown movie theaters announced June 15, that they will desegregate by July 10. Three days later 35 of city's better restaurants agreed to serve all customers without regard to race. Another 25 restaurants had previously desegregated.

STATE ACTION

Florida

During the 1960 demonstrations there, Governor Fowler appointed the Statewide Fowler Commission on Race Relations. The commission was not continued by Governor Bryant.

Kentucky

Commission on Human Rights established under a general assembly act of March 1960. Eleven members are appointed by the Governor. Governor Combs stated June 4 he would "ask the general assembly to pass a general civil rights acts."

North Carolina

June 18: Governor Sanford moved on several fronts to head off North Carolina's growing racial crisis. In a statewide radio and television address (June 18) the Governor spoke sympathetically of Negro "requests and aspirations." He also asked for a halt to Negro demonstrations "to help avoid strife, ill will, danger to life and property, and damage to our State."

He announced he had called Negro leaders to the Capital for a meeting on June 25, "to place before the public in an orderly manner their requests and aspirations." He appointed retired Maj. Gen. Capus M. Waynick, former commander of the North Carolina National Guard and experienced in negotiating racial conflicts, to represent his office in continuing negotiations with Negro leaders. Two immediate targets are sought by the Governor's negotiators: Statewide application of the "Durham plan"; daily progress reports to local Negro leaders by city officials.

Also under intense negotiation: Employing more Negroes in State jobs. In January of this year the Governor began naming of 24 prominent Negro and white citizens to the statewide North Carolina Good Neighbor Council.

Virginia

May 29: Governor Harrison rejected a proposal for a statewide biracial commission.

SUMMARY

Cities where some desegregation has occurred since April 3, 1963

Alabama: Birmingham, Gadsden, and Mobile.
Arkansas: Fayetteville, Little Rock, and Pine Bluff.
Florida: Miami.
Georgia: Atlanta, Brunswick, and Savannah.
Mississippi: Jackson.
North Carolina: Asheville, Charlotte, Concord, Durham, Fayetteville, Greensboro, Lexington, Mount Airy, Raleigh, Statesville, Thomasville, Wadesboro, and Winston Salem.
Oklahoma: Oklahoma City.
South Carolina: Charleston, Greenville, and Spartenburg.
Tennessee: Clarksville, Knoxville, Memphis, and Nashville.
Texas: Austin and Houston.
Virginia: Alexandria, Arlington, Falls Church, Lynchburg, Norfolk, Portsmouth, and Richmond.

Estimated number of arrests in 11 Southern States since April 3, 1963: 10,420. (The Southern Regional Council estimated the number of arrests during the February 1, 1960, through September 1, 1961, period of demonstrations in Southern and border States at 3,600.)

Number of fatalities related to demonstrations since April 3, 1963: 3.

Cities where some demonstrations have occurred since April 3, 1963

Alabama: Birmingham and Gadsden.
Arkansas: Hot Springs and Pine Bluff.
Florida: Cocoa, Daytona Beach, Gainesville, Lakeland, Miami Sarasota, Tallahassee, and Winter Haven.
Georgia: Albany, Atlanta, Augusta, Macon, Rome, and Savannah.
Louisiana: Baton Rouge and Shreveport.
Mississippi: Biloxi, Clarksdale, Greenwood, and Jackson.
North Carolina: Charlotte, Chapel Hill, Durham, Enfield, Fayetteville, Goldsboro, Greensboro, High Point, Lexington, Oxford, Raleigh, Thomasville, Wilmington, and Winston-Salem.
Oklahoma: Oklahoma City.
South Carolina: Charleston and Rock Hill.
Tennessee: Chattanooga, Clarksville, Knoxville, and Nashville.
Texas: Denton.
Virginia: Charlottesville, Danville, Farmville, Hampton, Lawrenceville, Lynchburg, and Petersburg.

ADDENDA

Florida: Lakeland, June 6: Movie theater picketing. Miami, June: Leading hotels desegregated (comparable to Miami Beach where they have been desegregated for some time).
Kentucky: Covington, Henderson, Hopkinsville, Lexington, Louisville, and Paducah. (Local commissions on civil rights sponsored in these cities by the statewide commission.)
Mississippi: Biloxi, June 23: Attempted wade-in. Greenwood, June 24: Six Negro girls attempted sit-in (the city's first) at a drugstore.
North Carolina: Sanford, June: Biracial committee formed.
Tennessee: Athens and Oak Ridge: (Both cities have official biracial commissions and have had no demonstrations.)
Texas: Austin, June 10: 38 restaurants (estimated 70 percent of total) desegregated.

Virginia: Arlington, June 17: 4 movie theaters desegregated. Danville, June 13: Moderate business leaders from chamber of commerce and retail merchants association outvoted Mayor Stinson and formed new biracial committee to replace collapsed white city council committee. On the same date Negroes picketed a local mill for the first time, and pickets subsequently applied for jobs. Falls Church, June 17: A movie theater desegregated. Front Royal, Harrisonburg, Waynesboro. (Mid-April—Howard Johnson's in these cities desegregated.) Newport News, June: A biracial committee in operation. Roanoke, June: A race relations subcommittee of the Citizens Committee for Greater Roanoke in operation. There have been no demonstrations. Woodstock, June: Has a biracial commission of eight.

STATEMENT OF HON. NEIL STAEBLER, U.S. REPRESENTATIVE FROM THE STATE OF MICHIGAN, ON THE PROPOSED CIVIL RIGHTS ACT OF 1963

Mr. Chairman and members of the subcommittee, I wish to express my appreciation for this opportunity to submit a statement in support of the proposed Civil Rights Act of 1963.

My firm support for the President's program is indicated by my cosponsorship of Chairman Celler's bill. I want to concentrate in my remarks here on the vital and highly controversial public accommodations section. It is contended by some that this would constitute a denial of the rights of private property.

When one enters into open dealing with the public, however, he opens himself to regulation in the public interest; zoning laws are an example of this. Three-fifths of our States, including my State of Michigan, already have laws requiring nondiscrimination in public accommodations, yet those who fear for the rights of private property seem to be little bothered by these State laws. It should also be pointed out that under this law the owner of a business would be able to exercise his private property rights in the exclusion of disorderly or otherwise objectionable persons, but simply not on the illogical basis of skin color. Finally, it is a longstanding tenet of British common law that no keeper of a public accommodation may refuse any bona fide customer. This is an historic inheritance from the Nation which gave us our legal framework and our regard for individual liberties.

Michigan has had on the books for 60 years a law requiring full and equal accommodations in hotels, motels, restaurants, and all other places of public accommodation and recreation without regard to race, religion, or national origin. While I am aware that it may not be possible to generalize from the case of Michigan, our favorable experience may be of interest in connection with the legislation under consideration. Ours is not, of course, a perfect law; nor is it a final answer to the problem of discrimination, but it has been an effective first step. In the first place, there have been relatively few complaints filed; secondly, most cases have been settled by conciliation, not litigation. Such conciliation would be the function of the Community Relations Service established by the bill. The Michigan law has not hurt our booming tourist trade; has operated peacefully and without fanfare; and has generally been met with cooperation on the part of the owners of the public accommodations. If our experience is any indication, title II of the Civil Rights Act of 1963 would be a useful and valuable article of legislation.

Mr. Chairman, I believe the time has come for this body to declare with President Kennedy that "race has no place in American life or law." I strongly urge the rapid passage of this legislation.

EXCERPT FROM AN INTRODUCTION OF A PAMPHLET ENTITLED, "THE CIVIL RIGHTS CASES," DISTRIBUTED BY THE VIRGINIA COMMISSION ON CONSTITUTIONAL GOVERNMENT

(Submitted by Hon. William M. Tuck, a U.S. Representative from the State of Virginia)

Precisely these same 14 amendment arguments and justifications were presented to the Supreme Court in 1883 in support of the Civil Rights Act of 1875. They persuaded only Mr. Justice Harlan. They persuaded no one else on the Court. So far as the equal protection clause is concerned (the Court did not

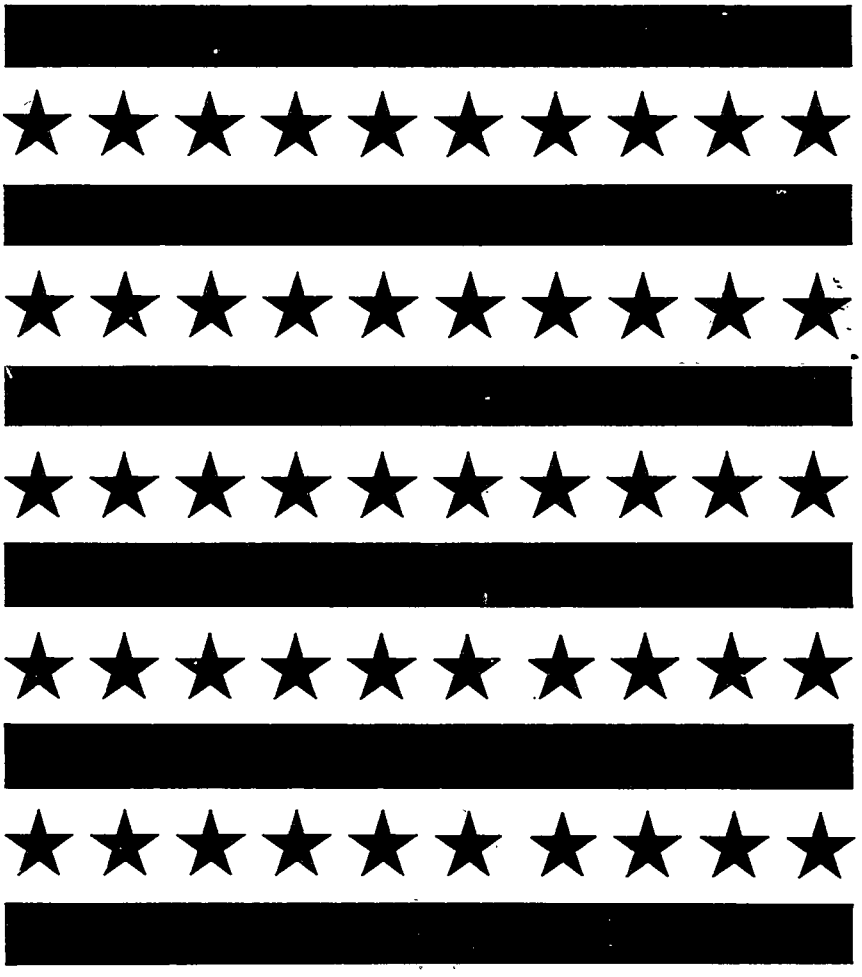
reach the commerce clause), the Court's opinion in the *Civil Rights* cases bears directly on Mr. Kennedy's pending bill.

It might be observed that the eight Justices who united in the opinion were a great deal closer to the 14th amendment than our jurists of today. There was a time when the intention of the framers and ratifiers was regarded as the very polestar of constitutional construction. These eight Justices, all of them mature men when the 14th was declared adopted in 1866, knew full well the intention of that engraftment upon the Constitution. Their contemporary construction on this question of "public accommodations" is entitled to great weight.

It is of passing interest also to note who these justices were. Plainly they had no southern bias. Bradley, who wrote the opinion was 70 years old in 1883, a native of New York, a Rutgers graduate, an ardent Unionist who publicly had denounced secession as treason. Samuel Blatchford, 63, also was a New Yorker, a Columbia graduate, formerly private secretary and later law partner of William H. Seward. The colorful Stephen J. Field, 66, a native of Connecticut, had been appointed from California. Horace Gray, 55, was a Bostonian, a Harvard graduate, a renowned scholar and jurist who had served many years on the Supreme Judicial Court of Massachusetts. Stanley Matthews, 59, was a native of Cincinnati, formerly the editor of an abolitionist newspaper, who had served as a colonel of Ohio Infantry in the Union Army. William Burnham Woods, 59, also an Ohioan, served as a Union officer at Shiloh, in the siege of Vicksburg, and in Sherman's march to the sea. Samuel F. Miller, 67, started out to be a doctor in Kentucky, practiced medicine for 12 years, took up the law, and moved to Iowa where his emancipationist views were more acceptable. Chief Justice Morrison R. Waite, 66, was a native of Connecticut, a Yale graduate, a stanch Unionist who settled in Toledo and identified himself prominently with the northern cause.

These were the justices who united in the opinion from which excerpts follow. In the view of the Virginia Commission on Constitutional Government, they correctly expounded the true meaning of the 14th amendment: The equal protection clause emphatically does not relate to the private conduct of private individuals in their private places of business. Nor should it be imagined that in directing public attention to this opinion of 1883, we are merely exhuming the dusty bones of long-forgotten law. The opinion was reaffirmed as recently as 1959 in *Williams* v. *Howard Johnson Restaurants*, 268 F. 2d 845, and still more recently, by the U.S. Supreme Court, in the 1961 case of *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715. This is the controlling law.

One further word: This commission is not concerned with questions of race relations as such. We are concerned with constitutional questions solely. Our view, strongly held, is that in a free society, great care should be taken to secure the individual's freedom. The owner of a neighborhood drugstore, or dress shop, or soda fountain, as we see it, has a right to choose his customers as he sees fit. Call this a property right, or a right of privacy, or a right of free association: It too is a civil right, and even when it may be exercised wrongly, as some believe, it is entitled to the full protection of our law.



CIVIL RIGHTS AND LEGAL WRONGS

A critical commentary upon the President's pending "Civil Rights" Bill of 1963, prepared and distributed by the Virginia Commission on Constitutional Government. ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★

CIVIL RIGHTS AND LEGAL WRONGS

From the moment the President's omnibus Civil Rights Bill was introduced in June, the entire resources of the Federal Government have been thrown behind its support. As a consequence, many Americans have heard only a case *for* the bill.

This commentary is an attempt to present the other side.

VIRGINIA COMMISSION ON CONSTITUTIONAL GOVERNMENT
Travelers Building, Richmond, Virginia

CIVIL RIGHTS AND LEGAL WRONGS

The logic is said to go something like this: All decent Americans should support good things. All decent Americans should oppose bad things. Racial discrimination is a bad thing. Bills to prohibit racial discrimination are good things. The President's pending Civil Rights Bill is intended to prohibit racial discrimination. Therefore, his bill is a good thing, and all decent Americans should support it.

If this were all there were to it—if the problem were as simple as A plus B, and therefore C—nothing could be gained by further discussion of the President's proposal. All decent Americans would be of one mind.

But the problems that have produced this bill are not easy problems, and the bill is not a simple bill. One of the great distinctions of the American system is that we try always to distinguish between the means and the end—between the goal itself, and the way in which a goal is reached. Such careful distinctions need to be made in this case.

We believe this bill is a very bad bill. In our view, the means here proposed are the wrong means. The weapons the President would contrive against race prejudice are the wrong weapons. In the name of achieving certain "rights" for one group of citizens, this bill would impose some fateful compulsions on another group of citizens. The bill may be well-intentioned—we question no man's motivation in supporting it—but good intentions are not enough. In this area, we need good law. And the President's bill, in our view, is plain bad law.

That is perhaps the least that could be said of it. In our judgment, this bill violates the Constitution in half a dozen different ways:

It would tend to destroy the States' control of their own voting requirements.

It would stretch the Commerce Clause beyond recognition.

It wrongly would invoke the 14th Amendment.

It would undermine the most precious rights of property.

It would raise grave questions of a citizen's right to jury trial.

The bill would open new doors to the forces of government regimentation.

And in the end, because of the violence that would be done to fundamental law, Americans of every race would suffer equal harm.

The emotionalism of this turbulent summer is largely responsible for the serious attention now given the bill and for the eminent voices raised in its behalf. In a calmer climate, the bill's defects would be readily apparent. But this is not a calm time; it is a passionate time, and dispassionate thought comes hard. What is here proposed, in this brief pamphlet, is simply that we sit down and reason together. Those of us who strongly oppose the bill believe our position is sound. We should like to explain this position to you.

THE BILL ITSELF

Mr. Kennedy's omnibus Civil Rights Bill of 1963 (S. 1731) is divided into seven major titles. Briefly:

- Title I relates to "voting rights." It would place elaborate new controls upon the States' constitutional authority to fix the qualifications of voters.

- Title II relates to "public accommodations." It would compel the owner of almost every business establishment in the United States to serve all persons regardless of race.

- Title III, relating to the "desegregation of public education," would vest sweeping new powers in the U. S. Commissioner of Education and the Attorney General to deal with "racial imbalance" in schools throughout the country.

- Title IV would set up a new Federal agency, the "Community Relations Service."

- Title V would continue the Commission on Civil Rights until 1967, and endow it with broad new authority.

- Title VI amends all statutes providing financial assistance by the United States by grant, contract, loans, insurance,

guaranty, or otherwise. It would permit such assistance to be suspended upon a finding of racial or religious discrimination.

- Title VII authorizes the President to create a "Commission on Equal Employment Opportunity," possessed of "such powers as may be conferred upon it by the President" to prevent discrimination under contracts in programs or activities receiving direct or indirect financial assistance from the United States government.

This is what the bill is all about. At first glance, perhaps, many persons may see nothing wrong in the several proposals. In this emotional hour, one is tempted to leap from a sincere conviction that discrimination is wrong, to a false conclusion that a Federal law is the proper way to prevent it. We do not believe the intensely personal problems of racial feeling can be solved by any Federal law; the roots go deeper than Congress can reach. In any event, we believe that whatever might be gained by this particular Federal law, if anything, the positive harm that would be done to constitutional government would far outweigh the hypothetical good.

TITLE I—VOTING RIGHTS

In the United States, beyond all question, the right to vote is just that—a *right* to vote. For most Americans, probably the ancient right of property ranks first in their daily lives; it is the oldest right of all. But as political beings, they view the right to vote as basic. As the President has said, it is ultimately the right on which the security of all other rights depends.

A moment's reflection, however, reminds us that the right to vote is not an absolute right. Children cannot vote. Lunatics cannot vote. Certain convicts cannot vote. Beyond these obvious limitations, it is evident that persons in Virginia cannot vote for a Senator from New York. Residents of Albany cannot vote for the City Council of Schenectady. And the man who moves to Manhattan on a Monday cannot vote for the Mayor on Tuesday. These are elementary considerations, of course, but it does no harm to spell them out.

Why is all this so? It is because the right to vote, though it is described in the 15th Amendment as a right accruing to "citizens of

the United States," is in its exercise a right accruing to citizens of the several separate States. It never should be forgotten that whenever we vote, we vote as citizens of our States. We never vote nationally. We are always, at the polls, Virginians, New Yorkers, Texans, Missourians. As voters, we are never "Americans." The idea is hard to get accustomed to; but it is so. The Constitution makes it so.

Three provisions of the Constitution merit attention. First, the 15th Amendment. It is very short:

> The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State *on account of race, color, or previous condition of servitude.* [Emphasis added].
>
> The Congress shall have power to enforce this article by appropriate legislation.

The briefest perusal of Mr. Kennedy's pending Civil Rights Bill will disclose that some of its most important provisions are not related to the denial or abridgment of the right to vote "on account of race, color, or previous condition of servitude." The 15th Amendment is not relied upon at all. If the bill were based clearly upon the Fifteenth, the position of the Virginia Commission would be wholly different. We might object that a bill along these lines were unwise, or unwarranted; but we would not oppose it as unconstitutional. No. In its provisions relating to a standard literacy test, and in other provisions, the administration's bill has nothing to do with State deprivals in the area of "race, color, or previous condition of servitude." *This bill applies to all citizens, everywhere.*

Therefore, other provisions of the Constitution come into play. The first of these provisions appears in the second paragraph of Article I. It tells us who shall be qualified to vote in what often are termed Federal elections—that is, who shall be qualified to vote for members of the Congress. It reads:

> The House of Representatives shall be composed of members chosen every second year *by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.* [Emphasis supplied].

The final provision of the Constitution of concern to us here is to be found in Article I, Section 4. It reads:

> The *times, places,* and *manner* of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof: But the Congress may at any time by law make or alter *such regulations,* except as to the places of choosing Senators. [Emphasis supplied].

Now, keeping these provisions in mind for the moment, consider what is proposed in Title I of Mr. Kennedy's omnibus bill. We find some astounding things.

First, and this is merely by way of example, we may note that the power of the States to impose a poll tax (for good or ill) has not yet been repealed. A constitutional amendment to achieve that end is actively pending. At the time the President's bill was introduced, 36 States—but not the necessary 38 States—had agreed to a constitutional amendment to prohibit such taxes. As this is written, poll taxes are as lawful, as constitutional, as any other tax. But the President's bill simply ignores the process of formal constitutional amendment. It is as if the pending constitutional amendment did not exist. The bill proposes by simple statute to declare that "No person acting under color of law shall . . . deny the right of any individual to vote in any Federal election because of an omission of such individual relating to payment of poll tax." The Virginia Commission takes no position, one way or another, on the merits of a poll tax. Obviously, with the votes of only two States to go, the levy is about to be abolished. Very well, we would say; let it go. The point is that the machinery already is fully in motion for abolition of this tax by proper constitutional process, but the Administration is unwilling to wait upon such machinery. It is filled with impatience. It cannot pause. So the President's bill undertakes to accomplish by simple congressional enactment what the Congress has decreed may be accomplished only by constitutional amendment.

This comparatively minor provision, of potential application to five States only, is cited by way of example, to suggest the zeal for hurried change that underlies this title of the bill. Title I goes on to lay down rules for the use of literacy tests, not as such tests may affect persons of "race, color, or previous condition of servitude," but as they may affect *every* person. Here the bill leaves the 15th Amendment altogether, and trespasses upon the other constitutional pro-

visions quoted. The bill would prohibit the use by any State of a literacy test unless such tests met Federal requirements—unless the tests were "wholly in writing" and unless a copy of such test were furnished the individual registrant "within 25 days of the submission of his written request." Beyond this, the bill would provide that State literacy tests were of no consequence anyhow: Any person who had completed the sixth grade in a public school or an accredited private school would arbitrarily be deemed to possess "sufficient literacy, comprehension, and intelligence to vote in any Federal election."

We take no position here on the merits of these proposals as such. They are as may be. Our contention is that such proposals plainly deal with the qualifications of electors in the several States. These proposals have nothing whatever to do with the "times, places, and manner of holding elections." In our view, they are simply beyond the authority of the Congress to enact. They plainly encroach upon the power of each State to fix "qualifications requisite for electors of the most numerous branch of the State legislature."

The President's bill continues with a provision aimed at certain of the Southern States, in which—in a scattering of counties—fewer than 15 percent of the adult Negroes have registered to vote. The Virginia Commission would make its own position clear: We have no patience with conspiracies or chicanery or acts of intimidation intended to deny genuinely qualified Negroes the right to vote. We have no patience with acts of bland partisanship that may give the vote to certain white persons and prohibit the vote to Negroes of equal stature. Wherever such acts have occurred, they are to be emphatically condemned. We do say this: There is abundant law on the books—there was abundant law on the books even prior to enactment of the Civil Rights Acts of 1957 and 1960—to prohibit and to punish such willful acts by local registrars. All that is required is that the existing laws be enforced. If the Congress somehow is persuaded that still further law is required to enforce the 15th Amendment, the Virginia Commission will raise no constitutional objection. In the area of "race, color, or previous condition of servitude," the Amendment plainly vests in Congress the power to adopt appropriate legislation.

We come back to the larger point. The key provisions of Title I, as a whole, have nothing to do with "race, color, or previous condition of servitude." These provisions assert, on the part of the

Congress, some power to fix general qualifications for voters throughout the United States. If this principle be accepted, as to literacy tests and the rest, it must follow that the Congress may fix a uniform age for voters, a uniform period of residence in State or city or precinct, and in every other fashion control the qualifications of electors. For sound reasons, the Constitution deliberately left the fixing of such qualifications in the control of each separate sovereign State. When the President's bill attempts to ride roughshod over this plain provision of the supreme law of the land, the President's bill violates the Constitution. And we object.

The person who takes the time and trouble to read the remaining provisions of Title I will find many other areas of grave concern to those who believe in adhering to the Constitution. Only in the interests of a decent brevity do we pass over them here, in order to get to the even more outrageous provisions of—

TITLE II. PUBLIC ACCOMMODATIONS

Perhaps the most obvious wrongness of Title II may be summed up in a phrase: This section is conceived in hypocrisy, and cannot rise above its shabby origins.

Title II opens with a long recital of "findings." In these opening paragraphs, the Congress purportedly "finds" all sorts of burdens upon interstate commerce, all resulting from acts of racial discrimination. It is of passing interest to inquire how the Congress has found these things, for the Administration's witnesses have provided no convincing evidence to point them out. Possibly we are to rely on faith alone. In any event, the Congress here "finds" that a substantial number of Negroes, traveling in interstate commerce, are denied convenient access to hotels, motels, and eating accommodations; that practices of audience discrimination in the entertainment industry create "serious and substantial" burdens upon interstate commerce; that fraternal, religious, and scientific conventions "frequently" are dissuaded from meeting in particular cities by reason of discriminatory practices; that business organizations "frequently" are hampered in setting up branch plants by reason of discrimination; and finally, that—

(h) The discriminatory practices described above are in *all*

> cases encouraged, fostered, or tolerated in some degree by the governmental authorities of the States in which they occur, *which license or protect the businesses involved by means of laws and ordinances and the activities of their executive and judicial officers.* [Emphasis supplied].

This is the strange and ominous foundation on which Title II is made to rest. Read it, we beg you. Ponder it! Reflect, if you please, upon this assertion of some Federal authority over any business that may be "licensed" by State authority. Reflect, if you please, upon the vagueness of these "activities" of a State's executive and judicial officers. Because the very next sentence of this "finding" ties it all together:

> Such discriminatory practices, particularly when their cumulative effect throughout the Nation it considered, *take on the character of action by the States and therefore* fall within the ambit of the equal protection clause of the 14th Amendment to the Constitution of the United States.

The object of this smooth leaping and hurdling is apparent to the most casual student of the Constitution. Obviously, the 14th Amendment does not prohibit acts of private discrimination in ordinary daily life. The Supreme Court of the United States repeatedly has said so. In an unbroken chain of opinions reaching back to 1883, the Court has ruled that the amendment prohibits only those acts of discrimination that may be charged to the States themselves in such areas as voting rights, jury service, and access to public institutions. The amendment says that "no State" shall deny equal protection. What individuals do is their own business. But suppose—as this bill proposes—that individual acts "take on the character of State acts"? In this event, the smallest retail establishment, the humblest soda fountain, "takes on the character" of the State itself. In effect, it becomes an agency of the State. Its acts are State acts. Its denials are State denials. And in this fateful moment, the ancient distinctions between private property and public agencies fly out the window. Under the precedent here proposed, private property, as such, in this regard will have ceased to exist.

This is the very crux of Title II of the President's bill. These easy "findings" do not affect the South alone. They affect every State, every locality, every businessman. In this mad confusion of

the Commerce Clause and the 14th Amendment, nothing makes sense. The alleged acts of racial discrimination by private business establishments simultaneously are found to be burdens upon interstate commerce and denials of equal protection by the States themselves.

The final finding reflects this confusion:

> (i) The burdens on and obstructions to commerce which are described above can best be removed by invoking the powers of Congress under the 14th Amendment and the commerce clause of the Constitution of the United States to prohibit discrimination based on race, color, religion, or national origin in certain public establishments.

We invite the thoughtful reader to go back and read that paragraph once again. Ostensibly, the bill is here concerned with "burdens on and obstructions to" commerce. The power of the Congress in this area derives from Article I, Section 8, vesting in Congress the power "to regulate commerce among the several States." But the object of this bill is not really to regulate commerce. The object of the bill, in its own revealing words, is "to prohibit discrimination." The Commerce Clause is here being deceptively adapted not to commerce, but to social reform.

The substantive provisions of the President's bill then are set forth:

> Sec. 202. (a) All persons shall be entitled, without discrimination or segregation on account of race, color, religion, or national origin, to the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of the following public establishments:

And the bill sets them forth. We put them line by line, the better to emphasize the sweep of this bill. The law, by its own terms, is to apply to:

> Every hotel,
>
> Every motel,
>
> Every other public place engaged in furnishing lodging to transient guests, including guests from other States or

traveling in interstate commerce;

Every motion picture house,

Every theater,

Every sports arena,

Every stadium,

Every exhibition hall,

Every other public place of amusement or entertainment which customarily presents motion pictures, performing groups, athletic teams, exhibitions, or other sources of entertainment which move in interstate commerce; and

Every retail shop,

Every department store,

Every market,

Every drugstore,

Every gasoline station, and

Every other public place which keeps goods for sale;

Every restaurant,

Every lunchroom,

Every lunch counter,

Every soda fountain, and

Every other public place engaged in selling food for consumption on the premises; and

Every other establishment where goods, services, facilities, privileges, advantages, or accommodations are held out to the public for sale, use, rent, or hire . . .

Then follows the superficial saving grace of "if." The provisions of Section 202 are to apply to such establishments "if"

(1) The goods, services, facilities, privileges, advantages, or accommodations offered by any such place or establishment are provided to a substantial degree to interstate travelers, or

(2) a substantial portion of any goods held out to the public by any such place or establishment for sale, use, rent, or hire has moved in interstate commerce . . . .

There are two other such provisions, but it is needless to quote them. The second proviso impales the smallest hotdog stand upon the transportation of its mustard. There is not a neighborhood soda fountain in American, not a dress shop, not a hat shop, not a beauty parlor, not a single place or establishment beyond the tiniest roadside stand of which it may be said that a substantial portion of its goods, held out for sale or use, has not moved in interstate commerce.

We would urge thoughtful Americans, wherever they may live, whatever their views may be on questions of race relations, to ponder the twisted construction here placed upon the Commerce Clause. When the Congress first began to regulate "commerce among the several States," the object was to regulate the carriers in which the goods were hauled. In time, a second area of regulation developed, as the nature of the goods themselves came into the congressional power. Then a third area developed, as Congress sought to regulate the conditions under which the goods themselves were manufactured.

In this bill, a fourth area is opened up. It is as wide as the world. Here the Congress proposes to impose a *requirement to serve*. Heretofore, such a requirement has been imposed solely in the area of public service corporations—the telephone companies, electric power companies, gas and water companies—the companies that operate as regulated public utilities. Now the restricted class of public service corporations is to be swept aside. Here Clancy's Grill and Mrs. Murphy's Hat Shoppe are equated with AT&T. The neighborhood drug store is treated as the gas company: *It must serve*. Within the realm of Section 202, the owner has no option, no right of choice. Yes, he may reject drunks, rowdies, deadbeats. But his right to discriminate by reason of race or religion—or any other related personal reason—is denied him under the pain of Federal injunction and the threat of prison sentence for contempt of court.

At this point in our argument the Virginia Commission would beg the closest attention: We do not propose to defend racial discrimination. We do defend, with all the power at our command, the citizen's right to discriminate. However shocking the proposition may sound at first impression, we submit that under one name or another, this is what the Constitution, in part at least, is all about. This right is vital to the American system. If this be destroyed, the whole basis of individual liberty is destroyed. The American system does not rest upon some "right to be right," as some legislative majority

may define what is "right." It rests solidly upon the individual's right to be wrong—upon his right in his personal life to be capricious, arbitrary, prejudiced, biased, opinionated, unreasonable—upon his right to act as a free man in a free society.

We plead your indulgence. Whether this right be called the right of free choice, or the right of free association, or the right to be let alone, or the right of a free market place, this right is essential. Its spirit permeates the Constitution. Its exercise colors our entire life. When a man buys union-made products, for that reason alone, as opposed to non-union products, he discriminates. When a Virginian buys cigarettes made in Virginia, for that reason alone, as opposed to cigarettes made in Kentucky or North Carolina, he discriminates. When a housewife buys a nationally advertised lipstick, for that reason alone, as opposed to an unknown brand, she discriminates. When her husband buys an American automobile, for that reason alone, as opposed to a European automobile, he discriminates. *Every one of these acts of "discrimination" imposes some burden upon interstate commerce.*

The examples could be endlessly multiplied. Every reader of this discussion will think up his own examples from the oranges of Florida to the potatoes of Idaho. And the right to discriminate obviously does not end with questions of commerce. The man who blindly votes a straight Democratic ticket, or a straight Republican ticket, is engaged in discrimination. He is not concerned with the color of an opponent's skin; he is concerned with the color of his party. Merit has nothing to do with it. The man who habitually buys the *Times* instead of the *Herald Tribune*, or *Life* instead of *Look*, or listens to Mr. Bernstein instead of to Mr. Presley, is engaged in discrimination. Without pausing to chop logic, he is bringing to bear the accumulated experience—the prejudice, if you please—of a lifetime. Some non-union goods may be better than some union goods; some Democrats may be better than some Republicans; some issues of *Look* may be better than some issues of *Life*. None of this matters. In a free society, these choices—these acts of prejudice, or discrimination, or arbitrary judgment—universally have been regarded as a man's right to make on his own.

The vice of Mr. Kennedy's Title II is that it tends to destroy this concept by creating a pattern for Federal intervention. For the first time, outside the fully accepted area of public utilities, this bill undertakes to lay down a compulsion to sell.

We raise the point: If there can constitutionally be a compulsion to sell, why cannot there be, with equal justification, a compulsion to buy? In theory, the bill is concerned with "burdens on and obstructions to" commerce. In theory, the owner of the neighborhood restaurant imposes an intolerable burden upon interstate commerce if he refuses to serve a white or Negro customer, as the case may be. But let us suppose that by obeying some injunction to serve a Negro patron, the proprietor of Clancy's Grill thereby loses the trade of ten white patrons. In the South, such a consequence is entirely likely; it has been demonstrated in the case of Southern movie houses. Can it be said that the refusal of the ten whites imposes no burden on interstate commerce? Plainly, these ten intransigent customers, under the theory of this bill, have imposed ten times as great a burden on commerce among the several States. Shall they, then, be compelled to return to Clancy's for their meals? Where does this line of reasoning lead us?

How would all this be enforced? Under Title II, the Attorney General would be required to investigate complaints of denial of service. Persistent acts of discrimination would be prohibited by Federal injunctions, obtained in the name of the United States. Any person who attempted to interfere with Clancy's decision would be subject to individual injunction. And at the end of every such proceeding lies the threat of fine or imprisonment for contempt of court. *There would be no jury trials.*

This has been a very abbreviated summary of the "public accommodations" features of the President's bill. A definitive analysis could be much extended. Not only is the Commerce Clause distorted beyond recognition, the provisions of the Fourteenth Amendment also are warped to cover individual action as opposed to State action. Our hypothetical Clancy could not call upon the police to eject an unwanted customer, trespassing upon his booths and tables. Reliance upon local police to enforce old laws of trespass, under this bill, would be regarded as an exercise of "State action." Clancy has become the State. Like Louis of old, he too may say, "L'état, c'est moi."

TITLE III—DESEGREGATION OF PUBLIC EDUCATION

Title III of the President's bill goes far beyond all decisions of the Supreme Court in the field of school desegregation, for it im-

plicitly couples the formal desegregation of public schools in the South with the elimination of "racial imbalance" in schools throughout the land. The bill proposes to achieve these aims by vesting broad new powers in the Commissioner of Education and the Attorney General. Even private schools, if their pupils received tuition grants from a governmental source, would be brought into line.

The opening provisions of Title III authorize the Commissioner, upon application from local school officials, to engage in a wide variety of programs of advice, technical assistance, grants, loans, contracts, and training institutes. The Commissioner would control the amounts, terms, and conditions of such grants. They would be paid on the terms he prescribed. He alone would fix all "rules and regulations" for carrying out these programs to promote desegregation and to relieve "racial imbalance."

Presumably, the authority of Congress to promote this busywork for the Commissioner is to be found in the fifth section of the 14th Amendment. This is the section that empowers Congress to adopt "appropriate legislation" in support of the Equal Protection Clause. If the Equal Protection Clause truly were intended to prohibit a State from maintaining racially separate public schools, such legislation perhaps would be "appropriate." The history of public education in the United States, in the years immediately following the purported ratification of the 14th Amendment in 1868, utterly denies any such intention. To this day, no law of the United States requires desegregation. These programs of the Commissioner of Education are cart before horse; they are the sort of programs that would implement a law if there were a law; but there is no law. There is the Supreme Court's opinion of 1954 in *Brown* v. *Board of Education*, and there are other high court opinions emanating from it, but impressive and historic as these decisions may be, they are still no more than judgments binding named defendants in particular lawsuits.

It should be emphasized, again, that these decisions have nothing to do with "racial imbalance" in public schools. They are limited to judgments requiring that the States shall not deny to any person on account of race the right to attend any school it maintains. The shifting of students from school to school in order to "remove racial imbalance," with or without Federal aid and regulation, is not within the ambit of the desegregation decisions. Under this gross distortion of the 14th Amendment, school children throughout the country would become pawns in a game of power politics.

It seems to us desirable to keep this distinction in mind, between laws enacted by the Congress, and judgments imposed by the court. The Constitution is the supreme law of the land, but when the court acts in a suit arising under the Constitution it acts judicially, not legislatively. If local school boards throughout the South are to be prohibited *by law* from maintaining separate school systems, a law must be passed "pursuant to the Constitution" to impose such a prohibition. Until then, any such grants and loans and training programs as these would appear premature. And we would take the position, in the light of the history of the 14th Amendment, that such a law would not be "pursuant to the Constitution." It would violate the plain intention both of those who framed the amendment and also of the States that ratified it. Such legislation would not be "appropriate" legislation.

Meanwhile, we do not intend to be captious or legalistic. The *Brown* decision has been treated as if it were indeed legislation. For good or ill, the desegregation of public schools proceeds. These particular provisions of Title III are better subject to criticism simply as manifestations of the bureaucratic Federal sprawl.

More serious, in our view, are the provisions of Title III that would vest elaborate new powers in the Attorney General. The effect of these provisions would be to throw the entire massive weight of the Department of Justice, with its unlimited resources, into the scales of almost any parent in search of a free lawsuit. The basic complaint would be that some local school board "had failed to achieve desegregation." But as we have tried to point out, in the overwhelming majority of school districts in the South, there is now no legal requirement that local school boards even attempt to achieve desegregation. Before there can be a failure of a duty, there must first be a duty. These provisions of the bill simply assume the duty, and leap to its failure.

Our apprehension is that the awesome power here proposed, for a proliferation of suits "in the name of the United States," would create more turmoil than it would settle. The "orderly progress of desegregation in public education" would not be enhanced, but impaired, as resentments were stirred up that otherwise might be peacefully resolved. And we cannot see the end to the bureaucracy that could be required to prosecute suits "in the name of the United States," once this precedent were set in the single area of school desegregation.

TITLE IV—ESTABLISHMENT OF COMMUNITY RELATIONS SERVICE

This title would create a new Federal agency, the "Community Relations Service," headed by a director at $20,000 a year. Presumably, it would fulfill some functions not now fulfilled by the Civil Rights Commission, the President's Fair Employment Practices Committee, the established churches and various civic bodies, the countless racial commissions around the country, and the civil rights division of the Department of Justice. The duties of this Service would be "to provide assistance to communities *and persons therein* in resolving disputes, disagreements, or difficulties relating to discriminatory practices." [Emphasis supplied].

We are not inclined to haggle over the amount of time, energy and money that might be wasted by one more Federal agency in the civil rights field. We do call attention to the italicized language. In our own view, it simply is not the function of Congress, under any provisions of the United States Constitution, to dispatch Federal agents to countless communities in order to resolve racial disagreements among "persons therein."

TITLE V—COMMISSION ON CIVIL RIGHTS

The Virginia Commission on Constitutional Government expresses neither opposition to nor support of Title V of the President's bill. This portion of the bill would extend the life of the Commission on Civil Rights to November 30, 1967, and would lay down certain standardized rules for its further hearings and investigations.

In our own view, the Commission on Civil Rights has contributed little or nothing toward the unraveling of the knotty tangles of race relations in the United States. Its recommendations in the spring of 1963, proposing the withdrawal of grants, loans, and even contracts from Southern States that did not meet its own notions of right conduct, amounted to an outrageous proposal for denial of the very equal protections it professes to support. We perceive no useful achievements of this Commission, but we raise no constitutional objections to its continuance.

TITLE VI—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Title VI of the President's bill is not long. It had perhaps best be quoted in full:

> Sec. 601. Notwithstanding any provisions to the contrary in any law of the United States providing or authorizing direct or indirect financial assistance for or in connection with any program or activity by way of grant, contract, loan, insurance, guaranty, or otherwise, no such law shall be interpreted as requiring that such financial assistance shall be furnished in circumstances under which individuals participating in or benefitting from the program or activity are discriminated against on the ground of race, color, religion, or national origin or are denied participation or benefits therein on the ground of race, color, religion, or national origin. All contracts made in connection with any such program or activity shall contain *such conditions as the President may prescribe* for the purpose of assuring that there shall be no discrimination in employment by any contractor or subcontractor on the ground of race, color, religion, or national origin. [Emphasis supplied].

The thinly veiled intimidation of Title VI goes back to a statement made by Attorney General Robert Kennedy in London in October of 1962. At that time, he speculated publicly that a threat to withdraw Federal subsidies, grants, loans, and contracts might be used as a club over the Southern States. Mr. Kennedy was quick to point out that such a threat would have to be used with great delicacy. He seemed unsure of its desirability. He did not defend its constitutionality. He was just thinking aloud.

In April of 1963, the Civil Rights Commission evidenced no such finesse. The Commission recommended flatly to the President that he seek power to suspend or cancel either all, or selected parts of, the Federal financial aid that now flows to such States as Mississippi, "until [such States] comply with the Constitution and laws of the United States." It was unclear precisely how a judicial determination would be reached that entire States had failed to comply with the Constitution and laws of the United States, but this small question of due process apparently troubled the Commission not at all.

The question troubled Mr. Kennedy. In his press conference of April 17, the President blinked at this startling proposal and turned away from it:

> I don't have the power to cut off aid in a general way as was proposed by the Civil Rights Commission, and I would think it would probably be unwise to give the President of the United States that kind of power because it could start in one State and for one reason or another might be moved to another State which has not measured up as the President would like to see it measure up in one way or another.

It is a fair question to ask what happened. What happened between April 17, when the President voiced these comments at his press conference, and June 19, when his majority leader introduced his Civil Rights Bill? How did a power that was "probably unwise" in April become a power that was "essential" in June? The obvious answer is that the interim was marked by widespread racial demonstrations. But it is not pleasant to conclude that the President of the United States may be coerced, intimidated, or black jacked into changing his mind so swiftly on a legislative proposal of fateful importance. What happened?

We earnestly submit that the punitive terms of Title VI of this bill threaten gross violation of every principle of due process of law. No provision whatever is made for determining when individuals "participating in or benefitting from" various programs are "discriminated against." The two sentences of this Title define no terms. They propose no judicial inquiry. They leave hundreds of millions of dollars in "Federal funds," paid for by all of the people—black, white, Liberal, Conservative—at the uncontrolled discretion of the President or someone else who may determine this "discrimination."

These programs include aid to dependent children, aid to the blind, aid to the permanently disabled. They include funds for vocational education, hospital construction, public housing, the insurance of bank deposits. Federal personnel would be authorized to supervise loans by banks and building and loan associations, farm financing of all kinds, government subsidies, conservation programs, small business loans and contracts in any activity affected by government loans, insurance, guaranties, or grants. If a Federal agency made an administrative finding that discrimination exists, Federal support

could be withdrawn and the institution or program wrecked.

To permit a President—any President—to suspend such programs on his own unchecked conclusion that certain beneficiaries are "discriminated against" would violate the whole spirit of uniformity that pervades the Constitution. The supreme law of our land provides that "direct taxes shall be apportioned among the several States according to their respective numbers." Duties, imposts and excises "shall be uniform throughout the United States." There must be a "uniform rule of naturalization" and "uniform laws on the subject of bankruptcies." Many other provisions attest this same concept of equal treatment among the States.

Only by a fantastic distortion of the congressional power under the 14th and 15th Amendments could this Title VI be justified. Its effect would be to penalize the many for the occasional unlawful conduct of the few. Its potential application would jeopardize the very lives and well-being of thousands of innocent and law-abiding persons, including veterans, blind persons, and disabled persons, in order to bludgeon a handful of State officials into line with a President's desires.

It seems to us sufficient merely to quote the language of this tyrannical Title of the President's bill. The language speaks most eloquently for itself.

TITLE VII—COMMISSION ON EQUAL EMPLOYMENT OPPORTUNITY

This final substantive section of the bill authorizes the President to establish a "Commission on Equal Employment Opportunity." This permanent agency of the government would be headed by the Vice President; the Secretary of Labor would serve as vice chairman. There would be up to 15 members in all. An executive vice chairman would run the operation. The Commission would be empowered to employ "such other personnel as may be necessary." The bill defines the commission's duties:

> It shall be the function of the Commission to prevent discrimination against employees or applicants for employment because of race, color, religion, or national origin by Government contractors and sub contractors, and by contractors and sub contractors participating in programs or activities in which

> direct or indirect financial assistance by the United States Government is provided by way of grant, contract, loan, insurance, guaranty, *or otherwise.* The Commission shall have *such powers to effectuate the purposes of this title as may be conferred upon it by the President.* The President may also confer upon the Commission *such powers as he deems appropriate* to prevent discrimination on the ground of race, color, religion, or national origin in Government employment. [Emphasis supplied].

Again, it seems to us necessary merely to quote the provisions of the bill in order to make their autocratic nature evident to every thoughtful observer. The power here proposed to be conferred upon the President is virtually unlimited. No legislative limitations of any sort are suggested. The President may confer upon the Commission "such powers as he deems appropriate." And whether these include the power to impose criminal sanctions, or to seek civil injunctions, or to abrogate contracts awarded under sealed bid, no man can say. The Commission's powers would be whatever the President regarded as appropriate; and the definition of "government employment" is as wide as the Federal budget itself. The administration's bill proposes, in effect, that the Congress abdicate, and turn its legislative powers over to the White House. The powers here demanded are not the powers rightfully to be exercised by a President in a free country. These are the powers of a despot.

* * *

There is a final Title VIII in the bill, authorizing the appropriation of "such sums as are necessary to carry out the provisions of this Act." What these sums might amount to, again, no man can say.

This is the package Mr. Kennedy has asked of the Congress. He has asked it in an emotional hour, under the pressures of demonstrators who have taken violently to the streets, torch in hand.

We of the Virginia Commission ask your quiet consideration of the bill. And we ask you to communicate your wishes to the members of the Congress who represent you in the House and Senate.

Richmond,
August, 1963.

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JAMES J. KILPATRICK, *Vice Chairman,* Richmond, Va.
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Q.—(From May Craig, the Portland Press Herald) Mr. President, do you think that Mrs. Murphy should have to take into her home a lodger whom she does not want, regardless of her reason, or would you accept a change in the civil rights bill to except small boarding houses like Mrs. Murphy?

A.—The question would be, it seems to me, Mrs. Craig, whether Mrs. Murphy had a substantial impact on interstate commerce. [Laughter]. Thank you.

—The Press Conference,
July 17, 1963.

STATEMENT OF HON. WILLIAM B. WIDNALL, A U.S. REPRESENTATIVE FROM THE STATE OF NEW JERSEY, ON H.R. 7152 AND OTHER CIVIL RIGHTS BILLS

Mr. Chairman, members of the committee, I appreciate the opportunity to put my views on record in support of civil rights legislation. In the past few months, indeed, in the past 100 years, actions have spoken louder and more eloquently than any words of mine to tell you why we need additional legislative safeguards. I would only point out that in discussing civil rights legislation and its scope, that we are not granting rights to minorities, nor are we giving someone a new right at the expense of another's old right. We are seeking to guarantee rights which have always been in existence, morally speaking, and legally speaking since the adoption of the Constitution and the 14th amendment, but these rights have not been exercised out of unawareness, inability, or fear. That is our problem, and I would like to comment on possible ways to solve it.

You have before you in essence, two possible avenues, commonly known as the interstate commerce approach and the 14th amendment approach. One is embodied in H.R. 7152, the other in bills submitted by a number of my colleagues and myself, my own being H.R. 6743. Neither is perfect and both can borrow and learn from the other. For example, H.R. 6743 and its companions would allow the Attorney General to institute civil actions upon a complaint. This authority has been circumscribed in H.R. 7152 to limit it to cases where the individual cannot obtain legal protection on his own behalf either because of lack of finances or other outside support, or because of fear of physical or economic reprisal. I think this is a more adequate approach.

The fundamental question, however, is the enforcement of these provisions. It is true that the psychological affect of the mere passage of a strong civil rights measure will work throughout the country to open doors now closed to minorities on racial or religious grounds. It is also true, however, that the number of cases to be undertaken under this section will have to be selected, both by the interested civil rights groups, and the Justice Department, according to enforcement needs. The number of personnel available as well as the costs involved simply make it impossible to enforce the law through the courts as broadly as some may wish. Legal action and the passage of laws are only some of the tools required to gain equality of treatment. More basic are education, understanding, patience, and good will on both sides.

I raise this point of implementation of the law, whatever may be passed, because it is a pivotal point in my thinking on which approach should be used. The commerce clause approach will rely on the discretion of the Justice Department and civil rights advocates and the courts as to what is "substantial," in terms of interstate traffic, and commerce. This is a case-by-case approach, time consuming and open to charges of abuse. It is also an open invitation to set some sort of dollar limit in the act, when what we are seeking is to persuade any establishment of any size, serving the public, to treat their customers fairly. A vague criteria such as this is also unfair to the businessmen themselves, and may contribute to misunderstanding and disappointment even among the minority.

On the other hand, the 14th amendment approach deals with businesses "authorized by a State or political subdivision of a State." The courts will be called upon to determine what is an "authorization" under the act. In this case, however, the groundwork has already been prepared by recent Supreme Court decisions in the field of State action under the 14th amendment, notwithstanding the 1883 decision striking down portions of the Civil Rights Act of 1875.

Rather than a case-by-case approach, the courts will be able to establish certain categories of State and local authorization within the meaning of the law, thus making further litigation in these categories unnecessary and unwarranted.

The use of the 14th amendment approach also permits the development of a clearer legislative history than the use of vague phrases such as "substantial degree to interstate travelers" found in the administration bill.

I would suggest that the committee could confine the word "authorized" to action by a State or political subdivision that permits a business to operate either legally or economically. A nondiscretionary act, like the enrollment of a business on the tax rolls, might be determined to be an insufficient authorization.

The case of hotels, motels, and restaurants, lodges and the like is a separate one, for me. Every law student is taught that English common law provided for nonidscriminatory treatment by owners of inns and lodges, and the extension to modern hotel and motel terminology is no radical move. There are some people who seem to think that the move for public accommodation nondiscrimination

clauses in legislative directives is also a new thing, generated by an unruly minority that doesn't know its place and fostered by a Federal court system that does not have the best interest of the country at heart.

This does a great injustice not only to those who are seeking equal treatment today, but to the men of the Congress of nearly a hundred years ago. Much of what is in the civil rights legislation now under discussion, whether you base it on the 14th amendment or the commerce clause, is found in the Civil Rights Act of 1875. We can learn from the past as well as the present.

With respect to H.R. 7152, I would suggest a closer examination of the provision designed to cut off funds where discrimination exists in federally assisted programs. The provision leaves the discretion to the Executive—it is not the mandatory provision that minority groups have been seeking. How this discretion would be exercised, therefore, is an important factor. Will the President exercise it between different programs, or between projects and awards within each program? It is possible to write criteria for this discretionary act into the bill? Should Congress itself make the discretionary choice between programs either in this bill or as the programs come up on the floor of the House? Or would it be possible to build in a check on Executive action, similar to the 60-day veto period by Congress of a Presidential reorganization order? These questions must be answered before I, at least, could make a favorable determination for a discretionary provision.

Finally, I would urge the committee to report a comprehensive bill but again caution those whose hopes might turn into disillusionment if too much is staked on the mere passage of legislation. I have in mind the fact that the President's order on discrimination on housing, issued in November of last year, had no committee as called for to carry it out until May of 1963. A pamphlet for informational purposes directed to the minority groups involved is only now being put together. The problem of dealing with federally financed housing approved before the order has not been solved. I cite this as an example of the distance that must be traveled between the spoken word and its implementation. Congress has a responsibility to see that, no matter what the political coloring or the personnel of the administration in command, a speedy, consistent, and continuous implementation of legislation designed to secure the equal rights of all Americans will be guaranteed.

SUPPLEMENTARY STATEMENT BY THE WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM, U.S. SECTION, CONCERNING CIVIL RIGHTS

The Women's International League for Peace and Freedom, U.S. section presented testimony before this committee in May, indicating its strong and unmitigated support for civil rights legislation then under consideration. With the introduction of new legislation by the administration the league would like to supplement its previous statement with information pertinent to the administration bill.

The league wishes to reiterate, first of all, that it stands firmly in support of this legislation. However, there are at least three areas in which we feel it might be strengthened. The first of these is under title II. Our organization thinks that this section must and should be supported on moral grounds alone. However, we realize that members of this committee must, as attorneys, be motivated by a consideration for the legal basis and authority for such a law. Therefore, we would like to point out that title II can be served by both the commerce clause and the 14th amendment. There is direct precedent for combining these as the constitutional underpinning for the President's civil rights program. The Holding Company Act and the Security Exchange Act were both based on the commerce and postal powers of the Constitution. In addition, a Federal statute requiring equality of treatment without regard to race, color, religion, or national origin is a means of preventing unconstitutional State action and assuring to everyone equal legal protection. In considering title II, the league recommends:

(1) That the operating section be written not in terms of the commerce clause but rather covering everything open to the public.

(2) That if exceptions are necessary they be predicated on the right of privacy not on size.

(3) That a dollar unit not be used as a basis for the public accommodations covered by the bill.

The league does not feel it necessary to review for this committee the continuing injustices in the area of school desegregation. It seems clear to us that provision of civil injunctive powers for the Attorney General is a minimal step. We would suggest strengthening title III by:

(1) Requiring that school districts begin compliance with the Supreme Court's decision immediately.

(2) Authorization for the Attorney General to bring suits whether or not the complainants are to institute legal proceedings.

(3) A provision authorizing the Attorney General to bring suits in all situations where persons are denied their constitutional rights because of race, religion, or national origin.

With regard to the Commission on Equal Employment Opportunity, the league would like to suggest that definite regulatory powers be vested in the Commission for redress of grievances based on job discrimination. We would like to recommend that the powers suggested in the various Fair Employment Practices Commission legislation now under consideration be used as criteria for determining the necessary enforcement and regulatory powers. We hope that the recent request by the Leadership Conference on Civil Rights for such consideration will be given the committee's full attention.

The league, in conclusion, supports the bill, while seeking simultaneously to equip it with few more teeth. It is not perfect nor a panacea, yet we deem it an important and comprehensive measure in the struggle for justice and enlightenment.

STATEMENT OF HON. JOHN W. WYDLER, U.S. REPRESENTATIVE FROM THE STATE OF NEW YORK

The following statement relates to my bill, H.R. 3148, and is submitted for consideration during the current hearings:

The struggle of man for freedom is both a foreign and domestic problem for the United States. Abroad we are fighting the Communists so that men around the world might enjoy freedom. At home we are struggling with our neighbors to maintain a dual society.

Many of our citizens who would be willing to fight a war and to die to see a man be fully free in South Vietnam or Cuba would face violence rather than allow a Negro his full freedom at home.

It is a matter of conscience. We have already seen the day pass when new legislation makes a significant difference. Not the law, but lack of intention is at fault here.

Nevertheless, as a lawmaker I must try to make use of the tools at my disposal. I have sponsored the civil rights bill, H.R. 3148, and state that each section is self-evidently justified. It will do for my neighbor what I would have him do for me. It should be passed not because it will solve the problem but because it will help. It is a small step, but it is in the right direction.

We have been witness to a lot of meaningless and childish statements concerning civil rights lately * * * both pro and con. What we need is mature reflection not only on the questions of integration and equality, but on man's dignity, our neighbor's and our own.

COMMUNICATIONS RECEIVED FOR THE RECORD

NATIONAL ASSOCIATION OF SOCIAL WORKERS, INC.,
NORTHEASTERN NEW YORK CHAPTER,
Schenectady, N.Y., August 9, 1963.

Hon. EMANUEL CELLER,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN CELLER: The Northeastern New York Chapter of the National Association of Social Workers wishes to join with thousands of other responsible Americans in adding its support to the Civil Rights Act of 1963 (S. 1731 and H.R. 7152) and strongly urges its passage. The chapter especially urges that the public accommodations title be retained and that the proposed legislation not be watered down in any way.

As members of the social work profession, the 200 members of the northeastern New York chapter believe that full opportunity for education, vocational training and employment, for equal access to public facilities and for the right to vote and hold office must be fully insured for Negroes as for other citizens. We call upon the Federal Government to be more active in insuring the civil rights of all Americans and not to settle for too low goals and minor achievements.

We sincerely hope that this vital legislation will be passed by Congress.

Sincerely,

JAMES J. CALLAHAN, JR., *Chapter Chairman.*

NEW YORK YEARLY MEETING
OF THE RELIGIOUS SOCIETY OF FRIENDS,
New York, N.Y., August 1, 1963.

Congressman EMANUEL CELLER,
House Office Building, Washington, D.C.

DEAR CONGRESSMAN CELLER: New York Yearly Meeting of the Religious Society of Friends, comprising Friends in New York, New Jersey, Connecticut, and Vermont, meeting at Silver Bay, N.Y., July 26 to August 2, 1963, supports the President's second civil rights message to Congress.

In the belief that there is that of God in every man, we prayerfully urge adoption of laws that will provide the legal foundations for nondiscrimination in the fields of voting rights, school desegregation, public accommodations, housing, and fair employment.

Being aware that even the best legislation in civil rights is not enough, we want to assure you that we will extend every effort to help our Government in bringing forth the necessary moral climate by working on these matters in our communities.

Signed on behalf of the Yearly Meeting,

GEORGE B. CORWIN, *Clerk.*

DORSETT MARINE,
Cambridge, Md., June 12, 1963.

Congressman CHARLES S. GUBSER,
House Office Building, Washington, D.C.

DEAR CONGRESSMAN GUBSER: I want to write you about civil responsibilities and what is happening here in Cambridge.

Arriving at the Cambridge plant Tuesday morning, I found our accountant late to work. He explained, saying that his car was stoned Monday night as he pulled up to a stoplight in town on his way home. One brick broke the front

windshield, several others dented the right side of his car, and one came clear through the open right front window, smashing the left rear window with considerable force. This brick would have killed or seriously injured anyone in the right front seat and narrowly missed our employee.

When he reported this to the local police, they replied that he was the fifth to report this occurrence. One of the five had been pulled from his car and severely beaten, requiring hospitalization. The police said they could do nothing to stop or arrest the group of six to eight men causing the disturbance. The reason was that they were Negro and the police could not keep the Negroes in jail. Also, at that time there was a disturbance by the Negroes in jail requiring the attention of the complete force. Plumbing was being wrecked and bedding thrown from the jail windows.

On Tuesday night I saw on TV the hundreds of just federalized State militia march onto the campus of the University of Alabama to enforce the order of the Federal court there. I saw the emotional appeal of the President urging Federal legislation on civil rights with respect to the Negro, practically inciting mobs in the streets unless Congress acts. I also saw on TV the raw threat of Rev. George Lawrence to engage in massive civil disobedience if the civil rights bills are delayed in Congress this summer.

Later, on Tuesday night, in spite of increased support of Maryland State police in Cambridge, violence again flared. A Negro march to protest jailing a Negro girl was staged in the center of town and witnessed by a crowd of whites. At the end of the demonstration the crowds dwindled, but later three businesses (owned by whites) in the colored section of town were burned, three white men were wounded by gunfire, Negroes stoned firemen attempting to put out the fires, causing minor injury, while the local and State police did not or could not protect them.

As political leaders of our Nation, you have the responsibility and duty to help our people return to sanity by your careful consideration of this entire racial issue. I should call it the "Negro" issue and the intimidation, threats, and lawlessness resulting from the Negro issue.

What is happening right now in Cambridge is not an isolated instance, as you can see by reading the paper. In California, Negro groups are demanding (and getting) from the State special privileges to end de facto segregation in schools, and a State fair housing act is under consideration giving Negroes special privilege in buying or renting. Riots in the South, threats in the Capitol, incipient violence in the major cities of the North, particularly with large Negro populace—Chicago, Detroit, New York. A year ago in Oakland, Calif., a cab driver was brutally beaten in a Negro section by Negroes while Negro citizens standing by made no effort to halt the attackers. And so on.

It is incredible to me that the events of the last 2 days are actually happening here and that the Federal Government, led by the President, is, in essence, inciting mob rule. It does not take much imagination to realize what might happen in Washington, D.C., in the next few months on the civil rights bill. Nor can you ignore what a President of lesser scruples a few years from now might do with massive Federal power to impose his will under the emotions of the moment.

Sir, this country is great and became great because its citizens obeyed the laws of God and man and they worked hard. Call it the Puritan ethic, or the Christian culture, it aided Americans in times of stress where dangers to our personal and national existence were greater and more real—and more easily understood, perhaps than today.

Today 90 percent of Americans, who are white, are sympathetic to the Negroes' situation, because Americans are traditionally for the underdog. But the Negroes should not gain an advantage because of race. Laws should not discriminate against whites because of race. Nor should public money be used to aid in special privilege or immunity against due process of law because of race.

It is time to stand up and be counted to halt this trend of events. Most Americans are perplexed because our Government is acting so un-American. Why are we supporting a race which, in fact, accounts for 10 times the rate of illegitimate children than the whites, and 5 to 10 times the crime? If we are to treat them as a racial group in law, let's admit that as a group they make a secondary contribution to society and get them in position to make a greater contribution. As it is, welfare and relief costs which are now skyrocketing are being paid out predominantly to Negroes—a fact which is easy to check in Washington, D.C., Cook County, Ill., Alameda County, Calif., and throughout the country.

Let's talk equal responsibility with equal rights.

In the immediate issue of the civil rights bill, as a Member of our Congress, you are confronted with a direct appeal by the President to bypass normal legislative procedure and adopt his bill or expect riots in the streets. (This is not my interpretation but that of the Negroes and whites of this and other communities to the President's remarks, as exemplified by their actions.) This is an incredible action by a President sworn to uphold the Constitution and due process. Results of an ill-considered, special Federal measure could be catastrophic, as you can see by extrapolating events of the last few weeks and months.

Congress should not allow itself to be intimidated, threatened, or coerced into action. But what other interpretation can be put on the President's remarks? If there is any doubt in your mind as to what may happen in the Capitol, please read the Reverend Lawrence's threats in the morning papers and remember what happened here in Cambridge.

As a person, you and I know that the Negro problem is an individual social and economic problem. It can be solved by cooperation at the local level among individuals. It cannot be solved by legislative process, particularly at Federal level.

You cannot legislate ambition and desire in a Negro teenager. You cannot legislate respect for laws of God and man. You cannot help the individual Negro to achieve his goals with a special set of laws outside the existing working structure of the economy and society.

The Negro wants a job. Opportunity for training must be given him and encouraged at a local level. A careful analysis would show that many are "unemployable" and do not have skills or attitudes to get and keep a job. Minimum wages should be reduced, allowing more employment for unskilled workers. Labor unions should be encouraged to open their ranks to qualified Negroes and to analyze the effect of wage demands on unskilled unemployment of whites as well as Negroes.

The Negro wants better schooling. He should have access to training with his hands and brains. Not everyone can go to college, or should. Before 1865, the Negro was the artisan and skilled craftsman of the South. Today we need more plumbers, carpenters, metalworkers, machinists, and repairmen.

The Negro wants better housing. How can the Negro hope to escape his self-styled ghetto unless he learns to live as an individual with full responsibility for his appearance and actions, regardless of color. The problem is social and cutlural as well as economic. But to escape his ghetto he must respect law and order and meet his responsibilities, as well as does his neighbor.

The Negro wants understanding. The Negro is a special race, without the culture and pride of the white, or oriental. He can only derive pride from his own accomplishment as an individual, however small. He can be helped by person-to-person contact with mutual respect in the towns, counties, and States. Transition to full understanding for the Negro will not be easy or fast in coming nor helped by Presidential speeches, Federal law, or local rioting. Full understanding was not easy for the Chinese and Japanese or other immigrants, including our first settlers.

The Negro wants to be white. This is understandable when you consider that for years Negroes counted heads by eating them. Oceanic and African Negroes have enslaved, tortured, ravaged, stolen and warred on each other for centuries. It does not follow that Negro groups and sympathizers should now ascribe all their problems to whites.

I urge you to strongly oppose action on a Federal civil rights bill and speak out on the issue for moderation and local solution to problems. It is time for a loyal and loud opposition to the current administration trend to irresponsibility in race relations, as well as finance and foreign affairs. After much consideration, I am convinced that current racial policies can only lead to more mob rule, and further centralization of power in Federal hands, with breakdown of local law enforcement without really helping the individual Negro. At a time when we need unity most in confrontation with the Communist bloc, we shall be in turmoil of our own misunderstanding.

The genius of our American life is that it is not perfect, but will always aspire to be—that we have 180 million responsible decisionmakers spread throughout the land in freedom under law. In our culture each of us can make a place for his brothers, white or Negro, without coercion of Federal fiat, in accordance with the merit of the individual. This is God's way and the American way. Please speak out on the subject, now.

Yours very truly,

R. W. DORST, *President.*

STATE OF ALASKA,
OFFICE OF THE GOVERNOR,
Juneau, August 2, 1963.

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
House Office Building, Washington, D.C.

DEAR CHAIRMAN CELLER: It has been brought to my attention by Representative Ralph J. Rivers of Alaska that the House Judiciary Committee now is holding hearings on various civil rights proposals.

This letter is written therefore to record my wholehearted agreement with the legislation advanced by President Kennedy both as to its underlying philosophy and as to the procedural machinery proposed to accomplish its purposes.

It is my firm belief race should not give rise to distinctions between individuals. The executive and legislative arms of government have delayed for too long in taking positive action to give the force of governmental authority to this fundamental precept of our way of life. The courts have ruled decisively for equal protection of the laws and the equality of opportunity this entails. The judiciary, however, cannot lead the fight. Leadership must come from the executive and legislative branches of government. I am heartened that this administration and so many Members of Congress have indicated a willingness to assume this much-needed leadership.

I particularly favor granting the Attorney General authority to bring civil suits to enforce the provisions requiring equal treatment of groups now the subject of discrimination. The financial burden presently borne by Negroes in the South, where mass arrests are made, indicates that when a State's governmental machinery is geared to prevent equality of treatment, to ask private litigants to bear the entire responsibility of overcoming that policy is to place too great a burden on the individual. The availability of Government lawyers to handle the enormous burden of litigation resulting from protest movements should go a long way to make these efforts more effective.

Alaska has had a public accommodation law for a number of years. While the measure became law in 1949, it is only recently that legal actions have been instituted under it. This is due in part, I believe, to the unusually good record Alaska has in the area of civil rights. One case prosecuted under the act was settled out of court with the understanding that the discriminatory practice would cease. Another case resulted in jury acquittal.

In my opinion the true effectiveness of the law cannot be measured in terms of successful prosecutions. The fact that the State through its duly elected legislature and Governor takes a firm stand against discrimination has a substantial effect on others who look to their elected leaders for moral leadership I firmly believe that the State's equal accommodation law has a substantial effect in discouraging discrimination which might exist without that law. Similar benefits would accrue on a national scale from favorable consideration by the Congress.

I am sending you a copy of chapter 49, SLA 1962, which amended the earlier act to require equal treatment in providing housing accommodations. This is a far-reaching act. I am also sending you a copy of chapter 15, SLA 1963, which created a human rights commission. The commission and an executive director have now been appointed, and will have the full support of this administration in carrying out its duties.

Thank you for the opportunity to make my views known on this important legislation. You may use the contents of this letter as you see fit.

Sincerely,

WILLIAM A. EGAN, *Governor.*

LAWS OF ALASKA, 1962

CHAPTER 49

AN ACT Providing that all persons are entitled to the free and equal enjoyment of accommodations, amusements, conveyances, and other business establishments; amending Secs. 20–1–3 and 20–1–4, ACLA 1949, as amended by Ch. 21, SLA 1949; and providing for an effective date

Be it enacted by the Legislature of the State of Alaska:

SECTION 1. Sec. 20–1–3, ACLA 1949, is amended to read:

"SEC. 20–1–3. Persons Entitled to Full and Equal Accommodations, Facilities, and Privileges. All persons within the jurisdiction of the State of Alaska shall be entitled to the full and equal enjoyment of accommodations, advantages,

facilities, and privileges of public inns, restaurants, eating houses, hotels, motels, soda fountains, soft drink parlors, taverns, roadhouses, trailer parks, resorts, camp grounds, barber shops, beauty parlors, bathrooms, resthouses, theaters, swimming pools, skating rinks, golf courses, cafes, ice cream parlors, transportation companies, and all conveyances, housing accommodations, and all other public amusement and business establishments, subject only to the conditions and limitations established by law and applicable alike to all persons; and any denial of the use of the foregoing facilities by reason of race, creed, or color of the applicant therefore shall be a violation of this section. Public amusement and business establishments within the meaning of this section shall include any establishment which caters or offers its services or goods to the general public, including but not limited to public housing and all forms of publicly assisted housing, and any housing accommodation offered for sale, rent, or lease."

SEC. 2. Sec. 20-1-4, ACLA 1949, as amended by Ch. 21, SLA 1949, is amended to read:

"SEC. 20-1-4. Violation as Misdemeanor: Punishment. Any person who shall violate or aid or incite a violation of said full and equal enjoyment, or any person who shall display any printed or written sign indicating a discrimination on racial grounds of said full and equal enjoyment shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in jail for not more than 30 days, or fined not more than $500, or both."

SEC. 3. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

Approved April 3, 1962.

LAWS OF ALASKA, 1963

CHAPTER 15

AN ACT Relating to the creation of a Commission for Human Rights

Be it enacted by the Legislature of the State of Alaska:

SECTION 1. AS 18 is amended by adding a new chapter to read:

"CHAPTER 80. STATE COMMISSION FOR HUMAN RIGHTS

"Article 1. Creation and Organization of Commission

"SEC. 18.80.010. Creation.—There is created in the office of the Governor a State commission for human rights.

"SEC. 18.80.020. Composition and Appointment. The commission consists of five commissioners, appointed by the governor for staggered terms of 5 years, and confirmed by the legislature.

"SEC. 18.80.030. Chairman of Commission.—The commission shall elect one of its members as chairman.

"SEC. 18.80.040. Commission Meetings.—The commission shall hold a regular annual meeting and shall hold special meetings as necessitated by section 120 of this chapter.

"SEC. 18.80.050. Regulations.—The commission shall adopt procedural and substantive regulations necessary to implement this chapter.

"SEC. 18.80.060. Executive Director.—The commission shall appoint an executive director approved by the governor, and may hire other administrative staff as may be necessary to the commission's function. The commission may delegate to the executive director all powers and duties given it by this chapter except the duties given it in secs. 120 and 130 of this chapter.

"SEC. 18.80.070. Compensation.—The members of the commission are authorized per diem and travel allowances allowable to members of other boards and commissions.

"Article 2. Commission Investigation and Hearing

"SEC. 18.80.100. Complaint.—A person who believes he is aggrieved by any discriminatory conduct prohibited by AS 11.60.230, AS 11.60.240, AS 23.10,155, AS 23.10,190, or AS 23.10.255 may sign and file with the commission a written, verified complaint stating the name and address of the person alleged to have engaged in discriminatory conduct, and the particulars of the discrimination. The executive director may file a complaint in like manner when an alleged discrimination comes to his attention.

"SEC. 18.80.110. Investigation and Conciliation.—The executive director or a member of the commission's staff designated by the executive director shall informally investigate the matters set out in a filed complaint, promptly and impartially. If the investigator determines that the allegations are supported by substantial evidence, he shall immediately try to eliminate the discrimination complained of by conference, conciliation, and persuasion.

"SEC. 18.20.120. Hearing.—If the informal efforts to eliminate the alleged discrimination are unsuccessful, the executive director shall inform the commission of the failure, and the commission shall serve written notice requiring the person charged in the complaint to answer the allegations of the complaint at a hearing before the commission. The case in support of the complaint shall be presented before the commission by the executive director. The person charged in the complaint may file a written answer to the complaint and may appear at the hearing in person or otherwise, with or without counsel, and submit testimony. The executive director has the power reasonably and fairly to amend the complaint, and the person charged has the power reasonably and fairly to amend his answer. The commission shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The testimony taken at the hearing shall be under oath and be transcribed.

"SEC. 18.80.130. Order.—At the completion of the hearing, if the commission finds that a person against whom a complaint was filed has engaged in the discriminatory conduct alleged in the complaint, it shall order him to refrain from engaging in the discriminatory conduct. The order shall include findings of fact, and may prescribe conditions on the accused's future conduct which the commission determines are relevant to the cessation of the discrimination. A copy of the order shall be delivered in all cases to the attorney general of Alaska.

"SEC. 18.80.140. Effect of Compliance with Order.—Immediate and continuing compliance with all the terms of a commission order is a bar to criminal prosecution for the particular instances of discriminatory conduct described in the accusation filed before the commission.

"Article 3. Commission Reports and Publications

"SEC. 18.80.150. Report to the Legislature.—The commission shall, at the beginning of each legislative session, report to the legislature on civil rights problems it has encountered in the preceding year, and may recommend legislative action. The commission shall file the report with the governor of Alaska and the Alaska Legislative Council by December 31 of each year. The Alaska Legislative Council shall prepare a copy of the report for each member of the legislature.

"SEC. 18.80.160. Informative Publications.—The commission may prepare and distribute pamphlets and press releases to inform the public of its constitutional and statutory civil rights. The commission shall submit proposed publications to the Department of Law for a review of legal accuracy."

Approved March 19, 1963.

PHILADELPHIA, PA., *August 26, 1963.*

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
Washington, D.C.

DEAR MR. CELLER: I enclose a letter in which a favorable view of the constitutionality of legislation such as the public accommodations provisions of the current civil rights bill is expressed. That letter is joined in by the law school professors and law school deans whose names appear at the foot thereof. Obviously, it was not feasible to circulate the letter all over the country for manual signature. I have the concurrence of each man whose name is included and I assure you of my authority to identify him with the letter.

You will note that the name of the law school of each subscriber is set opposite his name. This is simply for identification. Each subscriber speaks for himself as an individual; he does not speak for his institution, nor for his faculty colleagues. It is anticipated that there will be additional subscribers, whose names will be furnished you in due time, as well as some individual letters from law school people.

Sincerely,

JEFFERSON B. FORDHAM.

Enclosure.

PHILADELPHIA, PA.,
August 26, 1963.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
Washington, D.C.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Washington, D.C.

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
Washington, D.C.

GENTLEMEN: The legislative proposals for congressional action prohibiting segregation or discrimination, by reason of race, color, religion, or national origin, in places of public accommodations, now pending before the Senate and House of Representatives, have given rise to debate concerning the source of congressional power to enact such legislation.

It is our opinion, as teachers of constitutional or public law, that Congress has the authority to enact a comprehensive law securing equality of treatment without regard to race, color, creed, or national origin in business establishments dealing with the public. Since segregation or discrimination in such establishments usually obstructs or distorts the movement of people or goods in interstate commerce, such laws as the National Labor Relations Act, the Fair Labor Standards Act, and the Agricultural Adjustment Act of 1938, as amended, and the decisions upholding them, furnish ample precedents for sustaining an equal public accommodations law under the power to regulate interstate commerce. The Supreme Court has also frequently upheld the use of the commerce clause to promote policies based not merely upon public health or commercial welfare but moral principles. In this connection it should be remembered that the triviality of the effect of an activity upon interstate commerce, when judged by itself, is not enough to remove it from the scope of Federal regulation where its impact, taken together with the impact of many others similar to it, is important.

In pointing to the commerce clause as an ample source of power under established principles, we do not minimize the importance of the 14th amendment. This amendment could also provide a sufficient basis for sustaining a comprehensive equal public accommodations law as applied to many, and perhaps all, the covered establishments.

Without depreciating in any way the force of the arguements based on the amendment, we feel obligated to observe, however, that, in the present state of the law, reliance solely upon that provision would raise substantial constitutional issues in a number of possible applications and put the proposed public accommodations sections to legal risks which could be avoided by additionally drawing upon the commerce clause as a source of congressional power.

We reject the argument that an equal public accommodations law is an unconstitutional interference with private property. Both the Supreme Court of the United States and the State courts have time and time again upheld the legislative power to regulate businesses offering accommodations or services to the public.

It is our conclusion, therefore, that Congress should enact or reject an equal public accommodations law on its merits without confining the legislation to any one constitutional theory to the exclusion of others. Any other course would

unnecessarily limit counsel and the courts in upholding the statute as applied in particular cases.

Sincerely,

John G. Fleming, R. H. Cole, Albert A. Ehrenzweig, E. C. Halbach, Jr., Geoffrey C. Hazard, Jr., I. M. Heyman, Dean Frank C. Newman, Preble Stolz, University of California at Berkeley; Dean Erwin N. Griswold, Paul A. Freund, Mark DeW. Howe, Arthur E. Sutherland, Jr., Ernest J. Brown, Harvard University Law School; Kenneth L. Karst, Ivan C. Rutledge, Paul D. Carrington, Roland J. Stanger, William W. Van Alstyne, Ohio State University College of Law; Dean Allan F. Smith, University of Michigan Law School; Dean Eugene V. Rostow, Yale University Law School; Murray Schwartz, University of California at Los Angeles; John O. Honnold, Jr., Howard Lesnick, A. Leo Levin, Louis B. Schwartz, Dean Jefferson B. Fordham, Theodore H. Husted, Jr., University of Pennsylvania Law School; Harlan Blake, Marvin Frankel, Walter Gellhorn, Wolfgang Friedmann, William K. Jones, John M. Kernochan, Louis Lusky, Jack B. Weinstein, Columbia University Law School.

BROOKLYN, N.Y., *July 29, 1963.*

Hon. EMANUEL CELLER,
House Office Building, Washington, D.C.:

We express our sympathy on the loss of your sister. We are much concerned about your civil rights bills. Granted we are united for this legislation we want to be certain that no exceptions will be allowed in the public accommodations provisions. Also that the bill be based on both the 14th amendment and the commerce clause. Also that Attorney General receive power to file injunctions to enforce all rights guaranteed by 14th amendment. Also that Fair Employment Practices Commission be established to enforce equality in employment opportunities. We urge that you take an uncompromising position on these issues.

ROBERT HALPERN,
Chairman, Brooklyn Chapter, Americans for Democratic Action.

COMMITTEE ON ECONOMIC AND SOCIAL RELATIONS
OF THE MENNONITE CHURCH,
Goshen, Ind., July 1, 1963.

Re: The completion of emancipation.

Hon. EMANUEL CELLER,
House Office Building,
Washington, D.C.

DEAR MR. CELLER: Enclosed please find a statement of position with respect to race relations formally adopted by the Mennonite Church in 1955. As indicated in this statement we confess our share in the injustices to persons of color of which our society is guilty. On the other hand we are happy to testify to a deepening of conviction among us that the position here taken concerning the sin of racial segregation and discrimination is the only position consistent with our Christian faith. We are also happy for continued efforts among us, in our congregations, our schools and institutions, and in places of business to bring our performance more nearly in line with the faith which we profess.

As the enclosed statement also says, we are grateful for the many steps taken by our Government to bring national policy more nearly into conformity with Christian principles of social justice. Specifically, we are grateful for: the Emancipation Proclamation which in 1863 freed 3 million of our fellow citizens from slavery; for the 14th and 15th amendments which provide constitutional guarantees of equal civil rights for all citizens; and for numerous recent court decisions and State and local legislative enactments for the implementation of these constitutional guarantees.

We are especially grateful for the proposals of our President looking toward the completion of the task begun a century ago. Surely after 100 years simple justice should require that it be no longer legally possible for a fellow citizen because of his race or color to be denied: Equal rights and opportunities for education, for training for a job or profession, for employment, and for decent housing; unrestricted opportunities for traveling, and of access to eating, sleeping, and other services and accommodations operated for the general public; and equal rights and opportunities with respect to the franchise and any and all other lawful pursuits of the citizenry.

It is therefore our sincere hope that all civil rights legislation now in process will be of such nature as to give full recognition to these requirements of equal justice, and of such expedition that the emancipation of our citizens of color begun a century ago may now be completed.

Sincerely yours,

GUY F. HERSHBERGER,
Executive Secretary.

THE WAY OF CHRISTIAN LOVE IN RACE RELATIONS

(A statement adopted by Mennonite General Conference, Aug. 24, 1955.)

Among the forces of evil challenging the advance of Christianity is a prejudice which many Christians feel toward those who are of a color or of a national origin different from their own. This prejudice, usually growing out of a feeling of superiority, often leads church members, as well as others, to practice various forms of discrimination contrary to the teachings and spirit of the Gospel. The victims of this kind of unjust treatment often become bitter toward their oppressors. Not only has this tension led to social antagonism and international ill will, but it has created conditions that have made the advance of the Gospel difficult and it has dimmed the Christian witness. Furthermore, those who have been guilty of attitudes of prejudice and superiority have been unable to experience the fullness of the Christian life.

As a fellowship of Christians which throughout its 400 years of history has placed great emphasis in all human relations upon Christian brotherhood and the way of love, we must periodically reexamine our application of the faith which we profess in order to maintain and promulgate a vital witness in our time. This is the faith in our Lord and Master who is the true revelation of God; in the Holy Scriptures which are the written revelation of Jesus Christ; and in the way of the cross as given in His teachings, in His life, and in His death.

I. THE TEACHING OF THE BIBLE

A. The unity of man in the order of creation

The Scriptures teach that God "made of one blood all nations of men" (Acts 17:26). The Bible throughout clearly teaches this fact which is corroborated by scientific observation: that all people are one people though they may have superficial differences. Such differences, whether due to variations in the physical features of the body or the cultural differences due to social environments, have no bearing upon the worth of a person before God, for each person bears the image of the Creator.

Therefore, the Christian must regard every man as his brother in the flesh, whom he must love and seek to win to the kingdom of God even as Christ loved and sought those among whom He walked.

B. The unity of man in the order of grace

1. The Bible teaches that all men "have sinned and come short of the glory of God." This fact is corroborated by the observation: that every section of the human race is guilty of evil, and that in every man the original image of God is marred.

2. The Bible also teaches that "God so loved the world, that he gave his only begotten Son, that whosoever believeth in him should not perish, but have everlasting life" (John 3:16). Against the dark background of man's sin shines the glory of God's grace. As Paul says, "No distinction is made, for all alike have sinned, and consciously fall short of the glory of God, but are acquitted freely by His grace through the ransom given in Christ Jesus" (Romans 3:22–24, Weymouth).

C. The unity of the one fellowship

The Bible teaches that it is the purpose of the Good Shepherd to bring all of His sheep as one flock into His fold. Jesus said, "And I have other sheep, that are not of this fold; I must bring them also, and they will heed My voice. So there shall be one flock, one shepherd" (John 10: 16, RSV). This one flock is the church, His "one body" (Ephesians 4: 4), a new society of men recreated in the image of God. This new society transcends all human differences: "Here there cannot be Greek and Jew, circumcized and uncircumcized, barbarian, Scythian, slave, free man, but Christ is all, and in all" (Colossians 3: 11, RSV). This transcendence is not a mere matter of theory, but it is a reality among men in whom Christ dwells and is therefore to be worked out in an actual realized fellowship on a local and intercommunity level.

D. The way of the cross in race relations

1. The Bible teaches that the church must take the way of the cross in all race and group relations. This means that we must reach aggressively across all barriers with the call of the Gospel, to include all who repent in the fellowship of the church. This call includes the expression of Christ's love in both word and deed.

2. Those who follow the way of the cross in proclaiming the Gospel of love to all men, and in exemplifying Christian brotherhood, may suffer persecution and injustice which they must be ready to accept with joy. Matthew 5: 9–11.

3. They way of the cross is the way of Christian nonresistance, where the egotisms of nation or race give way to Christian love and human solidarity. To refuse participation in warfare demands that Christians likewise rise above the practices of discrimination and coercion in other areas, such as race relations.

II. THE WITNESS OF CHURCH HISTORY

1. During His ministry Jesus said that "Men will come from east and west, and from north and south, and sit at table in the kingdom of God" (Luke 13: 29, RSV).

2. While Jewish Christians sometimes had difficulty in understanding this great truth, the manifestation of God's grace in the conversion of Cornelius taught them that "God is no respecter of persons"; that "in every nation he that feareth him, and worketh righteousness, is accepted with him" (Acts 10: 34, 35); that God gave the Holy Spirit to the Gentiles as much as to the Jews; that "he made no distinction between us and them, but cleansed their hearts by faith" (Acts 15: 8, 9, RSV).

3. There is ample evidence that from the time of the Jerusalem Conference through the time of the Reformation the church accepted into its fellowship people of different cultural, national, and racial backgrounds. Nowhere in the New Testament are distinctions made on the basis of race or color. The baptism of the Ethiopian took place without any hesitancy, nor did it raise any question within the brotherhood. Neither in the early centuries nor in the long period of the Middle Ages and the Reformation does the literature reveal any sign of a racial basis of admission to the Christian congregation or of discrimination and segregation based on race or color.

III. THE SIN OF SEGREGATION AND DISCRIMINATION

A. Racial discrimination a recent phenomenon

1. Racial tension as expressed in the denial of privileges and the segregation of peoples of different colors in public transportation, in schools, and even in churches is a relatively recent historical development.

2. In the United States colonialism produced the institution of slavery. This was followed by the struggle for its abolition, culminating in a Civil War and a Reconstruction period marked by bitterness and hatred, creating a situation in which the Negro members of our society were the unfortunate victims, and which affected to a greater or lesser degree all peoples of non-Anglo-Saxon stock among us.

3. Out of this situation has grown a vast mythology to the effect that people of color constitute a race which has a different ancestry from that of the Caucasian; and which in every way is inferior to it. Unfortunately, some Christian people have even deepened the confusion by claiming to find Biblical sanction and support for this myth. Thus many Christians find themselves in a position where they deny the basic principles of the Gospel, both in theory and in practice, in a manner never found before in the history of the church.

B. Racial prejudice and discrimination is a sin

We believe that racial prejudice and discrimination, as illustrated in the American pattern of segregation, or wherever it may be found, is a sin. Among the many reasons why we believe this to be true we note the following:

1. It is a denial of our professed faith that all those who are in Christ are one. Jesus prayed to the Father: "Keep through Thine own name those whom Thou hast given Me, that they may be one, as We are" (John 17: 11).

2. It is the perpetuation of a myth long proved false both by Christian faith and modern science.

3. It brands and discredits those discriminated against as undesirable and inferior.

4. It is a violation of the human personality as created by God; a denial of the opportunities and privileges which in the providence of God are meant for all peoples to enjoy.

5. It is a violation of the basic moral law which requires a redemptive attitude of love and reconciliation toward all men, and which forbids all falsehood, all feelings of hostility, and all attitudes which lead to strife and ill will among men, Matthew 5: 21–48.

C. The consequences of the sin

The sin of prejudice and discrimination has a harmful effect not only upon those directly involved, but upon the church and upon society as a whole.

1. It humiliates and frustrates the victim so that it becomes difficult for him to behave as a normal member of society.

2. It scars the soul of the one who practices the sin.

3. It contributes to social tension, to hatred, and strife.

4. It is a major cause of present-day international conflict and war.

5. It strengthens the hand of atheistic communism which claims to do away with the very sin which many Christians still defend.

6. It violates the central Christian message of redemption and love and thus discredits before the whole world the Christian church and the Gospel which it proclaims, and weakens its mission program.

IV. THE RESPONSE OF THE CHURCH

A. Our confession

In the light of the above, we are conscious of the contrast between the message of the Gospel and the conduct of men in their relations with their fellow men. As Christians we therefore humbly confess our sins. We confess that we have been blind when we should have seen the light; that we have failed to see that mere nonparticipation in violence and bloodshed is not an adequate expression of the doctrine of love to all men; that we have professed a belief in the urgency of the Great Commission without bringing into Christian fellowship our neighbors of "every kindred, and tongue, and people," and that we have failed to see that acceptance of the social patterns of segregation and discrimination is a violation of the command to be "not conformed to this world." Often we have been silent when others showed race prejudice and practiced discrimination. Too often our behavior has been determined by our selfish considerations of

public and social approval more than by our desire to accept the way of the cross. Some of us have accepted the false propaganda of racism and anti-Semitism which has come into our homes in the guise of Christian literature. Too often we have equated our own culture with Christianity without sensing which elements were genuinely Christian and which were merely cultural accretions from a secular society. Many times we have made it difficult for Christians of national origin different from our own to find fellowship among us because our own cultural pride and attitudes of exclusiveness served as obstacles. For these and our many other sins we repent before our fellow men and our God.

B. Our hope

Nonetheless we do not despair. The Gospel is not mere idealism, for within and around us we see manifestations of the grace of God working redemptively among men. There is reason for gratitude that in our brotherhood there are genuine expressions of Christian relations; and for the progress evident in many communities, we thank God. We appeal to fellow Christians everywhere with us to submit their hearts and lives to the scrutiny of the Scriptures and the Spirit. We know that in repentance and confession we experience the renewing grace of God, and that through this experience our relations with our fellow men can be healed.

C. Our duty

Repentance means that we turn from the sins which estrange us from God and amend our ways. We therefore urge:

1. That, as Christians, we cultivate a sense of belonging together on the basis of unity in Christ and discipleship.
2. That we recognize that any acceptance of the prevailing customs of discrimination is a violation of the Scriptural principle of nonconformity to the evil of this world.
3. That our congregations and mission stations follow the policy of inviting and receiving into their fellowship all who receive Christ and follow Him in true discipleship regardless of race or color; that in communities where there are now adajcent segregated congregations, sincere efforts toward intercongregational fellowship be cultivated.
4. That institutions and agencies of the church (as schools and colleges, hospitals, and homes for children and the aged, and the various church boards) if they have not yet done so, announce and carry out a policy of admission and service without discrimination of the basis of race, color, or nationality.
5. That in work with children, as in the case of summer Bible schools and summer camps, for example, an effort be made to conduct it on an interracial basis wherever there is a natural occasion to do so.
6. That we cultivate personal contacts among persons of various racial and other social groups.
7. That in our day-by-day social and business activities we become more sensitive to inequalities in practice.
8. That we express gratitude for the many manifestations of an awakened social conscience with respect to this question and for the many steps now being taken, especially by our Government, to correct the evils of racial intolerance within our society; that in our communities we support efforts to that end which are consistent with Christian principles; and that we give our witness against the evils of prejudice and discrimination wherever they may be found.
9. That in all differences of experience, insight, and conviction on this question within the brotherhood, we exercise Christian forbearance, and seek for positive Christian solutions.

D. Our program of teaching and preaching

Realizing that proper understanding is a necessary condition for the improvement of human relations on any level, we commend the following specific tasks and goals for our teaching and preaching program on race relations.

1. That we seek to present more clearly the teachings of the Bible, striving particularly to correct misunderstandings as to a supposed Biblical basis for discrimination.
2. That we help people to understand that science provides no basis for supposed qualitative differences among races.
3. That we deal with the psychological and sociological factors in race or other prejudice, helping our people to understand what this sin does to men's thought processes and social attitudes.

4. That we learn to think of all persons as persons, to meet them as such, and to be natural and at ease in their presence.

5. That we teach the necessity of uprooting from our conversation all words, expressions, and stories which lend support to racial prejudice.

6. That we call attention to the free interracial association in such countries as Brazil and localities in our own country where good relations have been achieved.

7. That on the question of interracial marriage we help our people to understand that the only Scriptural requirement for marriage is that it be "in the Lord"; that there is no valid biological objection to interracial marriage; and that, as in all marriages, the social implications of any proposed union should receive careful consideration.

V. THE CONCLUSION

In summary, the Gospel of Christ is a gospel of redemption, of reconciliation. God has made of peoples of diverse "races," colors, and nations a new fellowship, a new people, in Jesus Christ. He has called this new people to the ministry of reconciliation. If we have been incorporated into this fellowship, which is the body of Christ, our whole life is dedicated to the great process of redemption. This is the essence of our missionary task, and only as we rise above the differences of race and class are we truly engaged in the Christian witness.

(This statement, now the official position of the Mennonite General Conference, originated in a Study Conference on Christian Race Relations sponsored by the Committee on Economic and Social Relations of the Mennonite Church and the Mennonite Community Association at Goshen, Ind., April 22–24, 1955. Published proceedings of the conference in booklet form, 116 pages in length, may be secured by enclosing $1 and addressing either of these organizations at Scottdale, Pa.)

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
New York, N.Y., July 11, 1963.

Hon. GEORGE MEADER,
House of Representatives,
Washington, D.C.

MY DEAR MR. MEADER: I am writing to you at the suggestion of Mr. Clarence Mitchell, director of the NAACP Washington Bureau. Mr. Mitchell was kind enough to communicate to me your request for the source of the assertion that there are only 300 licensed Negro plumbers and electricians in the United States.

The names and addresses of all electricians and plumbers who are certified by municipal or State licensing agencies as having completed an established series of tests is a matter of public information. By examining these lists, especially with reference to residential addresses, it is possible to determine the number of Negroes certified as licensed mechanics.

To further determine the accuracy of this estimate, the available information was also checked against occupation information based upon the 1960 census which confirmed the figure as an accurate approximation of the number of Negro wage earners who are licensed electricians and plumbers.

It is interesting to note by the way that there are more Negroes in the United States who hold Ph. D. degrees than there are colored citizens who are certified in the plumbers' and electricians' crafts.

Sincerely,

HERBERT HILL, *Labor Secretary.*

JEWISH COMMUNITY COUNCIL,
Schenectady, N.Y., August 8, 1963.

Hon. EMANUEL CELLER,
House Judiciary Committee, U.S. Congress,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN CELLER: The Jewish Community Relations Committee of our Community Council wishes to bring its views on the current civil rights hearings to your respectful attention. As a member organization of the National Community Relations Advisory Council, we have fully endorsed and supported

the position taken by the plenary meeting of this body of June 30, 1963, in the resolution on civil rights which was taken that day in Atlantic City. A copy of that resolution is enclosed.

In addition to fully endorsing the complete text of that resolution, we wish to offer our unqualified support to the legislative proposals which have been submitted by the administration and to recommend even stronger action on the following points:

(1) We feel that part III authorizing the Attorney General to bring injunctive suits should be broadened to include all civil rights violations, not just school desegregation as is recommended in the administration's proposals.

(2) We believe that there should be provision for a full FEPC with enforcement powers instead of the administration's proposal for such a body but limited only to firms holding Government contracts.

(3) We feel that all places of public accommodation, should be included in the prohibition against discrimination, not just business above a certain size.

(4) We believe that recognition should be given the fact that a sixth grade education or its equivalent is conclusive proof of sufficient literacy to vote in both State and Federal elections, not just Federal elections alone.

(5) And finally, we feel that there should be a congressional requirement that school districts begin complying with the Supreme Court school decisions in 1963, as was promised in the 1960 Democratic Party platform.

We realize that the Congress of the United States has many serious and awesome responsibilities on its shoulders in the job of legislation for the best needs for all of our citizens for today, tomorrow and the day after.

As members of a religious minority which has enjoyed many rights and privileges in this great democratic Nation we are reluctant to be too critical concerning the need for drastic changes in civil rights. But the time is long past when it can be said that the problems of racial inequality which have been bred by enforced segregation can be changed without the kind of mandatory legislation proposed by our President and as modified by our five suggestions.

We appreciate this opportunity to have our views become part of your hearings and we look forward to positive early action by the Congress on these matters.

Sincerely yours,

BENJAMINE FLAX, *President*
Dr. HERMAN ROSENBAUM, *Chairman,*
Community Relations Committee.

RESOLUTION

JEWISH AGENCIES AND CIVIL RIGHTS

The current struggle of the American Negro is more than a struggle for civil rights. It is a struggle to secure human rights for all and to secure them now. It is a struggle in which we are all, regardless of color or faith, deeply involved, and to which, as Jews, we are firmly committed.

As Jews, we react with special sensitivity to the Negro's demands. We too, have stood before the oppressors demanding freedom. We, too, know the inexorable power of a righteous ideal. We, too, have buried our martyrs. Bitter experience has taught us what tragedy there is in a community of well-intentioned men who, through indifference and apathy, become accessories to the destruction of a people's rights. It is from such experience as well as for historic reasons of justice that Jewish agencies have long been in the forefront of the struggle to eliminate all forms of discrimination or segregation.

The times call upon us to reaffirm our wholehearted participation in the current struggle for human rights. Our Jewish heritage and our common humanity impel us to a renewed commitment to:

(*a*) Intensify our efforts to do all that is within our power to secure immediate justice and full citizenship rights for all Americans everywhere;

(*b*) eliminate any vestiges of discrimination in our own institutions and to strive to make them exemplars of equal opportunity;

(*c*) encourage the direct involvement of our constituencies in the struggle to make America completely free.

THE ROLE OF GOVERNMENT IN CIVIL RIGHTS

President Kennedy has rightly said of the current civil rights struggle that it confronts our Nation with "a moral issue * * * as old as the Scriptures and as clear as the American Constitution." We agree with the President that "the time has come for this Nation to fulfill its promises."

Our Federal courts have firmly established that any form of discrimination enforced or aided by the State is unconstitutional. It is the responsibility of the legislative and executive branches of government—Federal, State and local—to give practical meaning to these holdings.

We call upon the Congress to enact the civil rights program proposed by the President without delay and without weakening amendments.

We call upon State and local legislative bodies to adopt comprehensive measures prohibiting discrimination in employment, education, housing and places of public accommodation and establishing administrative agencies with sufficient powers to enforce such prohibitions.

We call upon the President to issue an executive order establishing a Federal civil rights code and appropriate administrative machinery to assure nondiscrimination in all programs and services maintained or operated by the Federal Government or benefiting from any subsidy or other form of Federal assistance.

We call upon the executives of State and local governments to promulgate similar civil rights codes within their respective areas of jurisdiction.

STATE OF NEW YORK
DEPARTMENT OF LAW,
New York, N.Y., July 17, 1963.

Hon. SAM J. ERVIN, Jr.,
Chairman, Subcommittee on Constitutional Rights, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR SENATOR ERVIN: I am pleased to give you my views on titles II, III, IV, VI and VII of S. 1731, as you have requested, for insertion in the published hearing record.

As the chief law enforcement officer of the State of New York, I strongly endorse the recommendations contained in these measures as both constitutional and desirable to supplement the arsenal of law and statute which we enjoy in our State.

The evil of discrimination against our citizens because of race, color, religion or national origin is a national problem of great seriousness which will require the combined efforts of all of us—Federal, State and local officials—to eliminate.

I have heretofore commented to you on the administration's proposed measures now before the Senate to enforce the constitutional right to vote and to extend for 4 years the Commission on Civil Rights. As to both of these, I indicated my support.

With respect to title II of S. 1731, relating to discrimination by places of public accommodation, the State of New York since 1895 has had on its books a statute making unlawful any discrimination in such public places by reason of race, color, creed or national origin.

Additional sanctions as well as additional classes of public accommodations covered by the law have been added from time to time in the intervening years. For a while the district attorneys and the aggrieved party each had a remedy in court. Since 1952, the aggrieved party has had the alternative available to him of filing a complaint with a State administrative agency, now known as the State Commission for Human Rights. One of my first acts as attorney general was to set up a separate bureau on a full-time basis to handle matters of civil rights. On the basis of the experience in New York, where such discrimination by places of public accommodation has been unlawful for almost 70 years, I commend the principle implicit in title II as both workable and moral, conducive to the development of a sound democratic society.

With respect to title III, relating to desegregation of public education, here, too, the State of New York takes pride in its laws of long standing as well as in its educational policies. The need for a national effort is very great. The offer of Federal funds to help deal with problems arising from racial imbalance in the public schools, often an inadvertent byproduct of residential patterns, is notable, and has widespread significance.

Title IV, dealing with the establishment of a Community Relations Service, will have the support of all people of good will. It assures that the Federal Government intends to use peaceful persuasion as a first recourse in resolving tensions and disagreements relating to discriminatory practices. However, I note a conspicuous absence from title IV of any reference to discriminatory practices based on religion as an area for activity by the Service. While problems of discrimination based on religion may not today be threatening the peace of our

communal life with the same intensity as discriminatory practices based on race, color, or national origin, the State of New York finds that discriminatory practices based on religion unhappily persist; and it is a wise policy to embrace such problems within the scope of any governmental program to deal with discrimination.

As to title VI, nondiscrimination in federally assisted programs, and title VII, the Commission on Equal Employment Opportunity, in my opinion these measures are soundly directed and will have the effect of supplementing and aiding our State program to eliminate discrimination in all areas.

In conclusion, I should like to state my personal opinion that enactment of S. 1731 will represent a notable reform within the Federal Government, one that is long overdue and will be welcomed by the overwhelming majority of the American public as a reassuring sign of democracy's capacity to govern.

Sincerely yours,

LOUIS J. LEFKOWITZ,
Attorney General.

NEW YORK, N.Y., *June 4, 1963.*

THE CHAIRMAN, HOUSE JUDICIARY COMMITTEE,
House Office Building,
Washington, D.C.

DEAR SIR: Please enter this letter of opposition, in the record of your hearings, concerning any pending civil rights bill (so-called), including my attached statement addressed to the President defining constitutional points of interest in this connection.

Kindly acknowledge receipt so that I may be sure this has reached your attention and the entry in the record of hearings will be made. I write as a member of the New York bar (retired).

Yours truly,

HAMILTON A. LONG.

AN OPEN LETTER TO THE PRESIDENT

1. The 14th amendment did not make the Bill of Rights applicable against the States, as proved conclusively by a distinguished and lengthy article, based upon exhaustive research, by Stanford University's former Law Professor Charles Fairman—supplemented by another splendid article by his colleague there, Professor Stanley Morrison—in the Stanford Law Review of December 1949. Citing the Fairman article, the Supreme Court admitted the truth of this proposition in the 1959 *Bartkus* case (page 124 of opinion), stating:

"We have held from the beginning and uniformly that the due process clause of the 14th amendment does not apply to the States any of the provisions of the first eight amendments as such. [1] The relevant historical materials have been canvassed by this Court and by legal scholars. [2] These materials demonstrate conclusively that the Congress and the members of the legislatures of the ratifying States did not contemplate that the 14th amendment was a shorthand incorporation of the first eight amendments making them applicable as explicit restrictions upon the States."

No scholar possessing requisite competence and intellectual integrity would pretend to the contrary. The two articles mentioned above exposed, scored, Justice Hugo Black's conflicting pretenses as being based upon inexcusably inadequate research.

2. A power granted to the Federal Government under the Constitution cannot be misused to accomplish a prohibited end, as the Supreme Court soundly decided in the Butler ("AAA") case in 1936—pages 73 to 74 of opinion; namely, the power to tax and spend cannot be misused to effect control over agriculture, farmers. This decision, entirely in keeping with the controlling intent with which the Constitution was framed and adopted (and no contrary amendment was ever adopted), continues to be the correct construction of the Constitution; which makes null and void the conflicting decision in 1942 in the *Wickard* case by which the Court committed rank usurpation.

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[1] Citing earlier cases.
[2] Citing the Fairman article (mentioned above).

3. Individual liberty—for instance, that part of liberty pertaining to the constitutional rights of owners of private property—can never properly be sacrificed in the name of equality, misconstrued to have a meaning never contemplated by the framers and adopters of the original Constitution or of any amendment. Equality—meaning only in the eyes of God and of law, according to the Declaration of Independence—is always subject to the duty aspect of individual liberty-responsibility, including the legal and moral duty to respect others' equal, constitutional, rights. The limits of the right to equality stop where the limits of the right to Liberty begin; neither can ever infringe upon the oher's area, constitutionally.

4. The foregoing is apropos, for example, of current violations and proposed violations of the constitutional rights of property—such as stores and restaurants; and it is particularly pertinent regarding those who violate rule by law, including law and order, to achieve ends in violation of others' constitutional rights—falsely pretending that the end justifies the means: bankrupt morally. 4 West 43d Street, New York City, June 4, 1963.

HAMILTON A. LONG.

DEPARTMENT OF JUSTICE,
Washington, May 24, 1963.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN CELLER: This refers to your letter to the Attorney General of May 13, 1963, and the copy of the letter enclosed therewith which Mr. Edward H. Gaylord, assistant county counsel, Los Angeles, Calif., wrote to Mr. Benjamin S. Hite, registrar of voters, Los Angeles, on December 19, 1962. You request comments on Mr. Gaylord's proposal that a procedure be established by amendment to the Civil Rights Act of 1960 whereby the Attorney General on application could authorize destruction of ballots and related materials where their retention for the period prescribed by the statute is impracticable and such destruction would not hinder its enforcement.

In addition to registration applications and other material concerning registration, the Civil Rights Act of 1960 in our view has the effect of requiring the retention of ballots and other material having to do with voting. Where keeping such material as ballots does not further the purposes of the Civil Rights Acts of 1957 and 1960 and where such retention poses substantial storage or other problems, I see no objection to an amendment whereby the Attorney General could authorize their destruction.

Sincerely,

BURKE MARSHALL,
Assistant Attorney General, Civil Rights Division.

DEPARTMENT OF JUSTICE,
Washington, July 26, 1963.

Hon. EMANUEL CELLER,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN CELLER: I understand that during a recent session of the Judiciary Committee conducting hearings on the civil rights bill a member of the Teamsters Union charged that this Department incorrectly failed to take prosecutive action against a member of the Texas Rangers concerning whom the mayor of Crystal City, Tex., had made complaint relating to alleged deprivation of civil rights. I thought you should be advised of the facts in this matter.

On April 29, 1963, Mayor Juan Cornejo sent a telegram to the Attorney General complaining that Texas Ranger Capt. Alfred Allee and county law enforcement officers had been harassing the Crystal City Council by interfering in all council sessions. The mayor further charged that he himself had been "picked up" without a warrant, "roughed up," and taken into a room without his consent for over 20 minutes, and that other councilmen had been subjected to the same treatment. He claimed to be in a state of fear and intimidation and that it had been necessary for him to send his telegram from San Antonio because he had reason to believe it would not be accepted or sent from the telegraph office in Crystal City.

Interviewed on May 1 by special agents of the FBI, Mr. Cornejo described two incidents in which he had come in contact with Captain Allee which formed the

basis for his complaint. The first occurred on April 26, 1963, when Mr. Cornejo went to city hall to confer with the newly hired city manager and the latter's predecessor. Following this conference Mr. Cornejo, while walking down the hallway, encountered the sheriff. The sheriff's elbow contacted Cornejo's left side at which time the sheriff said "Watch were you are going." Mr. Cornejo states this contact was not in the nature of a blow nor was it painful but he interpreted the incident as providing an excuse for the sheriff to issue a warning to him. At this time, Mayor Cornejo charges, Captain Allee placed his hand lightly on his shoulder and said he wanted to talk to the mayor. Cornejo replied "All right" and entered a nearby office, the ranger keeping his hand on Mr. Cornejo's shoulder, "more or less guiding" him. The sheriff followed them into this office, closing the door. A discussion ensued concerning Mr. Cornejo's treatment of a local citizen and a fellow councilman. Other matters of current civic interest were also discussed. Mr. Cornejo charges the sheriff at this time protested the mayor's behavior and cautioned that there might be bloodshed. Captain Allee advised the mayor that his treatment of the citizen had been wrong and requested him to apologize to the citizen. The group shook hands all around and left the room. Mr. Cornejo was reminded outside by Captain Allee to apologize to the citizen concerned, upon which Mr. Cornejo did in fact have a conversation with him following which they shook hands.

On Sunday, April 28, 1963, during a reception following a political meeting at San Antonio, Mr. Cornejo related his experience to those present and at that time a decision was made to send telegrams to various officials including the Governor and the Attorney General. The following day, Mr. Cornejo was accosted at city hall by Captain Allee who said he wished to talk to him. The mayor acquiesced and in the city manager's office a few moments later met with Allee and several others. Heated words passed back and forth concerning a press report of the April 26 incident, Captain Allee allegedly making extremely derogatory remarks concerning Mr. Cornejo and criticising him for sending telegrams to officials. Cornejo denied that he had told any newspaper that Captain Allee had kept him in any office for 20 minutes as reported. Following this exchange, Mr. Cornejo charged, Captain Allee grabbed him by the shirt collar and bumped the back of Mr. Cornejo's head against the sheetrock wall, at the same time admonishing him to keep his mouth shut.

Mayor Cornejo returned to his own office after this encounter and continued the business he had interrupted. He has no bruises or lacerations and there were no visible effects of the encounter. He says he did not feel physical pain while being held by Captain Allee. He interpreted the incident as being intended only to scare him because neither the seizure nor the bumping of his head was severe nor has he felt any after effects. Captain Allee is reported to have denied the mayor's charges. Mayor Cornejo has made this incident the subject of a civil action for damages brought against Captain Allee in the U.S. district court. In this action Mr. Cornejo seeks $15,000 compensation.

In his interview with the FBI, Mr. Cornejo failed to provide any factual support for the charges contained in his telegram to the effect that law enforcement officers have been interfering in all council sessions. Likewise he failed to provide any explanation for his statement concerning the necessity of sending his telegram from San Antonio. Also, he failed to name any other councilmen who, he previously said, had been similarly treated.

As background, you may be interested to know that Mr. Juan Cornejo, business agent of the Teamsters Union, was elected to the Crystal City Council on April 2, 1963, along with four others on the same ticket which overturned the entire former council. The newly elected council is composed entirely of Latin Americans, whereas the former government was comprised almost entirely of Anglo-Americans. Considerable ill feeling generated by this election still persists, and Captain Allee of the Texas Rangers was assigned to Crystal City to assist in maintaining law and order.

The Department has taken no prosecutive action in this matter because it has been determined that, even if Mayor Cornejo's description of the incidents is accurate (it is noted Captain Allee has issued a denial) the circumstances would not support a criminal prosecution based upon the Federal civil rights statute, which requires proof of a willful intent to deprive of a constitutional right. Rather, what appears to be involved, if anything, taking the charges at face value, is questionable conduct on the part of the Texas Ranger which, while it might be made the subject of an administrative inquiry by his superiors, would not provide a sound basis for Federal criminal prosecution.

Thank you for affording me the opportunity of setting the record straight on this matter. I assure you there has been no departure from routine handling of this matter by the staff of this Division and the personal affiliations of Mayor Cornejo did not in any way influence their judgment.

Sincerely,

BURKE MARSHALL,
Assistant Attorney General, Civil Rights Commission.

JAPANESE AMERICAN CITIZENS LEAGUE,
Washington, D.C., May 8, 1963.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: As your House Judiciary Subcommittee on Civil Rights opens hearings this morning on legislation "To enforce constitutional rights and for other purposes" and "To extend for 4 years the Commission on Civil Rights as an agency in the executive branch of Government, to broaden the scope of the duties of the Commission, and for other purposes," the National Japanese American Citizens League once again joins with individual citizens and organizations of good will to urge the speedy enactment of meaningful legislation to assure equality of opportunity and increased dignity to all Americans, without respect to race, color, creed, or national origin.

The current demonstrations in Birmingham, Ala., and the increasing racial tensions in the Nation's Capital, as well as in many other cities and communities throughout the country, underscore the urgency of the situation.

While the JACL is convinced that the two pending measures are not nearly sufficient to resolve the difficulties that demand consideration, JACL urges their immediate enactment as worthwhile, and possibly about as much as this Congress may be willing to approve. At least, by providing greater opportunities for the exercise of the franchise by the presently disenfranchised in the so-called Deep South, the power of the ballot soon may be used to elect such lawmakers as are willing to legislate for the general welfare and good of all the American people. And, the Civil Rights Commission may continue to investigate and spotlight areas—in the North and the South, in the East and in the West—where the civil rights of any American may be violated or compromised and to recommend corrective and remedial action.

Beyond these two bills, however, the JACL urges consideration and enactment of meaningful and enforcible Federal legislation to:

1. Authorize the Attorney General of the United States to institute civil actions in the courts to protect the constitutional and civil rights of all Americans;
2. Establish fair employment practices to govern all employment;
3. Assure fair housing practices in the purchase and the rental of all housing in which any Federal funds, directly or indirectly, are involved;
4. Provide for the equal protection of the laws to all Americans, including protection from mob violence and police brutality;
5. Eliminate segregation in transportation facilities;
6. Desegregate all places providing public accommodations, entertainment, recreation, etc.; and
7. Expedite the integration of all public schools.

There is no need for JACL here to present evidence or to argue the need for such civil rights legislation as is above proposed, for your subcommittee and the Senate Judiciary Subcommittee on Constitutional Rights have heard the evidence and the arguments over and over again since the end of World War II. Suffice it to say that the Congress cannot escape its responsibility for the current state of racial unrest and friction by blaming the judiciary or the executive. Of the three branches of Government, the legislative has been, by far, the least active in the common cause that must be our national destiny to assure for all Americans, everywhere in the land, equal rights and opportunities, with dignity, in every field of human endeavor and relationship.

As the innocent victims of racial discrimination during World War II, when our civil rights were violated as never before, or since, in American history, we Americans of Japanese ancestry respectfully urge that the Congress fulfill its constitutional obligations to promote the general welfare of all the people, without fear or favor, by extending to every citizen in the 50 States of our

Federal Union every right, privilege, immunity, and opportunity of our precious citizenship. Only by so doing will the Congress assure for all citizens these same rights, privileges, immunities, and opportunities that have been our proud boast and heritage.

Respectfully submitted.

MIKE MASAOKA,
Washington Representative.

JUNE 6, 1963.

HON. EMANUEL CELLER,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN CELLER: During the testimony on May 29, 1963, representatives of the Student Nonviolent Coordinating Committee mentioned extensive delays in the handling of civil rights cases in the Federal courts. The following are some illustrations of such delays:

On May 17, 1960, the Department of Justice filed suit in the Southern District of Mississippi against the city of Biloxi and Harrison County, to desegregate the beach at Biloxi. The case was based on a contractual obligation arising out of Federal assistance given by the Corps of Engineers to protect and develop the beach. No decision has as yet been reached by the district court.

Brunson v. *Board of Trustees* of School District No. 1 of Clarendon County, S.C., is the most recent of a series of cases going back to *Briggs* v. *Elliott*. The *Briggs* case dates to 1950. The *Brunson* case, which is essentially the same case, was filed in April 1960. The *Briggs* case was one of the cases decided by the Supreme Court on May 17, 1954. There is as yet no desegregation in South Carolina as a result of the *Briggs* decision, and the *Brunson* case has not been decided by the district court. It has recently been returned to the district court by the fourth circuit, which reversed the district court's decision that it could not be maintained as a class action.

In *Davis* v. *East Baton Rouge School Board* (E.D. La.) the district court ordered desegregation in May 1960, but the school board has been given until July of this year to submit a plan.

Koen v. *Knight* was filed in the Southern District of Alabama in August 1960. It is a suit to enjoin segregation at the Alabama Vocational Technical School at Mobile. It is still in the pretrial stage.

In addition, I am advised that there will be published an article on this subject in the Yale Law Journal. I do not know the date of publication as yet, but I have asked for excerpts from the preliminary report and I hope to be able to submit these in the near future.

Sincerely yours,

CLARENCE MITCHELL,
Director, Washington Bureau.

THE NATIONAL ASSOCIATION OF EVANGELICALS,
Washington, D.C., July 24, 1963.

HON. EMANUEL CELLER,
Chairman, House Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR SIR: The National Association of Evangelicals wishes to record its testimony in the words of the resolution on racial minorities adopted at the national convention, April 23–25, 1963, as expressing the predominant concern of approximately 30,000 churches in its 40 denominations.

"The National Association of Evangelicals calls attention to the stand it took at the convention in 1956 relative to racial minorities and urges its members to do everything possible by precept and practice to implement more zealously that resolution which is as follows:

"Whereas we believe that the teachings of Christ are violated by discriminatory practices against racial minorities in many, if not all, sections of our country; and

"Whereas we believe that the propagation of the gospel is hindered in many foreign countries by these practices; and

"Whereas we believe that many from these minority groups in our own country are alienated from the gospel by these actions: Therefore be it

"*Resolved,* That the National Association of Evangelicals reaffirms its belief in the teachings of Jesus Christ, including His emphasis upon the inherent worth and intrinsic value of every man, regardless of race, class, creed or color, and that we urge all our constituency to use every legitimate means to eliminate unfair discriminatory practices, and that, therefore, we deplore extremist tactics by any individual or organized groups. We believe that those in authority in political, social, and particularly evangelical Christian groups have a moral responsibility to work effectively and openly for the creation of that culture of life which will provide equal rights and opportunities for every individual."

In the discussion preceding the ratification of this resolution it was pointed out that to avoid impingement on the basic rights of individuals great caution should be exercised in passing any legislation for the purpose of correcting racial discrimination.

Very truly yours,

CLYDE W. TAYLOR, *Secretary.*

NATIONAL BOARD OF THE YOUNG WOMEN'S CHRISTIAN ASSOCIATION
OF THE U.S.A.,
New York, N.Y., July 26, 1963.

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
House Office Building, Washington, D.C.

DEAR CONGRESSMAN: On behalf of the National Board of the YWCA I am writing to urge your support of the civil rights bill, H.R. 7152. You will note from the enclosed statement of principles embodied in our interracial charter and the section of our national YWCA public affairs program dealing with basic individual rights and liberties that racial integration and civil rights have long been given major consideration in our service and action programs.

Believing as we do in the supreme worth and dignity of all human beings we would plead for provisions guaranteeing that no person shall suffer the indignity and hurt accompanying denial of services which call into question his worth as an individual. For this reason it is our conviction that the right to service free from discrimination in places of public accommodation and business establishments is one of the most important rights for which the civil rights bill provides.

The provision for voting rights is equally important. In a democracy it is inconceivable that all people should not share equally in the privileges and responsibilities of citizenship, a basic element of which is the right and obligation to vote. We also urge support of school desegregation, title III, but would hope that it could include not only school cases but also all situations where persons are denied their constitutional rights because of race, color, religion, or national origin.

We know from our experience in the YWCA of the pain and humiliation which both our Negro and white members share when services and opportunities are denied because of race. None of us can enjoy full freedom so long as any one of our fellow members and citizens is denied basic civil rights.

As the YWCA has worked throughout the country to make its own facilities and services as well as those in the community open to people of all races, it has become increasingly aware of the need for Federal legislation that would support and strengthen the work of voluntary organizations. We assure you of our continued efforts to achieve equal accommodations and opportunities for all citizens through voluntary compliance, but we need Federal legislation with adequate enforcement powers to make racial justice a reality throughout our Nation.

Sincerely yours,

MILDRED M. JONES,
Mrs. Paul M. Jones,
Vice President.

Enclosures.

THE INTERRACIAL CHARTER

(Adopted in 1946 by the 17th National Convention of the YWCA's of the United States of America)

The Young Women's Christian Associations of the United States, since the early days, have recognized their role in society as an organization for all women and girls, and particularly those who by reason of economic, cultural or social environment have not had opportunity to make their full contribution to the

common life. To them the association may potentially be, and often has been, a bulwark against unfavorable circumstance and a channel of creative endeavor.

Today racial tensions threaten not only the well-being of our communities but also the possibility of a peaceful world. Women of the minority races in America form more than one-tenth of the association constituency, and have a direct claim to the organization's understanding and support. That this responsibility has been recognized and accepted is clear from the evidence of succeeding convention actions. In 1936, the convention voted that

"Associations should continue to work for the building of a society nearer to the kingdom of God by attempting to create within the association a fellowship in which barriers of race, nationality, education and social status are broken down in the pursuit of the common objective of a better life for all."

This fellowship without barriers of race, this better life for all, is an accepted goal which we of the Young Women's Christian Associations of the United States of America strive to achieve. We shall be ever mindful of the variation in the number and range of difficulties to overcome and opportunities to progress. Wherever there is injustice on the basis of race, whether in the community, the Nation, or the world, our protest must be clear and our labor for its removal, vigorous and steady. And what we urge on others we are constrained to practice ourselves. We shall be alert to opportunities to demonstrate the richness of life inherent in an organization unhampered by artificial barriers, in which all members have full status and all persons equal honor and respect as the children of one Father.

As members of the Young Women's Christian Associations of the United States of America we humbly and resolutely pledge ourselves to continue to pioneer in an interracial experience that shall be increasingly democratic and Christian.

National Public Affairs Program

(Adopted by the 22d National Convention of the YWCA of the United States of America, May 1961)

SECTION III. BASIC INDIVIDUAL RIGHTS AND LIBERTIES

A. Basic constitutional guarantees.—Because freedom is indivisible the rights of all depend upon their being guaranteed to each member of the whole society, regardless of sex, race, economic status, or difference of belief and opinion. For this reason we have supported and will continue to support:

(1) The preservation and full realization of our traditional civil liberties, protesting vigorously wherever fundamental freedoms are abridged or denied.

(2) Equal justice before the law for all individuals.

(3) Protection of citizens in the exercise of their civil rights.

(4) Federal protection against lynching and mob violence, and effective legal safeguards against intimidation by reprisal.

(5) Measures that will preserve the proper investigative powers of Congress while preventing abuses of these powers and that will require such procedures of congressional investigative committees as will fully protect the rights of all individuals.

B. The right to vote.—The franchise constitutes the basic instrument of effective democracy and, as such, should be available to all adult citizens. We have therefore supported and will continue to support:

(1) The extension of voting rights to all citizens and the protection of persons in the exercise of those rights.

(2) The extension of the franchise to residents of the District of Columbia.

C. Equality of treatment.—Effective democracy and equal opportunity for all individuals requires that there be no barriers based on racial or minority status. We therefore affirm our support for the 1954 Supreme Court decision on desegregation and support:

(1) Measures which will provide to all persons without regard to race, creed, or nationality background, the right to share on an integrated basis in education, employment, housing, transportation, and all services financed to any degree by Federal grants in aid.

(2) Measures to require that facilities serving the general public be open to all without discrimination.

(3) Programs designed to improve the economic, health, educational, social, and political status of American Indians.

(4) Open public schools and opposition to the closing of public schools.

THE AMERICAN COUNCIL OF CHRISTIAN CHURCHES,
New York, N.Y., July 18, 1963.

Dear Senators and Congressmen:

The American Council of Christian Churches feels you will be vitally interested in a telegram this council sent the President of the United States, July 18.

A copy of the telegram in question is enclosed.

Sincerely yours,

ARTHUR G. SLAGHT, D.D., *General Secretary.*

THE AMERICAN COUNCIL OF CHRISTIAN CHURCHES,
New York, N.Y., July 18, 1963.

JOHN F. KENNEDY
President of the United States,
Washington, D.C.

MY DEAR MR. PRESIDENT: The thousands of churches throughout the United States cooperating with the American Council of Christian Churches believe the American Negro has inalienable rights. They also believe millions of other Americans have inalienable rights and that the rights of both are correlated and that both should be protected and preserved by lawful means. They do not believe civil rights are to be defined and determined by law being coerced by lawlessness. They do not believe the President of the United States should act in a manner, directly or indirectly, that can be interpreted as aiding and abetting lawlessness in order to publicize the grievances or assist any group of citizens in attaining desired goals. The multitude of members and friends of this council believe all moral and constitutional rights should be settled by the Congress and the courts of our land—not by street mobs. There are no so-called civil rights superior to the bedrock moral principle of all civilized societies, which is the adjudication of disputes by constitutional process.

Further, Mr. President, it is the conviction of the American Council of Christian Churches that no class of people on earth can have freedom and liberty without private property rights. The abolishment of private property rights is the first major act of a totalitarian regime. The demand that Congress enact legislation which will make the Federal Government absolute dictator to privately owned stores, hotels, motels, restaurants, and theaters is a definite step toward a totalitarian government. By the same logic and principle of law the Federal Government can take one step further and become dictator to the churches of this Nation. The Constitution of the United States guarantees these basic rights of freedom to all Americans. The thousands of churches cooperating with the American Council of Christian Churches strongly protests any effort to destroy these inherent rights all generations of Americans have known.

In the light of the Biblical principles laid down for Government and individuals in the Bible, in the 13th chapter of Romans, we respectfully urge upon you and upon Congress full consideration and preservation of the private property rights and principles involved in any civil rights measures a just and righteous Congress may be called upon to pass.

Respectfully,

ARTHUR G. SLAGHT, D.D., *General Secretary.*

TUSKEGEE, ALA., *May 17, 1963.*

HON. EMANUEL CELLER,
U.S. House of Representatives, House Office Building, Washington, D.C.

We deplore the events of the last seevral weeks which have witnessed the suppression of the rights of the Negro citizens of Birmingham to assemble peacefully to protest the indignities of segregation and discrimination. We believe that this and other denials of constitutional liberty are successful in part because, at present, the Justice Department has insufficient authority to bring legal proceedings on behalf of individuals who are deprived of the guarantees of the Bill of Rights. Therefore, we respectfully request that as chairman of the House Judiciary Committee you sponsor legislation which will specifically vest this authority in the Office of the Attorney General. Had such legal authority been available during the Birmingham crisis, Government lawyers could have sought immediate injunctive relief to prevent the arrest of Negroes peacefully protesting the enforcement of unconstitutional State laws.

We are convinced that southern patterns of discrimination are increasingly supported and perpetuated by Federal funds. Consequently, we urge you to introduce legislation making it unlawful to make any Federal expenditure where such funds will be used discriminatorily. Such an enactment will go a long way toward eroding the evil system of segregation and discrimination which does violence to our dignity and self-respect.

THE FACULTY AND STAFF OF TUSKEGEE INSTITUTE,
Tuskegee Institute, Alabama.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION,
New York, N.Y., July 29, 1963.

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: May I thank you for the many courtesies extended to me in connection with my appearance before your committee last Friday and for your kind words about the International Ladies' Garment Workers' Union.

I am writing at this time to suggest a small specific amendment to the proposed Civil Rights Act of 1963 that would be of great meaning to tens of thousands of native-born citizens, many of whom are concentrated in the New York metropolitan area and are presently ineligible to vote.

You will recall that in my testimony I referred to the Puerto Ricans who came into the ILGWU in great numbers in the early 1930's. My testimony read:

"* * * In the early thirties, many Puerto Ricans enrolled into our union in New York. Because of their recent entrance into the union, they were constitutionally ineligible to run for certain posts requiring a year of membership in the local and 2 years in the International. In 1934, the president of our union, President David Dubinsky, wrote a letter to a local in which he proposed that the newcomers be exempt from the constitutional proviso. 'In this way,' he wrote, 'these Spanish workers will be afforded an opportunity to take part in the administration of the affairs of the local.'

"These Spanish-speaking workers became first-class and first-rate citizens of the union. Yet, today, some 30 years later, Puerto Ricans in New York may not vote, although they are born citizens and are literate, solely because they are not allowed to take their literacy test in Spanish."

Puerto Ricans, many of whom cannot presently pass a literacy test in English and many more of whom are embarrassed to run the risk of failing such a test, are not uninformed about political affairs. There is a vigorous Spanish daily press, several Spanish language periodicals and several radio stations with day-long Spanish programs. To enfranchise the many Puerto Ricans educated in Puerto Rican schools is not to give the vote to illiterates, but to enfranchise literate Americans whose accident of birth caused them to be brought up with another language.

In the light of the above, I should like to propose, perhaps as an extension of my remarks before the committee, that the language of title I, section (b) be amended to strike out the words "where instruction is carried out predominantly in the English language."

The section would then read as amended: "* * * it shall be presumed that any person who has not been adjudged an incompetent and who has completed the sixth grade in a public school in, or a private school accredited by, any State or territory or the District of Columbia, possesses sufficient literacy, comprehension and intelligence to vote in any Federal election * * *."

Respectfully yours,

GUS TYLER, *Assistant President.*

UNITED STATES NATIONAL STUDENT ASSOCIATION,
Philadelphia, Pa., August 3, 1963.

Hon. EMANUEL CELLER,
Chairman of Judiciary Committee,
U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN CELLER: The National Student Association has noted with interest the discussion to include provisions for a Fair Employment Practices Commission under the civil rights bill which is presently before your committee.

As noted in my testimony before your committee July 17, the National Student Association has gone on record as favoring legislation which would establish such a Commission.

At this time, I wish to vigorously support the inclusion of such legislation by your committee in the present bill which you are considering.

As I mentioned in my testimony, the present legislative proposals included in H.R. 7152 do not answer the questions and criticisms being raised by the Negroes and members of other minority groups in our northern and western areas. Those citizens are in need of employment and they, as well as the association and other members of our society, wish to see an end to discrimination in employment practices. The problems involved in this area are complex indeed. The establishment of a Federal Fair Employment Commission will be a necessary first step in finding a solution to those problems.

Once again, on behalf of the National Student Association, I wish to draw the attention of the House Judiciary Committee to the declaration section of the resolution included in my testimony and offer our vigorous support for the inclusion of legislation establishing a Federal Fair Employment Practice Commission.

Very sincerely,

TIMOTHY A. MANRING,
National Affairs Vice President.

WASHINGTON HOME RULE COMMITTEE, INC.,
Washington, D.C., August 2, 1963.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House Office Building, Washington, D.C.

DEAR MR. CELLER: We in the home rule movement realize, of course, that your committee does not have general jurisdiction over legislation concerning the District of Columbia. Nevertheless, we are submitting this brief statement for the record, to point out the continued denial of self-government for residents of the Nation's Capital is a civil rights problem of national significance.

The District is faced with basic social and economic ills, resulting in juvenile delinquency, social decay, and racial strife. Yet, even though the symptoms have been increasingly exposed to national publicity, neither the community at large nor officials of its government have advanced solutions clearly related to the causes of these disorders.

No individual in District government or in Congress is to blame for this lack of constructive leadership. The fault lies in an antiquated and hopelessly inadequate Congress-Commission governmental structure, which places a premium on inactivity by locating responsibility for action as far as it possible from the need for responsible action. And, as is to be expected under these circumstances, power is exercised—and is valued highly—by a handful of individuals who are in a position to veto any proposal for change in the status quo. Nor are District residents to blame for the lack of initiative toward meeting District needs. Again, the fault lies in a governmental system that precludes effective action by an informed citizenry, discouraging thereby the emergence of the sense of community through which local problems are solved by local action elsewhere in the Nation.

In no other area of community life has this governmental impasse been more debilitating to the body politic than in the area of race relations. An appointed Board of Commissioners cautiously feels its way toward measures to reduce racial tensions. The congressional committee responsible for District affairs, meanwhile, has been concerned primarily with palliative remedies, such as the extension of police powers.

We are convinced that, with self-government, District residents long ago would have worked together to establish fair housing and fair employment standards. Local residents long ago would have acted to eliminate the conditions—inadequate schools and recreational facilities, among others, which breed inequality and discord. In short, the District long ago would have become an example for the rest of the Nation in the civil rights field, an example proving that Negroes and whites can join in finding solutions to common problems on the basis of mutual trust and equality.

Today, it is apparent that effective action in the civil rights field is long overdue in the District. It is equally apparent, however, that definitive action can be undertaken only at the behest of District's citizens directly concerned, only within the framework of responsible self-government.

Because we appreciate the difficulties which Congress faces at this time in developing national legislation on civil rights, we do not ask that home rule be added to legislation currently before your committee. We do hope, however, that this statement can be included in the 1963 civil rights record, expressing once again our conviction that home rule legislation is the keystone to civil rights in the Nation's Capital.

Respectfully,

GEORGE C. PENDLETON,
Chairman, Board of Directors.

DRESSMAKERS' JOINT COUNCIL,
New York, N.Y., August 2, 1963.

Representative EMANUEL CELLER,
House Judiciary Committee,
Washington, D.C.

DEAR SIR: I am writing, on behalf of the 80,000 members of our union, to urge you, as a member of the House Judiciary Committee, to support genuinely comprehensive and enforceable civil rights legislation.

It seems to us, as it must to you, that the time has come to meet squarely the basic issues at stake in this matter. We cannot, in good conscience or good sense, expect our Negro citizens to accept less than the equality of rights and opportunity guaranteed to all Americans in our Constitution. In plain truth, there is no acceptable compromise, nor one that can honorably be offered.

We believe that the proposals submitted by President Kennedy are sound. But, in our view, more is needed. We believe that it is necessary, in eliminating discrimination against Negroes at the polls, to establish a sixth-grade education as conclusive proof of literacy. We favor a provision authorizing the Attorney General to bring injunctive suits in all civil rights violations, and a strong and unequivocal stand on public accommodations.

Finally, we favor an effective fair employment practices law to end discrimination in hiring. We consider this of paramount importance. The exclusion of Negroes from jobs, and the barriers to advancement where they do have jobs, are at the root of much of the problem with which we are now struggling.

We hope that your committee, in its recommendations, will support these measures as essential in ridding our country of the injustices and humiliations from which Negro citizens have so long suffered.

Sincerely,

CHARLES S. ZIMMERMAN, *General Manager.*

SUBJECT MATTER INDEX [1]

[For complete and full text of all bills referred to or introduced, see pt. I of these hearings. Cases are listed in an accompanying index.]

[1] This subject matter index was prepared by the Library of Congress. Subheadings follow the order in which subjects appear in the hearings.

INDEX OF CASES[1]

[Full citation of cases in this index may be found in textual matter on pages listed after each case]

[1] This index of cases was prepared by the Library of Congress.

BILL INDEX[1]

[1] This bill index was prepared by the Library of Congress. The contents of bills identical to earlier bills are not listed; instead, a cross-reference identifies the earlier bill. All page references are to pt. I of these hearings.

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