CIVIL RIGHTS

2076-2

HEARINGS

BEFORE THE

COMMITTEE ON RULES

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH CONGRESS

SECOND SESSION

ON

H.R. 7152

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

JANUARY 9, 14, 15, AND 16, 1964

Printed for the use of the Committee on Rules

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CIVIL RIGHTS

THURSDAY, JANUARY 9, 1964

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RULES,
Washington, D.C.

The committee met at 10:30 a.m., in room H-313, Capitol Building, Hon. Howard W. Smith (chairman) presiding.

The CHAIRMAN. The committee will be in order.

Mr. Celler, there is a rumor around that you want to get a rule on H.R. 7152.

Mr. CELLER. I confirm the rumor.

(H.R. 7152 follows:)

Union Calendar No. 386

88TH CONGRESS
1ST SESSION

H. R. 7152

[Report No. 914]

IN THE HOUSE OF REPRESENTATIVES

JUNE 20, 1963

Mr. CELLER introduced the following bill; which was referred to the Committee on the Judiciary

NOVEMBER 20, 1963

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

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 four 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That this Act may be cited as the "Civil Rights Act of 1963".~~

SEC. 2. (a) 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. In recent years substantial steps have been taken toward eliminating such discrimination throughout the Nation. Nevertheless, many citizens of the United States, 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. Such discrimination impairs the general welfare of the United States by preventing the fullest development of the capabilities of the whole citizenry and by limiting participation in the economic, political, and cultural life of the Nation.

(b) It is hereby declared to be the policy of this Act to promote the general welfare by eliminating discrimination based on race, color, religion, or national origin in voting, education, and public accommodations through the exercise by Congress of the powers conferred upon it to regulate the manner of holding Federal elections, to enforce the provisions of the fourteenth and fifteenth amendments, to regulate commerce among the several States, and to make laws necessary and proper to execute the powers conferred upon it by the Constitution.

(c) It is also desirable that disputes or disagreements

arising in any community from the discriminatory treatment of individuals for reasons of race, color, or national origin shall be resolved on a voluntary basis, without hostility or litigation. Accordingly, it is the further purpose of this Act to promote this end by providing machinery for the voluntary settlement of such disputes and disagreements.

TITLE I—VOTING RIGHTS

SEC. 101. Section 2004 of the Revised Statutes (42 U.S.C. 1971), as amended by section 131 of the Civil Rights Act of 1957 (71 Stat. 637), and as further amended by section 601 of the Civil Rights Act of 1960 (74 Stat. 90), is further amended as follows:

(a) Insert "1" after "(a)" in subsection (a) and add at the end of subsection (a) the following new paragraphs:

"(2) No person acting under color of law shall—

"(A) in determining whether any individual is qualified under State law to vote in any Federal election 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.

"(B) deny the right of any individual to vote in any Federal election because of an error or omission of such individual on any record or paper relating to any application, registration, payment of poll tax, or

other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election; or

"(C) employ any literacy test as a qualification for voting in any Federal election unless (i) such test is administered to each individual wholly in writing and (ii) a certified copy of the test and of the answers given by the individual is furnished to him within twenty-five days of the submission of his written request made within the period of time during which records and papers are required to be retained and preserved pursuant to title III of the Civil Rights Act of 1960 (42 U.S.C. 1974-74e; 74 Stat. 88).

"(2) For purposes of this subsection—

"(A) the term 'vote' shall have the same meaning as in subsection (c) of this section;

"(B) the words 'Federal election' shall have the same meaning as in subsection (f) of this section; and

"(C) the phrase 'literacy test' includes any test of the ability to read, write, understand, or interpret any matter."

(b) Insert immediately following the period at the end of the first sentence of subsection (c) the following new sentence: "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 in, 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, possesses sufficient literacy, comprehension, and intelligence to vote in any Federal election as defined in subsection (f) of this section.~~"

~~(c) Add the following subsection "(f)" and designate the present subsection "(f)" as subsection "(g)":~~

~~"(f) Whenever in any proceeding instituted pursuant to subsection (c) the complaint requests a finding of a pattern or practice pursuant to subsection (c), 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 elec-~~

tion 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.

"Notwithstanding any inconsistent provision of State law or the action of any State officer or court, an applicant so declared qualified to vote shall be permitted to vote as provided herein. The Attorney General shall cause to be transmitted certified copies of any order declaring a person qualified to vote to the appropriate election officers. The refusal by any such officer with notice of such order to permit any person so qualified to vote at an appropriate election shall constitute contempt of court.

"An application for an order pursuant to this subsection shall be heard within ten days, and the execution of any order disposing of such application shall not be stayed if the effect of such stay would be to delay the effectiveness of the order beyond the date of any election at which the applicant would otherwise be enabled to vote.

"The court may appoint one or more persons, to be known as temporary voting referees, to receive applications pursuant to this subsection and to take evidence and report to the court findings as to whether at any election or elections (1) any applicant entitled under this subsection to apply for an order declaring him qualified to vote 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. 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 (c).

"In appointing a temporary voting referee the court shall make its selection from a panel provided by the judicial conference of the circuit. Any temporary voting referee shall be a resident and a qualified voter of the State in which he is to serve. He shall subscribe to the oath of office

required by section 1757 of the Revised Statutes (5 U.S.C. 16), and shall to the extent not inconsistent herewith have all the powers conferred upon a master by rule 53 (c) of the Federal Rules of Civil Procedure. The compensation to be allowed any persons appointed by the district court pursuant to this subsection shall be fixed by the court and shall be payable by the United States. In the event that the district court shall appoint a retired officer or employee of the United States to serve as a temporary voting referee, such officer or employee shall continue to receive, in addition to any compensation for services rendered pursuant to this subsection, all retirement benefits to which he may otherwise be entitled.

"The court or temporary voting referee shall entertain applications and the court shall issue orders pursuant to this subsection until final disposition of the proceeding under subsection (c), including any review, or until the finding of a pattern or practice pursuant to subsection (c), whichever shall first occur. Applications pursuant to this subsection shall be determined expeditiously, and this subsection shall in no way be construed as a limitation upon the existing powers of the court.

"When used in this subsection, the words 'Federal election' shall mean any general, special, or primary election held solely or in part for the purpose of electing or selecting any candidate for the office of President, Vice President,

presidential elector, Member of the Senate, or Member of the House of Representatives; the words 'State election' shall mean any other general, special, or primary election held solely or in part for the purpose of electing or selecting any candidate for public office; the words 'affected area' shall mean that county, parish, or similar subdivision of the State in which the laws of the State relating to voting are or have been administered by a person who is a defendant in the proceeding instituted under subsection (c) on the date the original complaint is filed; and the words 'voting age persons' shall mean those persons who meet the age requirements of State law for voting."

(d) Add the following subsection "(h)":

"(h) In any civil action brought in any district court of the United States under this section or title III of the Civil Rights Act of 1960 (42 U.S.C. 1974–74e; 74 Stat. 88) wherein the United States or the Attorney General is plaintiff, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief

judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

"It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited."

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 discrimination 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 artificially 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~~

~~(8) 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~~

~~(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 (c) 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.

TITLE III—DESEGREGATION OF PUBLIC EDUCATION

DEFINITIONS

SEC. 301. As used in this title—

(a) "Commissioner" means the Commissioner of Education.

(b) "Desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin.

(c) "Public school" means any elementary or secondary

educational institution, and "public college" means any institution of higher education or any technical or vocational school above the secondary school level, operated by a State, subdivision of a State, or governmental agency within a State, or operated wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from a governmental source.

(d) "School board" means any agency or agencies which administer a system of one or more public schools and any other agency which is responsible for the assignment of students to or within such system.

ASSISTANCE TO FACILITATE DESEGREGATION

SEC. 302. The Commissioner shall conduct investigations and make a report to the President and the Congress, within two years of the enactment of this title, upon the extent to which equal educational opportunities are denied to individuals by reason of race, color, religion or national origin in public educational institutions at all levels in the United States, its territories and possessions, and the District of Columbia.

SEC. 303. (a) The Commissioner is authorized, upon the application of any school board, State, municipality, school district, or other governmental unit, to render technical assistance in the preparation, adoption, and implementation of plans for the desegregation of public schools or

other plans designed to deal with problems arising from racial imbalance in public school systems. Such technical assistance may, among other activities, include making available to such agencies information regarding effective methods of coping with special educational problems occasioned by desegregation or racial imbalance, and making available to such agencies personnel of the Office of Education or other persons specially equipped to advise and assist them in coping with such problems.

(b) The Commissioner is authorized to arrange, through grants or contracts, with institutions of higher education for the operation of short-term or regular session institutes for special training designed to improve the ability of teachers, supervisors, counselors, and other elementary or secondary school personnel to deal effectively with special educational problems occasioned by desegregation or measures to adjust racial imbalance in public school systems. Individuals who attend such an institute may be paid stipends for the period of their attendance at such institute in amounts specified by the Commissioner in regulations, including allowances for dependents and including allowances for travel to attend such institute.

SEC. 304. (a) A school board which has failed to achieve desegregation in all public schools within its jurisdiction, or a school board which is confronted with problems

arising from racial imbalance in the public schools within its jurisdiction, may apply to the Commissioner, either directly or through another governmental unit, for a grant or loan, as hereinafter provided, for the purpose of aiding such school board in carrying out desegregation or in dealing with problems of racial imbalance.

(b) The Commissioner may make a grant under this section, upon application therefor, for—

(1) the cost of giving to teachers and other school personnel inservice training in dealing with problems incident to desegregation or racial imbalance in public schools; and

(2) the cost of employing specialists in problems incident to desegregation or racial imbalance and of providing other assistance to develop understanding of these problems by parents, schoolchildren, and the general public.

(c) Each application made for a grant under this section shall provide such detailed information and be in such form as the Commissioner may require. Each grant under this section shall be made in such amounts and on such terms and conditions as the Commissioner shall prescribe, which may include a condition that the applicant expend certain of its own funds in specified amounts for the purpose for which the grant is made. In determining whether to make a grant,

and in fixing the amount thereof and the terms and conditions on which it will be made, the Commissioner shall take into consideration the amount available for grants under this section and the other applications which are pending before him; the financial condition of the applicant and the other resources available to it; the nature, extent, and gravity of its problems incident to desegregation or racial imbalance, and such other factors as he finds relevant.

(d) The Commissioner may make a loan under this section, upon application, to any school board or to any local government within the jurisdiction of which any school board operates if the Commissioner finds that—

(1) part or all of the funds which would otherwise be available to any such school board, either directly or through the local government within whose jurisdiction it operates, have been withheld or withdrawn by State or local governmental action because of the actual or prospective desegregation, in whole or in part, of one or more schools under the jurisdiction of such school board;

(2) such school board has authority to receive and expend, or such local government has authority to receive and make available for the use of such board, the proceeds of such loan; and

(3) the proceeds of such loan will be used for the same purposes for which the funds withheld or withdrawn would otherwise have been used.

(c) Each application made for a loan under this section shall provide such detailed information and be in such form as the Commissioner may require. Any loan under this section shall be made upon such terms and conditions as the Commissioner shall prescribe.

(f) The Commissioner may suspend or terminate assistance under this section to any school board which, in his judgment, is failing to comply in good faith with the terms and conditions upon which the assistance was extended.

SEC. 305. Payments pursuant to a grant or contract under this title may be made (after necessary adjustments on account of previously made overpayments or underpayments) in advance or by way of reimbursement, and in such installments, and on such conditions, as the Commissioner may determine.

SEC. 306. The Commissioner shall prescribe rules and regulations to carry out the provisions of sections 301 through 305 of this title.

SUITS BY THE ATTORNEY GENERAL

SEC. 307. (a) Whenever the Attorney General receives a complaint—

~~(1) signed by a parent or group of parents to the effect that his or their minor children, as members of a class of persons similarly situated, are being deprived of the equal protection of the laws by reason of the failure of a school board to achieve desegregation, or~~

~~(2) signed by an individual, or his parent, to the effect that he has been denied admission to or not permitted to continue in attendance at a public college by reason of race, color, religion, or national origin,~~

~~and the Attorney General certifies that in his judgment the signer or signers of such complaint are unable to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly progress of desegregation in public education, the Attorney General is authorized to institute for or in the name of the United States a civil action in a district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.~~

~~(b) A person or persons shall be deemed unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such~~

person or persons are 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 would jeopardize the employment or economic standing of, or might result in injury or economic damage to, such person or persons, their families, or their property.

(c) Whenever an action has been commenced in any court of the United States seeking relief from the denial of equal protection of the laws by reason of the failure of a school board to achieve desegregation, or of a public college to admit or permit the continued attendance of an individual, the Attorney General for or in the name of the United States may intervene in such action if he certifies that, in his judgment, the plaintiffs are unable to maintain the action for any of the reasons set forth in subsection (b) of this section, and that such intervention will materially further the orderly progress of desegregation in public education. In such an action the United States shall be entitled to the same relief as if it had instituted the action under subsection (a) of this section.

(d) The term "parent" as used in this section includes other legal representatives.

SEC. 208. Nothing in this title shall be construed to

deny, impair, or otherwise affect any right or authority of the Attorney General or of the United States under existing law to institute or intervene in any action or proceeding.

SEC. 309. In any action or proceeding under this title the United States shall be liable for costs the same as a private person.

SEC. 310. Nothing in this title shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in public education.

TITLE IV—ESTABLISHMENT OF COMMUNITY RELATIONS SERVICE

SEC. 401. 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.

SEC. 402. It shall be the function of the Service to provide assistance to communities and persons therein in 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 Constitution or laws of the United States or which affect or may affect interstate commerce. The Service may offer

its services in cases of such disputes, disagreements, or difficulties whenever in its judgment peaceful relations among the citizens of the community involved are threatened thereby, and it may offer its services either upon its own motion or upon the request of an appropriate local official or other interested person.

SEC. 403. (a) The Service shall whenever possible in performing its functions under this title seek and utilize the cooperation of the appropriate State or local agencies and may seek and utilize the cooperation of any nonpublic agency which it believes may be helpful.

(b) The activities of all officers and employees of the Service in providing assistance under this title shall be conducted in confidence and without publicity, and the Service shall hold confidential any information acquired in the regular performance of its duties upon the understanding that it would be so held. No officer or employee of the Service shall engage in the performance of investigative or prosecuting functions for any department or agency in any litigation arising out of a dispute in which he acted on behalf of the Service.

SEC. 404. Subject to the provisions of section 403(b), the Director shall, on or before January 31 of each year, submit to the Congress a report of the activities of the Service during the preceding fiscal year. Such report shall also

contain information with respect to the internal administration of the Service and may contain recommendations for legislation necessary for improvements in such internal administration.

TITLE V—COMMISSION ON CIVIL RIGHTS

SEC. 501. Section 102 of the Civil Rights Act of 1957 (42 U.S.C. 1975a; 71 Stat. 634) is amended to read as follows:

"RULES OF PROCEDURE OF THE COMMISSION HEARINGS

"SEC. 102. (a) The Chairman, or one designated by him to act as Chairman at a hearing of the Commission, shall announce in an opening statement the subject of the hearing.

"(b) A copy of the Commission's rules shall be made available to the witness before the Commission.

"(c) Witnesses at the hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

"(d) The Chairman or Acting Chairman may punish breaches of order and decorum and unprofessional ethics on the part of counsel, by censure and exclusion from the hearings.

"(e) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall receive such evidence or testimony or summary of such evidence or testimony in

executive session. In the event the Commission determines that such evidence or testimony shall be given at a public session, it shall afford such person an opportunity voluntarily to appear as a witness and receive and dispose of requests from such person to subpena additional witnesses.

"(f) Except as provided in sections 102 and 105(f) of this Act, the Chairman shall receive and the Commission shall dispose of requests to subpena additional witnesses.

"(g) No evidence or testimony or summary of evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission such evidence or testimony taken in executive session shall be fined not more than $1,000, or imprisoned for not more than one year.

"(h) In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission is the sole judge of the pertinency of testimony and evidence adduced at its hearings.

"(i) Upon payment of the cost thereof, a witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the Commission.

"(j) A witness attending any session of the Commis-

sion shall receive $6 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 10 cents per mile for going from and returning to his place of residence. Witnesses who attend at points so far removed from their respective residences as to prohibit return thereto from day to day shall be entitled to an additional allowance of $10 per day for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance. Mileage payments shall be tendered to the witness upon service of a subpena issued on behalf of the Commission or any subcommittee thereof.

"(k) The Commission shall not issue any subpena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpenaed at a hearing to be held outside of the State wherein the witness is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process except that, in any event, the Commission may issue subpenas for the attendance and testimony of witnesses and the production of written or other matter at a hearing held within fifty miles of the place where the witness is found or resides or is domiciled or transacts business or has appointed an agent for receipt of service of process."

SEC. 502. Section 103(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975b(a); 71 Stat. 634) is amended to read as follows:

"SEC. 103. (a) Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive the sum of $75 per day for each day spent in the work of the Commission, shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his usual place of residence, in accordance with section 5 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 73b-2; 60 Stat. 808)."

SEC. 503. Section 103(b) of the Civil Rights Act of 1957 (42 U.S.C. 1975(b); 71 Stat. 634) is amended to read as follows:

"(b) Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his usual place of residence, in accordance with the provisions of the Travel Expense Act of 1949, as amended (5 U.S.C. 835-42; 63 Stat. 166)."

SEC. 504. Section 104 of the Civil Rights Act of 1957

~~(42 U.S.C. 1975c; 71 Stat. 635), as amended, is further amended to read as follows:~~

~~"DUTIES OF THE COMMISSION~~

~~"SEC. 104. (a) The Commission shall—~~

~~"(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;~~

~~"(2) study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution;~~

~~"(3) appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution; and~~

~~"(4) serve as a national clearinghouse for information, and provide advice and technical assistance to Government agencies, communities, industries, organizations, or individuals in respect to equal protection of the laws, including but not limited to the fields of voting, education, housing, employment, the use of public facilities, transportation, and the administration of justice. The Commission may, for such periods as it deems neces-~~

sary, concentrate the performance of its duties on those specified in either paragraph (1), (2), (3), or (4) and may further concentrate the performance of its duties under any of such paragraphs on one or more aspects of the duties imposed therein.

"(b) The Commission shall submit interim reports to the President and to the Congress at such times as either the Commission or the President shall deem desirable, and shall submit to the President and to the Congress a final and comprehensive report of its activities, findings, and recommendations not later than September 30, 1967.

"(c) Sixty days after the submission of its final report and recommendations the Commission shall cease to exist."

SEC. 505. (a) Section 105(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975(d); 71 Stat. 636) is amended by striking out in the last sentence thereof "$50 per diem" and inserting in lieu thereof "$75 per diem."

SEC. 506. Section 105(g) of the Civil Rights Act of 1957 (42 U.S.C. 1975d(g); 71 Stat. 636) is amended to read as follows:

"(g) In case of contumacy or refusal to obey a subpena, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, within the

jurisdiction of which the injuiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof."

SEC. 507. Section 105 of the Civil Rights Act of 1957 (42 U.S.C. 1975d; 71 Stat. 636), as amended by section 401 of the Civil Rights Act of 1960 (42 U.S.C. 1975d(h); 74 Stat. 89), is further amended by adding a new subsection at the end to read as follows:

"(i) The Commission shall have the power to make such rules and regulations as it deems necessary to carry out the purposes of this Act."

TITLE VI—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

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, no such law shall be interpreted as requiring that such financial assistance shall be furnished in circumstances under which individuals participating in or benefiting 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.

TITLE VII—COMMISSION ON EQUAL EMPLOYMENT OPPORTUNITY

SEC. 701. The President is authorized to establish a Commission to be known as the "Commission on Equal Employment Opportunity," hereinafter referred to as the Commission. 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 subcontractors, and by contractors and subcontractors 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.

SEC. 702. The Commission 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 Commission, while attending meetings or conferences of the Commission or otherwise serving at the request of the Commission, 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 73b-2 of title 5 of the United States Code for persons in the Government service employed intermittently.

SEC. 703. (a) There shall be an Executive Vice Chairman of the Commission who shall be appointed by the Presi-

dent and who shall be ex officio a member of the Commission. The Executive Vice Chairman shall assist the Chairman, the Vice Chairman, and the members of the Commission and shall be responsible for carrying out the orders and recommendations of the Commission and for performing such other functions as the Commission may direct.

(b) Section 106(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, Commission on Equal Employment Opportunity."

(c) The Commission 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.

TITLE VIII—MISCELLANEOUS

SEC. 801. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

SEC. 802. If any provision of this Act or the applica-

~~tion thereof to any person or circumstance is held invalid, the remainder of the Act and the application of the provision to other persons or circumstances shall not be affected thereby.~~

That this Act may be cited as "The Civil Rights Act of 1963".

TITLE I—VOTING RIGHTS

SEC. 101. Section 2004 of the Revised Statutes (42 U.S.C. 1971), as amended by section 131 of the Civil Rights Act of 1957 (71 Stat. 637), and as further amended by section 601 of the Civil Rights Act of 1960 (74 Stat. 90), is further amended as follows:

(a) Insert "1" after "(a)" in subsection (a) and add at the end of subsection (a) the following new paragraphs:

"(2) No person acting under color of law shall—

"(A) in determining whether any individual is qualified under State law or laws to vote in any Federal election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political sub-

division who have been found by State officials to be qualified to vote;

"(B) deny the right of any individual to vote in any Federal election because of an error or omission of such individual on any record or paper relating to any application, registration, payment of poll tax, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election; or

"(C) employ any literacy test as a qualification for voting in any Federal election unless (i) such test is administered to each individual wholly in writing except where an individual requests and State law authorizes a test other than in writing, and (ii) a certified copy of the test whether written or oral and of the answers given by the individual is furnished to him within twenty-five days of the submission of his request made within the period of time during which records and papers are required to be retained and preserved pursuant to title III of the Civil Rights Act of 1960 (42 U.S.C. 1974–74e; 74 Stat. 88).

"(3) For purposes of this subsection—

"(A) the term 'vote' shall have the same meaning as in subsection (e) of this section;

"(B) the phrase 'literacy test' includes any test of the ability to read, write, understand, or interpret any matter."

(b) Insert immediately following the period at the end of the first sentence of subsection (c) the following new sentence: "If in any such proceeding literacy is a relevant fact there shall be a rebuttable presumption 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 where instruction is carried on predominantly in the English language, possesses sufficient literacy, comprehension, and intelligence to vote in any Federal election."

(c) Add the following subsection "(f)" and designate the present subsection "(f)" as subsection "(g)":

"(f) When used in subsections (a) or (c) of this section, the words 'Federal election' shall mean any general, special, or primary election held solely or in part for the purpose of electing or selecting any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives."

(d) Add the following subsection "(h)":

"(h) In any proceeding instituted in any district court of the United States under this section the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. A copy of the request shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge) of the circuit in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

"In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the

chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

"It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited."

TITLE II—INJUNCTIVE RELIEF AGAINST DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION

SEC. 201. (a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

(b) Each of the following establishments which serves the public is a place of public accommodation within the meaning of this title if its operations affect commerce, or if

discrimination or segregation by it is supported by State action:

(1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

(2) any restaurant, cafeteria, lunch room, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station;

(3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and

(4) any establishment (A) which is physically located within the premises of any establishment otherwise covered by this subsection, or within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

(c) The operations of an establishment affect commerce within the meaning of this title if (1) it is one of the estab-

lishments described in paragraph (1) of subsection (b); (2) in the case of an establishment described in paragraph (2) of subsection (b), it serves or offers to serve interstate travelers or a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce; (3) in the case of an establishment described in paragraph (3) of subsection (b), it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce; and (4) in the case of an establishment described in paragraph (4) of subsection (b), it is physically located within the premises of, or there is physically located within its premises, an establishment the operations of which affect commerce within the meaning of this subsection. For purposes of this section, "commerce" means travel, trade, traffic, commerce, transportation or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country.

(d) Discrimination or segregation by an establishment is supported by State action within the meaning of this title if such discrimination or segregation (1) is carried on under color of any law, statute, ordinance, regulation,

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custom, or usage; or (2) is required, fostered, or encouraged by action of a State or a political subdivision thereof.

(e) 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 (b).

SEC. 202. All persons shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule or order, of a State or any agency or political subdivision thereof.

SEC. 203. No person 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 201 or 202, or (b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 201 or 202, or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 201 or 202, or (d) incite or aid or abet any person to do any of the foregoing.

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 satisfies himself that the purposes of this title will be materially furthered by the filing of an action.

(b) In any action commenced pursuant to this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, and the United States shall be liable for costs the same as a private person.

(c) In case of any complaint received by the Attorney General alleging a violation or threatened violation of section 203 in a place where State or local laws or regulations forbid the act or practice involved, the Attorney General shall notify the appropriate State or 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.

(d) In the case of any complaint received by the Attorney General alleging a violation or threatened violation of section 203, the Attorney General, before instituting an ac-

tion, may utilize the services of any Federal, State, or local agency or instrumentality which may be available to attempt to secure compliance with the provisions of this title by voluntary procedures.

(e) Compliance with the foregoing provisions of subsection (c) 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 prove ineffective.

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) The remedies provided in this title shall be the exclusive means of enforcing the rights hereby created, but nothing in this title shall preclude any individual or any State or local agency from asserting any right created by any other Federal or State law not inconsistent with this title, including any statute or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right.

(c) Proceedings for contempt arising under the provisions of this title shall be subject to the provisions of section 151 of the Civil Rights Act of 1957 (71 Stat. 638).

TITLE III—DESEGREGATION OF PUBLIC FACILITIES

SEC. 301. (a) Whenever the Attorney General receives a complaint signed by an individual to the effect that he is being deprived of or threatened with the loss of his right to the equal protection of the laws, on account of his race, color, religion, or national origin, by being denied access to or full and complete utilization of any public facility which is owned, operated, or managed by or on behalf of any State or subdivision thereof, other than a public school or public college as defined in section 401 of title IV hereof, and the Attorney General certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the public policy of the United States favoring the orderly progress of desegregation in public facilities, the Attorney General is authorized to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section.

The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

(b) The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the employment or economic standing of, or might result in injury or economic damage to, such person or persons, their families, or their property.

SEC. 302. Whenever an action has been commenced in any court of the United States seeking relief from the denial of equal protection of the laws on account of race, color, religion, or national origin, the Attorney General for or in the name of the United States may intervene in such action. In such an action the United States shall be entitled to the same relief as if it had instituted the action.

SEC. 303. In any action or proceeding under this title the United States shall be liable for costs the same as a private person.

SEC. 304. Nothing in this title shall affect adversely

the right of any person to sue for or obtain relief in any court against discrimination in any facility covered by this title.

TITLE IV—DESEGREGATION OF PUBLIC EDUCATION

DEFINITIONS

SEC. 401. As used in this title—

(a) "Commissioner" means the Commissioner of Education.

(b) "Desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin.

(c) "Public school" means any elementary or secondary educational institution, and "public college" means any institution of higher education or any technical or vocational school above the secondary school level, operated by a State, subdivision of a State, or governmental agency within a State, or operated wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from a governmental source.

(d) "School board" means any agency or agencies which administer a system of one or more public schools and any

other agency which is responsible for the assignment of students to or within such system.

SURVEY AND REPORT OF EDUCATIONAL OPPORTUNITIES

SEC. 402. The Commissioner shall conduct a survey and make a report to the President and the Congress, within two years of the enactment of this title, concerning the lack of availability of equal educational opportunities for individuals by reason of race, color, religion, or national origin in public educational institutions at all levels in the United States, its territories and possessions, and the District of Columbia.

TECHNICAL ASSISTANCE

SEC. 403. The Commissioner is authorized, upon the application of any school board, State, municipality, school district, or other governmental unit, to render technical assistance to such applicant in the preparation, adoption, and implementation of plans for the desegregation of public schools. Such technical assistance may, among other activities, include making available to such agencies information regarding effective methods of coping with special educational problems occasioned by desegregation, and making available to such agencies personnel of the Office of Education or other

persons specially equipped to advise and assist them in coping with such problems.

TRAINING INSTITUTES

SEC. 404. The Commissioner is authorized to arrange, through grants or contracts, with institutions of higher education for the operation of short-term or regular session institutes for special training designed to improve the ability of teachers, supervisors, counselors, and other elementary or secondary school personnel to deal effectively with special educational problems occasioned by desegregation. Individuals who attend such an institute may be paid stipends for the period of their attendance at such institute in amounts specified by the Commissioner in regulations, including allowances for dependents and including allowances for travel to attend such institute.

GRANTS

SEC. 405. (a) The Commissioner is authorized, upon application of a school board, to make grants to such board to pay, in whole or in part, the cost of—

(1) giving to teachers and other school personnel inservice training in dealing with problems incident to desegregation, and

(2) employing specialists to advise in problems incident to desegregation.

(b) In determining whether to make a grant, and in fixing the amount thereof and the terms and conditions on which it will be made, the Commissioner shall take into consideration the amount available for grants under this section and the other applications which are pending before him; the financial condition of the applicant and the other resources available to it; the nature, extent, and gravity of its problems incident to desegregation; and such other factors as he finds relevant.

PAYMENTS

SEC. 406. Payments pursuant to a grant or contract under this title may be made (after necessary adjustments on account of previously made overpayments or underpayments) in advance or by way of reimbursement, and in such installments, as the Commissioner may determine.

SUITS BY THE ATTORNEY GENERAL

SEC. 407. (a) Whenever the Attorney General receives a complaint—

(1) signed by a parent or group of parents to the effect that his or their minor children, as members of a class of persons similarly situated, are being deprived of the equal protection of the laws by reason of the failure of a school board to achieve desegregation, or

(2) signed by an individual, or his parent, to the

effect that he has been denied admission to or not permitted to continue in attendance at a public college by reason of race, color, religion, or national origin,

and the Attorney General certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the public policy of the United States favoring the orderly achievement of desegregation in public education, the Attorney General is authorized to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

(b) The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the employment or economic

standing of, or might result in injury or economic damage to, such person or persons, their families, or their property.

(c) The term "parent" as used in this section includes any person standing in loco parentis.

SEC. 408. In any action or proceeding under this title the United States shall be liable for costs the same as a private person.

SEC. 409. Nothing in this title shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in public education or in any facility covered by this title.

TITLE V. COMMISSION ON CIVIL RIGHTS

SEC. 501. Section 102 of the Civil Rights Act of 1957 (42 U.S.C. 1975a; 71 Stat. 634) is amended to read as follows:

"RULES OF PROCEDURE OF THE COMMISSION HEARINGS

"SEC. 102. (a) The Chairman, or one designated by him to act as Chairman at a hearing of the Commission, shall announce in an opening statement the subject of the hearing.

"(b) A copy of the Commission's rules shall be made available to the witness before the Commission.

"(c) Witnesses at the hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

"(d) The Chairman or Acting Chairman may punish

breaches of order and decorum and unprofessional ethics on the part of counsel, by censure and exclusion from the hearings.

"(e) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall receive such evidence or testimony or summary of such evidence or testimony in executive session. In the event the Commission determines that such evidence or testimony shall be given at a public session, it shall afford such person an opportunity voluntarily to appear as a witness and receive and dispose of requests from such person to subpena additional witnesses.

"(f) Except as provided in sections 102 and 105(f) of this Act, the Chairman shall receive and the Commission shall dispose of requests to subpena additional witnesses.

"(g) No evidence or testimony or summary of evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission such evidence or testimony taken in executive session shall be fined not more than $1,000, or imprisoned for not more than one year.

"(h) In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission is the sole judge of

the pertinency of testimony and evidence adduced at its hearings.

"(i) Upon payment of the cost thereof, a witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the Commission.

"(j) A witness attending any session of the Commission shall receive $6 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 10 cents per mile for going from and returning to his place of residence. Witnesses who attend at points so far removed from their respective residences as to prohibit return thereto from day to day shall be entitled to an additional allowance of $10 per day for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance. Mileage payments shall be tendered to the witness upon service of a subpena issued on behalf of the Commission or any subcommittee thereof.

"(k) The Commission shall not issue any subpena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpenaed at a hearing to be held outside of the State wherein the witness is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process except that, in any

event, the Commission may issue subpenas for the attendance and testimony of witnesses and the production of written or other matter at a hearing held within fifty miles of the place where the witness is found or resides or is domiciled or transacts business or has appointed an agent for receipt of service of process."

SEC. 502. Section 103(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975b(a); 71 Stat. 634) is amended to read as follows:

"SEC. 103. (a) Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive the sum of $75 per day for each day spent in the work of the Commission, shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his usual place of residence, in accordance with section 5 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 73b-2; 60 Stat. 808)."

SEC. 503. Section 103(b) of the Civil Rights Act of 1957 (42 U.S.C. 1975b(b); 71 Stat. 634) is amended to read as follows:

"(b) Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be paid actual travel expenses, and per diem

in lieu of subsistence expenses when away from his usual place of residence, in accordance with the provisions of the Travel Expenses Act of 1949, as amended (5 U.S.C. 835-42; 63 Stat. 166)."

SEC. 504. (a) Section 104 of the Civil Rights Act of 1957 (42 U.S.C. 1975c; 71 Stat. 635), as amended, is further amended to read as follows:

"DUTIES OF THE COMMISSION

"SEC. 104. (a) The Commission shall—

"(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;

"(2) study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution;

"(3) appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution;

"(4) serve as a national clearinghouse for information in respect to equal protection of the laws, including but not limited to the fields of voting, education, housing,

employment, the use of public facilities, transportation, and the administration of justice; and

"(5) investigate allegations, made in writing and under oath or affirmation, that citizens of the United States are unlawfully being accorded or denied the right to vote, or to have their votes properly counted, in any election of presidential electors, Members of the United States Senate, or of the House of Representatives, as a result of any patterns or practice of fraud or discrimination in the conduct of such election.

"(b) The Commission shall submit interim reports to the President and to the Congress at such times as either the Commission or the President shall deem desirable, and shall submit to the President and to the Congress a report of its activities, findings, and recommendations not later than January 31 of each year."

(b) Section 104(c) of the Civil Rights Act of 1957 is repealed.

SEC 505. Section 105(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975d(a); 71 Stat. 636) is amended by striking out in the last sentence thereof "$50 per diem" and inserting in lieu thereof of "$75 per diem."

SEC. 506. Section 105(g) of the Civil Rights Act of 1957 (42 U.S.C. 1975d(g); 71 Stat. 636) is amended to read as follows:

"(g) In case of contumacy or refusal to obey a subpena, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof."

SEC. 507. Section 105 of the Civil Rights Act of 1957 (42 U.S.C. 1975d; 71 Stat. 636), as amended by section 401 of the Civil Rights Act of 1960 (42 U.S.C. 1975d(h); 74 Stat. 89), is further amended by adding a new subsection at the end to read as follows:

"(i) The Commission shall have the power to make such rules and regulations as it deems necessary to carry out the purposes of this Act."

TITLE VI—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

SEC. 601. Notwithstanding any inconsistent provision of any other law, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

SEC. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, contract, or loan, shall take action to effectuate the provisions of section 601 with respect to such program or activity. Such action may be taken by or pursuant to rule, regulation, or order of general applicability and shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding of a failure to comply with such requirement, or (2) by any other means authorized by law: Provided, however, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the

failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means.

SEC. 603. Any department or agency action taken pursuant to section 602 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedure Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

TITLE VII—EQUAL EMPLOYMENT OPPORTUNITY

FINDINGS AND DECLARATION OF POLICY

SEC. 701. (a) The Congress hereby declares that the oppo tunity 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.

(b) The Congress further declares that the succeed-

ing 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 enjoyment 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 union, 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 719, 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, gen-

eral 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 719, (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;

(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 repre-

senting 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. 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, COLOR, RELIGION, OR NATIONAL ORIGIN

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, color, religion or national origin; 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, color, religion, or national origin.

(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, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, or national origin.

(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, color, religion, or national origin;

(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, color, religion, or national origin; 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, color, religion, or national origin 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 necessary 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, color, religion, or national origin, 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. 706. (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 title, 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 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.

(g) 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 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 appro-

priate to effectuate the purposes and policies of this title and to make the results of such studies available to interested governmental and nongovernmental agencies.

(h) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court.

(i) 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. 707. (a) Whenever it is charged in writing under oath by or on behalf of a person claiming to be aggrieved, or a written charge has been filed by a member of the Commission (and such charge sets forth the facts upon which it is based) that an employer, employment agency, or labor organization has engaged in an unlawful employment practice, the Commission shall furnish such employer, employment agency, or labor organization (hereinafter referred to as the "respondent") with a copy of such charge and shall make an investigation of such charge. If two or more members of the Commission shall determine, after such investigation, that reasonable cause exists for crediting the charge, the Commission shall endeavor to eliminate any such unlawful employment practice by informal methods of conference, conciliation,

and persuasion and, if appropriate, to obtain from the respondent a written agreement describing particular practices which the respondent agrees to refrain from committing. Nothing said or done during and as a part of such endeavors may be used as evidence in a subsequent proceeding.

(b) If the Commission has failed to effect the elimination of an unlawful employment practice and to obtain voluntary compliance with this title, or in advance thereof if circumstances warrant, the Commission, if it determines there is reasonable cause to believe the respondent has engaged in, or is engaging in, an unlawful employment practice, shall, within ninety days, bring a civil action to prevent the respondent from engaging in such unlawful employment practice, except that the Commission shall be relieved of any obligation to bring a civil action in any case in which the Commission has, by affirmative vote, determined that the bringing of a civil action would not serve the public interest.

(c) If the Commission has failed or declined to bring a civil action within the time required under subsection (b), the person claiming to be aggrieved may, if one member of the Commission gives permission in writing, bring a civil action to obtain relief as provided in subsection (e).

(d) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this

title. Such actions may be brought either in the judicial district in which the unlawful employment practice is alleged to have been committed or in the judicial district in which the respondent has his principal office. No such civil action shall be based on an unlawful employment practice occurring more than six months prior to the filing of the charge with the Commission and the giving of notice thereof to the respondent, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the Armed Forces, in which event a period of military service shall not be included in computing the six month period.

(e) If the court finds that the respondent has engaged in or is engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and shall order the respondent 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 unlawful employment practice), as may be appropriate. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court 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 cause.

(f) In any case in which the pleadings present issues of fact, the court may appoint a master and the order of reference may require the master to submit with his report a recommended order. The master shall be compensated by the United States at a rate to be fixed by the court, and shall be reimbursed by the United States for necessary expenses incurred in performing his duties under this section. Any court before which a proceeding is brought under this section shall advance such proceeding on the docket and expedite its disposition.

(g) The provisions of 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), shall not apply with respect to civil actions brought under this section.

(h) In any action or proceeding under this title the Commission shall be liable for costs the same as a private person.

EFFECT ON STATE LAWS

SEC. 708. (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 cases covered by this title, 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 bringing a civil action in any cases or class of cases referred to in such agreement. No person may bring a civil action under section 707(c) 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. 709. (a) In connection with any investigation of a charge filed under section 707, 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 committed or is committing an unlawful employment practice, or which may aid in the enforcement of this title.

(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 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 Commission 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 Commission shall prescribe by regulation or order as reasonable, necessary, or appropriate for the enforcement of this title or the regulations or orders thereunder. The Commission 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 this 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 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. 710. (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 jurisdiction, powers, and duties of the Commission, 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 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. 711. (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 this title.

(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. 712. (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 this title and such other relevant information which the Commission 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. 713. 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. 714. (a) The Commission shall have authority from time to time to issue, amend, or rescind suitable regulations to carry out the provisions of this title. 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 title 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 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 reports, 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. 715. 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. 716. There is hereby authorized to be appropriated not to exceed $2,500,000 for the administration of this title 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. 717. If any provision of this title or the application of such provision to any person or circumstance shall be held invalid, the remainder of this title 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. 718. 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. 719. (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, and 707 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 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 title.

TITLE VIII

REGISTRATION AND VOTING STATISTICS

SEC. 801. The Secretary of Commerce shall promptly conduct a survey to compile registration and voting statistics in such geographic areas as may be recommended by the Commission on Civil Rights. Such a survey and compilation shall, to the extent recommended by the Commission on Civil Rights, include a count of persons of voting age by race, color, and national origin, and a determination of the extent to which such persons are registered to vote, and have voted in any statewide primary or general election in which the Members of the United States House of Representatives are nominated or elected, since January 1, 1960. Such information shall also be collected and compiled in connection with the Nineteenth Decennial Census, and at such other times as the Congress may prescribe.

TITLE IX—PROCEDURE AFTER REMOVAL IN CIVIL RIGHTS CASES

SEC. 901. Title 28 of the United States Code, section 1447(d), is amended to read as follows:

"An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise."

TITLE X—MISCELLANEOUS

SEC. 1001. Nothing in this Act shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General or of the United States or any agency or officer thereof under existing law to institute or intervene in any action or proceeding.

SEC. 1002. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

SEC. 1003. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of the provision to other persons or circumstances shall not be affected thereby.

Amend the title so as to read: "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 public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes."

The CHAIRMAN. Mr. Brown advised me that he could not be here the first thing this morning because of being with his Republican National Committee. I think the others are around and probably will be in in a minute, so you may proceed, Mr. Celler.

STATEMENT OF HON. EMANUEL CELLER, REPRESENTATIVE IN CONGRESS FROM NEW YORK

Mr. CELLER. Mr. Chairman, I want to thank you, and the members of this distinguished committee for an opportunity afforded me to present the views on H.R. 7152, to the end that we may obtain a rule.

I need not spangle my remarks with any unusual words, because I feel that I have a just cause in asking for this rule. I would say that H.R. 7152 might be well deemed a standard to which the wise and the honest can repair.

The civil rights picture in this country is still pretty dim. The right-to-vote section of the 1957 civil rights law has been a failure, despite the Commission on Civil Rights, which credits a determined effort in the past to bring about general voting for the Negro.

In 1956, just 5 percent of the voting age Negroes in 100 Southern counties were registered to vote. Today the figure has only risen to 8.3 percent, despite the passage of 2 civil rights acts, the institution of some 40-odd suits by the Department of Justice, and the operation of dozens of private registration drives.

If there has been any progress in that regard, the progress has indeed been at a snail's pace. It is a hundred years since the announcement and promulgation of the Emancipation Proclamation. The body of the Negro was then unshackled but today in numerous parts of the country his mind and spirit are still fettered in chain. He still wears some of the badges of slavery. In many places humiliation faces him at every twist and turn.

As you know, ladies and gentleman, patience is finite. Small wonder the Negro's patience and forbearance are at an end and as our late moderate President warned, "The fires of frustration and hatred are ablaze in many places." Racial intolerance hurts our image abroad, especially among the newly emerged nations. Racial intolerance reflects upon our boast as a great democracy.

President Johnson yesterday forthrightly and courageously and in clarion tones asked for this bill, for which I am seeking a rule. He said:

> Let this session of Congress be known as the session which did more for civil rights than the last 100 sessions combined.

He went on to say:

> Unfortunately, many Americans live on the outskirts of hope, some because of their poverty, some because of their color, and all too many because of both. Let us make one principle of this administration abundantly clear: All of these increased opportunities, employment, education, housing, every field, must be open to Americans of every color. And then with somewhat a fire in his belly—

the President said:

> for this is not merely an economic issue, or a social, political, or international issue, it is a moral issue, and it must be met by passage this session of the bill now pending in the House. All members of the public should have equal access to facilities open to the public. All members of the public should be equally eligible for Federal benefits financed by the public. All members of the

public should have an equal chance to vote for public officials and to send their children to good public schools and to contribute their talents to the public good. Today Americans of all races stand side by side in Berlin and Vietnam. They died side by side in Korea. Surely they can work and eat and travel side by side in America.

I say to the members of this committee, I am not unaware of the price that must be paid for the advancement and the culmination of the cause of civil rights. To many it means changing patterns of life that have existed for a century or more. It is easy for myself and other Northerners to demand that some change their mores, their customs, wrench away from tradition, but it is like asking one to sever hand from wrist.

I wish, truly, it could be otherwise, but unfortunately it cannot. The die is cast. The cries of pain, humiliation, and anguish must be answered. Congress must promply answer with justice and fairness.

The movement toward civil rights cannot be stayed. You can no more stop it than you can hold back the tide with a groan. Also, any efforts to prevent enactment of the Civil Rights Act is but a delaying action. Any attempt to prevent ultimate passage is useless, just as useless as trying to make a tiger eat grass or a cow eat meat. That cannot be done.

We shall have a bill presented so that the entire House may work its will, either through a rule or a discharge petition.

The President significantly also spoke as if he were specifically addressing this committee when he said in his state of the Union message yesterday:

We can demonstrate effective legislative leadership by discharging the public business with clarity and dispatch, voting each important proposal up or voting it down, but at least bringing it to a fair and final vote.

I do not relish any discharge petition, but sometimes bitter medicine is essential for the health of the body politic.

I am very happy to note the statement made by the distinguished chairman, that he hopes to conduct these hearings with dispatch and that they will not be unduly prolonged. I have great faith in your chairman, ladies and gentlemen. I think he will carry out his word and I honor him for his carrying out that word. He has always done so.

President Johnson also said some weeks ago, "Above all," and he used the words "above all" with emphasis, he was for the civil rights bill and he meant above all in point of time and above all in point of importance.

The late President Kennedy forthrightly supported the bill. Indeed, I can tell you that he helped fashion it. The bill is a result of a genuine bipartisan effort in the Judiciary Committee, and I pay tribute to my distinguished colleague on the Judiciary Committee, Representative Bill McCulloch, of Ohio, who indeed rendered yeoman's service in endeavoring to get bipartisan support for this bill. All honor is due him because he forsook any partisan advantage in order order to get a constructive, forthright bill.

Now, you may rebel against some paragraphs of this bill, but I believe that frankly, anyone who opposes the general purport of this bill is unrealistic. Civil rights shall no longer be a beautiful canvas of sweet phrases and pretty sentiments. They must be woven into the

warp and woof of the life of the Nation. The time has come for action. An ounce of performance is worth a pound of preachment.

H.R. 7152, as amended, contains 10 titles. It is a comprehensive bill. It seeks to provide appropriate, effective, and necessary solutions to many pressing problems in the field of civil rights and to remedy inadequacies in existing law.

Title I of the bill deals with voting. It seeks to assure that no qualified voter is denied the right to vote solely because of his race or color. The deficiencies of the Civil Rights Act of 1957 and 1960, which sought this objective, require correction.

First, there has been lengthy and often unwarranted delay in court proceedings to vindicate voting rights. For example, one suit filed July 19, 1961, in Louisiana Parish, where 24,000 of 40,000 eligible whites were registered, but only 725 of 16,000 eligible Negroes were registered, is still pending after 2 years, and so is the Negro's right to vote pending for 2 years.

Obviously there is no such thing as retroactive relief with respect to voting rights. To eliminate the delay, title I of H.R. 7152, as amended, would require courts to give priority to voting cases brought by the United States. It would also authorize and direct the appointment of a three-judge court upon the request of the Attorney General. Three-men courts are not unusual in this country. We have established such courts by law in antitrust cases, in transportation cases, and in other cases.

Another voting abuse has been the resort to literacy tests, another device as a means of discriminating against Negroes attempting to register. The bill would prohibit the discriminatory use of such tests and devices by registered officials and would require such officials to apply equal standards with respect to Federal elections. I emphasize "Federal" because it is limited to Federal elections. The title requires that literacy tests, whenever given, must be in writing and creates a reasonable presumption that an individual who has completed the sixth grade, possesses sufficient literacy to vote in Federal elections.

Title II of the bill would establish the right of all persons to full and equal enjoyment without discrimination or segregation of the services and facilities of designated places of public accommodation, if the operations of such places affect commerce or if the discrimination or segregation is supported by State action.

This title seeks to remove the daily affront and humiliation occasioned by discriminatory denials of access to facilities open to the general public. The mounting resentment to such discrimination has been responsible for numerous protests and demonstrations. Such discrimination not only inhibits the mobility of large groups of our citizens, but results in substantial burdens on the free flow of commerce. While there has been steady progress in many areas, much remains to be done.

Of the 275 cities, with population in excess of 10,000 in the 11 States of the old Confederacy and the 4 border States as of July 1963, approximately 65 percent have not yet desegregated their hotels and motels; close to 60 percent have not yet desegregated their restaurants or theaters; and 43 percent still have segregated luncheon counters. An even bleaker picture is presented in 98 cities in the southern and border States, with less than 10,000 population; approximately 85

to 90 percent of these smaller cities have not yet desegregated their restaurants, hotels, motels, theaters, or luncheon counters.

Legislation to secure the right to service in places of public accommodation is no novelty in the United States. Indeed, some 30 States and the District of Columbia have laws prohibiting discrimination in places of public accommodation. The failure of more States to take effective action in the light of prevalence of discrimination makes Federal legislation necessary.

Title II of the bill prohibits discrimination on ground of race, color, or national origin in hotels, motels, theaters, places of amusement presenting entertainment which move in interstate commerce, and restaurants, luncheon counters and gasoline stations which sell food or goods which move in commerce or which serve interstate travelers. In addition to these enumerated establishments, the bill covers establishments which either contain, or are located within the premises of, any establishment that is specified in the bill.

This would mean, for example, that retail stores, which are ordinarily excluded from the bill, that retail stores which contain public luncheon counters or restaurants would thereby also be subject to the nondiscriminatory provisions of the bill. However, barberships, beauty parlors, and other such establishments are not covered, unless they are contained within a hotel and intended for the use of the patrons of the hotel.

Discrimination is also prohibited in the establishments designated in the bill if such discrimination is supported by State action.

Finally, the bill would prohibit discrimination in any establishment, whether or not in the enumerated categories, if discrimination is required or purports to be required by State law.

The prohibitions of title II of the bill would be enforced only by civil suits for injunctions; neither criminal penalties nor the recovery of money damages would be involved. Any person violating a court injunction issued under the provisions of title II, of course, would be subject to contempt proceedings, but these would be limited by the jury trial provisions of the Civil Rights Act of 1957.

In addition to private action, the bill authorizes the Attorney General to bring suit in important cases but requires that the matter be first referred to local authorities to afford such local authorities a reasonable time to act if local law appears to prohibit the conduct complained of.

Title III of the bill——

Mr. COLMER. Mr. Chairman, I don't want to interrupt the witness, but I want to be sure that I understood what he has said. I wonder if it would be in order for me to ask him to repeat what he said about jury trials.

Mr. CELLER. Yes; I would be glad to.

Mr. COLMER. I do not want to interrupt the gentleman's orderly proceeding.

Mr. CELLER. If there is any contempt citation—I mean any criminal contempt citation growing out of title II after an injunction has been issued by a court, that contempt proceeding must be tried before a jury under the 1957 act, if the person accused of contempt demands a jury. If, for example, the judge, without a jury, evokes sanctions and the fine is over $300, or the imprisonment is over 45 days, then

the person who is guilty of the contempt can nonetheless demand a new trial and the hearing is de novo before a jury in the district court. That is the 1957 act.

The CHAIRMAN. I don't want to interrupt, either, but would you be a little more specific in defining civil contempt and criminal contempt?

Mr. CELLER. That is a very thin difference between the two. Criminal contempt would be where a judge issues an order, that and the person accused should cease discrimination and he deliberately refuses to cease practicing discrimination, that would be a criminal contempt. If, for example, in a court somebody makes a disturbance or makes an accusation against a judge or is guilty of some improper decorum, and the judge wants to find him in contempt, that would be a civil contempt.

Title III of the bill concerns State or municipal facilities, like public parks, libraries, playgrounds, swimming pools, other than schools or colleges, the limitation of access to or use of which would be a denial of equal protection of the laws under the 14th amendment.

This title would authorize the Attorney General under specified circumstances to initiate suits to segregate public facilities other than the public governmental institutions which are operated, owned, managed by or on behalf of the United States. This title does not authorize suits against private, nongovernmental businesses or establishments. The mere fact that a price or rates of a business were limited or controlled by State or local law, or that the business was subject to some form of license or regulation, would not bring it within the scope of title III, since such regulation would not be enough to make the facility State managed or controlled for the purpose of the title.

Title III only concerns those public facilities which are State or locally managed by some instrumentality of the State.

Title III would also authorize the Attorney General to intervene in any pending lawsuits brought by a private person to obtain relief from a denial of equal protection of the laws because of race, color, religion, or national origin.

Title IV of the bill deals with the desegregation of public education. Nine years have passed since the *Brown* v. *the Board of Education* decision. Yet there still remain more than 2,000 school districts which require that white and Negro pupils attend separate schools. Many Negro children who entered segregated schools at the time of the 1954 *Brown* Supreme Court decision entered segregated high schools this past year. These students have suffered loss of equal educational opportunities, which can never be remedied.

Today this Nation confronts the fact that because of discrimination in education, great numbers of our citizens are hopelessly handicapped in the labor market.

Title IV would hasten the process of desegregation in two important ways: First, it would authorize the Commissioner of Education to provide upon application of local school authorities technical and financial aid to assist schools in dealing with problems occasioned by desegregation. Second, it would authorize the Attorney General to institute suits to compel desegregation where the private parties are unable to bring suit and where the Attorney General considers that a suit would materially further the national policy favoring the orderly achievement of desegregation in public education.

Title V of the bill as amended concerns the Commission on Civil Rights. In addition to minor procedural and technical changes, it gives the Commission permanent status.

Title V also authorizes the Commission to serve as a national clearinghouse for information concerning denials of equal protection of the law and to investigate allegations as to patterns or practices of fraud or discrimination in elections for Federal office.

Title VI of the bill is intended to insure that no person in the United States is excluded from participation in, denied the benefits of or subjected to discrimination on grounds of race, color, or national origin under any program or activity receiving Federal financial assistance.

Title VI directs all appropriate Federal agencies to adopt rules, regulations, or orders of general applicability to effectuate this national policy of nondiscrimination.

It would require each Federal agency administering Federal assistance, by grant, contract, or loan, to reexamine its assistance program to make sure that adequate action has been taken to preclude such discrimination.

The objective of title VI is to end discrimination, not to deny Federal assistance. The title requires that an effort be made to secure compliance by voluntary means before any enforcement mechanism is invoked.

The title will not punish innocent beneficiaries of Federal aid for wrongs committed by others. For example, title VI would not affect an individual farmer who borrows money through a Government agency. It would affect the distributor of those funds if the distributing agency practiced discrimination.

As to each assisted program or activity, title VI will require an identification of those persons whom Congress regarded as participants and beneficiaries and with respect to whom the principle declared in title VI would apply.

For example, the purpose of acreage allotments under the Agricultural Production Act is to assist farmers by stabilizing production and prices. It is not basically concerned with farm employment. As applied to this program, title VI would preclude discrimination in connection with the eligibility of farmers for allotment payments but would not require action to end discriminatory employment practices by farmers themselves receiving allotments.

To guard against any possible abuse ample opportunity——

The CHAIRMAN. I wish you would be a little more specific about that—farmers. He is receiving the benefit of a Federal program financially. Why isn't he included as well as the fellow above him?

Mr. CELLER. Because the prohibition is aimed at the distributing agency. It is the agency, if it discriminates, which would have its funds cut off, but if the agency deals improperly or discriminates as between the farmers, who are entitled, then the funds would be cut off, but assume that the agency properly distributes funds. If the farmer, however, discriminates in employment, he can still get his aid because this does not reach the individual farmer. That farmer may be reached if he employs, after a certain period, more than 25 persons under title VII—FEPC, which will come later, but he is not covered by title VI. He can do anything he wishes, the farmer

can. He is not covered by title VI. It is only the agencies that do the actual distribution of funds that are covered.

The CHAIRMAN. Excuse me for interrupting, but I will come back to that. I want to ask you one or two questions myself.

Mr. CELLER. Certainly. To guard against any possible abuse ample opportunity is provided for judicial review of any Federal agency action terminating or refusing to grant or to continue financial assistance on grounds of discrimination.

The executive branch has generally followed nondiscriminatory policies in the administration of Federal assistance programs, where not limited by statutory provisions such as those contained in the Hill-Burton Act, 42 U.S. Code 291(e)(f) and the second Morrill Act, 7 U.S. Code 223. Those acts provide for separate but equal practices and the Government actually had to recognize those statutes so that if a hospital provided separate but equal facilities for colored the aid had to be given, because that was the law of the land, but this title abolishes and revokes the Morrill Act and the Hill-Burton Act insofar as such acts authorize "separate but equal" facilities.

Title VI would provide clear statutory support for such executive action and would guarantee that it be continued in future years as a permanent part of our national policy.

Title VII of the bill establishes the Federal Equal Employment Opportunity Commission designed to eliminate discriminatory employment practices by certain employers, union and employment agencies.

The Commission is empowered to: (1) Receive and investigate charges of discrimination in employment affecting commerce; (2) attempt, through conciliation and persuasion to resolve disputes involving such charges and, if efforts to secure voluntary compliance are unsuccessful; (3) seek relief in the Federal courts, where the matter will be heard de novo.

In order to enable employees, unions and employment agencies to adjust their policies and procedures in conformity with the requirements of title VII, the provisions prohibiting discriminatory employment practices and providing relief therefrom do not become effective until 1 year after the date of the enactment of title VII. Similarly, in order to provide for orderly transition and adjustment, coverage in the first year of the law's operation will only cover employers or unions which have 100 or more employees or members; in the second year of its operation, 50 or more employees and 50 members of the union and in the third year and thereafter, 25 or more employees and 25 members of the union.

To the maximum extent possible, title VII provides for the utilization of existing State employment laws and procedures. Existing State laws will remain in effect, except as they conflict directly with Federal law.

Through cooperative efforts with State and local agencies, title VII envisions an effective and harmonious mobilization of Federal, State, and local authorities in attacking this national problem.

Approximately 25 or 26—I am not certain, I think it is 25 or half of the States today—have laws prohibiting discrimination in employment. Title VII would extend this protection throughout the 50 States.

Title VIII of the bill directs the Secretary of Commerce, through the Bureau of the Census, to compile registration and voting statistics by race, color, and national origin in such geographic areas and to such extent as the Commission on Civil Rights recommends.

The resulting data will provide an accurate and reliable fund of information helpful to the Congress in determining the dimensions of discrimination in voting. It will particularly aid in assessing progress made in assuring to each qualified citizen the fundamental right to vote.

Title IX of the bill amends existing law, 28 U.S. Code, section 1447 (d), to expressly permit appeal from a Federal court order remanding to the State court from which it was removed any civil rights case removed pursuant to 28 U.S. Code, section 1443. Title X contains three miscellaneous provisions. The first preserves existing authority of the Attorney General; the second provides for appropriations authority; and the third contains a general severability clause.

From the very beginning of this 88th Congress, measures seeking enactment of the civil rights law have been introduced. The Civil Rights Subcommittee of the House Committee on the Judiciary began public hearings on May 8, on these measures. By the time the public hearings were concluded on August 2, 1963, over 170 civil rights bills had been proposed by Members of the House of Representatives.

The Civil Rights Subcommittee sat in executive session for a total of 17 days seeking to fashion a bill that would not only prove effective, but would also attract and obtain sufficient support for its passage.

The full Judiciary Committee thereafter met in executive session and on November 20 favorably reported an amended version of H.R. 7152, which represents a substantial, as I said before, bipartisan committee consensus.

While no bill can solve the complex problems of discrimination, I believe enactment of the measure approved by the Committee on the Judiciary would do more toward eliminating these wrongs than any other measure possible at this time.

H.R. 7152, as amended, contains the most comprehensive program designed to resolve the issues which today challenge our national consicence. The demonstrations and violence of recent months have served to point up what many of us have known for years, that this Nation can no longer abide the moral outrage of discrimination.

The enactment of this bill is required, as the late lamented President Kennedy has said—

not merely for reasons of economic efficiency, world diplomacy, and domestic tranquillity, but above all because it is right.

I ask this committee that we have granted us an open rule providing for from 15 to 20 hours of general debate. That might mean 5 to 6 days.

The CHAIRMAN. Does that conclude your prepared statement?

Mr. CELLER. Yes, sir. That concludes it; yes, sir, Mr. Chairman.

The CHAIRMAN. Mr. Chairman, this civil rights subject is a matter, like the poor, always with us. Of course, we have enacted a lot of civil rights legislation in the past, and I will come to that later.

Your committee received the President's bill, and I believe you introduced it, did you not?

Mr. CELLER. Yes, sir.

The CHAIRMAN. On July 20.

Mr. CELLER. I was told June 20.

The CHAIRMAN. And you held hearings on that?

Mr. CELLER. Yes, sir.

The CHAIRMAN. And substituted another bill in the subcommittee, which you approved, and then suddenly you abandoned the bill and adopted a third bill, which is the matter that will be before the House, as I take it, if you get a rule such as you want to substitute that for the President's bill; is that correct?

Mr. CELLER. Yes, sir.

The CHAIRMAN. I have examined all three bills with a good deal of care. I have taken some interest in this matter, as you may know.

This last bill, the one that we have before us now, differs very widely from either the President's bill or your subcommittee's bill and I am wondering why you didn't give more attention to the hearings on the bill that is before us. How did that bill originate? Where did it originate? Who wrote it?

Mr. CELLER. Well, part of the answer that I would have to give would be the result of activity in executive session, Mr. Chairman——

The CHAIRMAN. Not in the executive department?

Mr. CELLER. Well, forgive me if I continue: It would not, I think, be proper for me to give the details as to the progress of that bill in executive session because, according to the parliamentary rules, that which happens in executive session is not to be made public. We have the minutes and those minutes are open to any member that wishes to see those minutes. They are very full and detailed and any member of this committee would be privileged to examine those minutes if they wish to see them, but I couldn't disclose all the details that that question envisages in this public hearing. It would not be proper and the rules of procedure would preclude my doing so.

I can say, however, that the final bill that was reported out by the Judiciary Committee was a bill that was fashioned by the Judiciary Committee, aided by the Department of Justice and aided by the White House, then occupied by the late lamented and martyred President Kennedy. I can make that statement, and I will say this: That the whole is always equal to the sum of all its parts and the bill that was reported out by the subcommittee of the Judiciary Committee to the full committee was a much broader bill than the bill that finally evolved. That very broad bill was thoroughly discussed. Therefore, if the full bill was discussed, it is only natural to assume that the bill that was narrow, was likewise discussed because every nook and cranny of the bill that was reported out by the subcommittee of the Judiciary Committee originally was gone through with a fine comb and resulted in primarily the bill that was finally passed and reported to the House by the full Judiciary Committee.

It is true that we did not spend all the days in winnowing the last bill as we did the bill that was reported out by the subcommittee. There was no need to, because everything concerning that last bill was known and was made and had been made manifest. It was crystal clear, every item of it, as a result of the hearings that we have had,

which extended for several months and with reference to the discussions that were had in executive session. I do not know of any phase of this bill now before you that was not discussed thoroughly and completely.

The CHAIRMAN. I sort of differ with you about hiding this light under a bushel of what took place to really bring this bill forth. I think this is public business and I think the public is entitled to know what took place. As a matter of fact, around the Capitol, it is pretty general knowledge what took place and that is what I wanted to ask you about before we go into the details of the bill. Of course, if you do not want to answer it, it is all right with me.

Mr. CELLER. Well, of course——

The CHAIRMAN. I am told that this bill was never seen by members of the committee until the morning that it was reported out. If I am in error in any statement I make, I hope you will correct me.

Mr. CELLER. As I indicated to you before, the bill that was reported by the subcommittee practically contained evey single subject that is in the bill before you now so that if anyone says they hadn't seen that bill or its terms or its phrases, it is beyond my comprehension how they could say that. Almost every word that is in the bill before you was in the other bill and it was trimmed down. It was lessened. Some of the fat was taken off. You might put it that way, but the import was clear. I don't mind saying that those gentlemen who have filed a minority report voted for the stronger bill.

Now, they voted for that stronger bill and it seems rather anomolous to me they should say to you or to anyone else they didn't know what they were voting for. I don't know where the gentleman gets the import of that statement.

Mr. BOLLING. It is my understanding that at least one of the men who signed the minority report did not vote for the stronger bill.

Mr. CELLER. That is correct.

The CHAIRMAN. I think a good many people who did not sign the minority bill did not vote for any bill.

Mr. BOLLING. I think it ought to be clear, there were some.

The CHAIRMAN. I was trying to get at what happened chronogically and how this bill was born.

That bill was taken up a few hours after it was brought to the attention of the members of the committee. It was not printed. It was in mimeographed form and the Chair announced there would be no opportunity to amend it, no one would be permitted to address the Chair on it with the exception of himself and the minority ranking member.

I think that is a correct statement. The bill was hurriedly read.

Mr. CELLER. Forgive me, Mr. Chairman, if I interrupt.

The CHAIRMAN. If I make a mistake, you tell me.

Mr. CELLER. I will say this: I neither affirm or deny that statement.

The CHAIRMAN. All right.

Mr. CELLER. If I would dilate on that, I would be divulging that which happened in the executive session of this full hearing, and I cannot do that, and I have plenty of authority for that. As chairman of the Rules Committee, I think you will agree I cannot do that.

The CHAIRMAN. There are exceptions to all rules.

Following that same line, regarding what is proper from a parliamentary standpoint, I was told, as I have said before, that no one was given an opportunity to offer any amendments, or make any suggestions, relative to the body of that bill.

Mr. CELLER. Of course, the previous question had been ordered.

The CHAIRMAN. I assume you took care to see the previous question was offered in accordance with your announced plan to not have any discussion of the bill.

You say you are very strict about not telling what happened in executive session because it would violate the rules of the House. You will remember, of course, that the Jefferson Manual is part of the rules of the House, and the Jefferson Manual says any bill offered in the committee must be read paragraph by paragraph and there must be opportunity offered to any Member to offer any amendments he might desire.

I wonder if you are not overlooking some of the parliamentary requirements.

Mr. CELLER. This was offered as a substitute.

The CHAIRMAN. And was read as a substitute and it was a complete bill. That is what it is, a complete bill.

Mr. CELLER. I will say to the gentleman, I did not take a single move in this very complex matter, and it is indeed complex, without conferring almost momentarily throughout with the Parliamentarian of the House. I got the affirmative approval from him on every single thing I did.

The CHAIRMAN. I do not want to go into this thing too deeply, but I am astonished if the Parliamentarian told you you could railroad a bill through without giving Members the opportunity to discuss it in accordance with Jefferson's Manual, and the flat provision is there.

Mr. CELLER. That is a rather unusual word and sort of taboo—"railroad"—we do not railroad anything through.

The CHAIRMAN. Would you prefer "strong-arm"? I will change my question.

I cannot conceive of the Parliamentarian ignoring the Jefferson Manual as part of the rules of the House.

However that may be, before you made this dramatic change in the bill—this third bill that your committee approved—I am told that the Attorney General was called to testify and that he made certain observations and suggestions to the committee and suggested certain changes in the bill and that some things ought to come out and some things ought to go in.

Now, I am anxious to see how this bill was generated by the Attorney General. I am told his testimony has not been printed.

Mr. CELLER. The testimony was ordered printed. Under the rules, the testimony circulated among the members and the members held up the transcript unduly long. One member still has a copy. We have not been able to get a hold of it. We have the testimony right here this morning and I should be very glad to submit it if you wish.

The CHAIRMAN. Yes.

Mr. CELLER. It is not printed. We could not print it because we get it back from the members.

The CHAIRMAN. Do you not think in a matter of this importance it is rather premature to come here and ask for a rule until the hearings are printed?

Mr. CELLER. I could not force members to rub their nose in the dust, as it were, and compel them to give me the testimony and read it overnight. It was voluminous. It had to circulate and it was the process of circulation that caused the delay. It was agreed it would be printed and the Attorney General consented to have it printed and arrangements were made for its printing.

The CHAIRMAN. That testimony was given prior to November 20?

Mr. CELLER. I think that is correct.

The CHAIRMAN. In other words, it has been about 2 months since that testimony was given and you have not sent it to the printer yet?

Mr. CELLER. And one member still has the transcript and I cannot wrench it from him. Perhaps you can help me get it back from him.

The CHAIRMAN. One way to help you would be for this committee to say that this is premature and when you get the hearings printed we will be glad to hear you further.

I doubt if the committee would agree with me on that procedure, but still, it would be orderly and appropriate.

Mr. CELLER. The committee itself, at my suggestion, ordered that the hearings be printed in December. We ordered it printed. We cannot get the transcript back. We are meeting with delay in that regard.

The CHAIRMAN. That member does not happen to be one of the perennial absentees?

Mr. CELLER. He is not at all.

The CHAIRMAN. I would like to see it.

Mr. CELLER. I have a copy of it right here.

The CHAIRMAN. I do not want to suspend these hearings to circulate one copy around to the members of the committee.

I would like to know why the Attorney General said this bill is preferable to the two previous bills. I think we are entitled to that information. I think that is the thing that really brought this bill forth, the testimony of the Attorney General.

Mr. CELLER. I did handsprings, as it were, to get the testimony so it could be printed, but I just could not get it.

The CHAIRMAN. You did not have to do any handsprings to get the other testimony printed. I am wondering what is the mystery about the Attorney General's testimony. He is a public official, and he brought forth this bill. There is not any doubt about that. His testimony is what induced you to do this.

Mr. CELLER. If you have an idle moments, I can give you a stack this high of testimony that was taken, and you can get anything you want out of it.

The CHAIRMAN. I cannot get the Attorney General's testimony out of it that brought forth this very bill we are going to consider in the House, and that is the vital testimony, and the only testimony the House will have to go on.

Mr. CELLER. Well, I must take exception that is the only testimony on which the final bill was based.

The CHAIRMAN. Of course, but it was the testimony that brought about the third and final bill. That is right, is it not? It is the only testimony. This bill just did not spring out of someone's imagination. Someone must have talked about it.

Mr. CELLER. This bill was voted on substantially by Republicans and Democrats in the committee, more than two to one.

The CHAIRMAN. And they heard the Attorney General's testimony. Perhaps the rest of us would agree with you if we could see the Attorney General's testimony that produced this bill.

I have undergone a lot of criticism because I did not call a meeting of the Rules Committee right away quick to report this bill out. Of course, there were three bills and as yet we have not got the full hearings, or the hearings that produced this particular document that is before us.

Mr. COLMER. Will the chairman yield to me right there?

With the thought I might possibly, although it is far-fetched, be of some help to the chairman in that matter, if I recall correctly, the distinguished chairman of the Judiciary Committee ordered the people who were opposed to this to have their minority reports in by a certain fixed date. I wonder why the distinguished chairman of the Judiciary Committee, if he could control the actions of these seven members, could not get this one recalcitrant member to consent to return the Attorney General's statement.

Mr. CELLER. I am afraid you ascribe to me too much power I do not have.

Mr. COLMER. I do not think anyone does that, after what happened in that committee.

The CHAIRMAN. Mr. Celler, I do want to ask you some questions about the various titles of the bill and I did not want to interrupt you during your prepared statement.

Mr. CELLER. I thank you for your courtesy in that regard.

The CHAIRMAN. There are some things you did not mention I want to clear up.

Now, the first title is on voting rights.

You know we passed a bill on voting rights in 1957, and that was supposed to cure all the evils that supposedly existed on that subject. That was not apparently satisfactory.

We passed another bill in 1960, further enlarging the jurisdiction over our State elections, and the first bill, if I recall correctly, provided—and the second bill strengthened that—for the appointment of voting referees.

Mr. CELLER. The first bill we had before us, you mean?

The CHAIRMAN. The first bill that you passed.

The law we have today, that is what I am talking about, the bill of 1957 provided for the appointment of voting referees.

Mr. CELLER. I think the referees were first mentioned in the 1960 act. Would you mind Mr. McCulloch expressing himself on that?

The CHAIRMAN. That is all right. I am probably mistaken.

Mr. MCCULLOCH. That was the 1960 act, and the voting referee title and the rule thereon was from two of the members of this Rules Committee making that title in order.

The CHAIRMAN. So we then enacted a law which is now in effect that the Federal courts could go into places complained about in

some of the Southern States and appoint a voting referee, and it went so far as to provide that anyone who was denied the right to vote could go to that voting referee and make complaint and give his testimony, that that testimony should be ex parte, which means that the State and voting official accused was not given any opportunity or permitted to be heard, and then that referee could report to the court and the court would issue an order that the person would be permitted to vote and he could go and vote.

As it turned out subsequently, an election might be changed by reason of that kind of vote.

It looks to me like that went pretty far.

I am wondering why some of that drastic legislation has not been put into effect. Why have they not gone on and used the law they have?

The first step that has been taken under that law, as far as I know, is—and I saw it in the newspaper—two suits have been instituted in Mississippi in the last month and two other suits instituted in Alabama in the last month, and after 3 years that is the first attempt apparently that has been made to use that law.

What do you need with any more? What more can you do?

Mr. CELLER. I have been told there are either 38 or 40 cases that have been filed under that act.

Now, we pass these laws to meet certain situations, and then experience tells us that the laws do not adequately meet the situations. In these cases there have been undue delays, prolongations, procrastinations, as a result of the wit and ingenuity of certain of the attorneys representing defendants in these cases, causing delaying of justice, and justice delayed is justice denied.

For instance, there is a case that has been pending for 2 years. Any time there is a decision there is an appeal. There is a cross-appeal. There is interrogatory and cross-interrogatory, and the result is a hopeless jungle of delays.

The idea of this is to prevent these delays and to set up a three-man court which will hear these cases expeditiously. That is the reason why we are changing.

The CHAIRMAN. I know exactly the reason. What you have done in this bill is to pack the court.

Mr. CELLER. Pack the court?

The CHAIRMAN. Yes.

Mr. CELLER. Because we set up a three-man court?

The CHAIRMAN. Yes.

Mr. CELLER. There is nothing new in the three-man court.

The CHAIRMAN. The three-man court is provided for an entirely different purpose.

Mr. CELLER. Not in civil rights, but we have had them in other subject matters. We have had them in antitrust——

The CHAIRMAN. I have not practiced law for a long time, but is not a three-man court set up where there is a constitutional question involved?

Mr. CELLER. No. Three-man courts are set up frequently to expedite proceedings, frequently in antitrust cases, so you can get the case to the Supreme Court.

The CHAIRMAN. The net result of this is, instead of having the district judge there at home try this case, if you did not like his com-

plexion on this subject, you go up to some distant place and pick yourself a circuit court of appeals judge and you go off in some other district and pick yourself a favorable district judge and you get the case decided any way you want.

Mr. CELLER. We do not exclude that district judge because the district judge is one of the three on it.

The CHAIRMAN. When you pack the court, he is in the minority.

Mr. CELLER. That does not follow.

The CHAIRMAN. Can you get action any faster in a three-man court than you can in a one-man court?

Mr. CELLER. Yes, you can, because the cases are handled expeditiously. The appeal is directly to the Supreme Court. You have the expendition of the decisions in the three-man court.

In this title we provide for the registration of voters. It is not a question of voting. We have had all kinds of difficulty in having these voters registered and all kinds of abuses have occurred and to meet these abuses——

The CHAIRMAN. You did that in 1960. You provided these voting referees to supervise all your elections.

Mr. CELLER. In that case the voting referee was only appointed after what was called a pattern or practice of discrimination was found.

Now, the question arose—what is a pattern or practice of discrimination?

That went up to the courts, higher courts, constantly. It was very difficult to establish a pattern or practice and it is still difficult.

The purpose of this title is to enable people first to register, and, after they have registered, to vote.

The CHAIRMAN. The whole thing is because you claim, or certain people claim, there is a pattern of discrimination against the colored race?

Mr. CELLER. No. The Attorney General can——

The CHAIRMAN. I believe you put the Attorney General in charge and he is permitted to bring these suits in the name of the United States.

Mr. CELLER. That is in the 1957 act. Congress approved that, that he bring the action in the name of the United States.

The CHAIRMAN. You furnish the forum and you pack the court and then you let the U.S. Government bring suit.

It strikes me you are going pretty far.

Now, you say this applies to Federal elections. Of course that thread runs all through this bill—it shall apply to Federal elections. But then in the bill you have a provision that a Federal election is any election held "in whole or in part" for the election of Members of Congress and the President.

Now, in the majority of States they hold their State elections at the same time they hold their Federal elections, so this bill virtually covers the waterfront on elections in those States.

Mr. CELLER. Partly so because in many States elections are held at one time.

The CHAIRMAN. Yes; that is what I am talking about, in the majority of States.

Mr. CELLER. We only legislate as to Federal elections. The State could hold——

The CHAIRMAN. Let's get that straight now.
Mr. CELLER. That is correct.
The CHAIRMAN. In whole or in part?
Mr. CELLER. If you will read page 40 of the bill, it says:

When used in subsections (a) or (c) of this section, the words "Federal election" shall mean any general, special, or primary election held solely or in part for the purpose of electing or selecting any candidate for the Office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives.

The primary election held "solely" and so forth is qualified by the fact that it must be an election for President, Vice President, Member of the Senate, or Member of the House.

The CHAIRMAN. Let me ask you this specific question——
Mr. CELLER. So it really refers to Federal elections solely.
The CHAIRMAN. Let me ask you this specific question: Let's say that Illinois elects the Governor and all its State officers from the Governor down to the justice of the peace the same year that you have an election for Congress, does this law cover the election of a justice of the peace in Illinois?
Mr. CELLER. No; it does not.
The CHAIRMAN. Tell me why?
Mr. CELLER. Because there is nothing in the act——
The CHAIRMAN. It says so. It is held in part.
Mr. CELLER. You did not read that whole section.
The CHAIRMAN. I have read it a number of times, my friend.
Mr. CELLER. Lines 19, 20, 21, and 22 are qualified by lines 23 and 24.
The CHAIRMAN. Yes; but it is held in part for the election of the President.
Mr. CELLER. But it must be an election for the President, or the Vice President, or a Member of the House, or a Member of the Senate. It only refers to that type of election where you have these limitations and conditions.
The CHAIRMAN. What is that "or in part" doing in there? That is the boobytrap.
Mr. CELLER. Maybe a special election for a Member of the House.
The CHAIRMAN. Suppose the President is being elected in a State that has their general elections at the same time as a presidential election, and the Governor is being elected and the justice of the peace is being elected? They are all covered.
Mr. CELLER. This act does not apply to those State officers.
The CHAIRMAN. What is "in part" for?
Mr. CELLER. It would probably refer to a special election for a Member of the House.
The CHAIRMAN. You are not going to pass this bill on probabilities. Do you not think we ought to know where we are going?
Mr. CELLER. It is only part of an election for one office.
The CHAIRMAN. It is held in part for the election of the President?
Mr. CELLER. It is only a part of a general Federal election. I do not agree with you, Mr. Chairman.
The CHAIRMAN. Why do you not clarify?
Mr. CELLER. We probably could clarify it in a report.
If anyone wants to clarify it by an amendment, we would consider it.

The CHAIRMAN. Would you object to striking out "in part"?

Mr. CELLER. I do not know whether it is necessary to make any change.

The CHAIRMAN. If it does not mean anything, why can you not take it out? If it does not cover a State election, or a justice of the peace, why do you object to taking it out?

Mr. CELLER. I do not think it applies to any State officer as I read it. I think if you want to clear it up, we could clear it up in a report.

The CHAIRMAN. Oh, no; this is going to be the law when you get through with it, if you do, which I hope you do not. If you put this thing on the people, it is going to be the law, and it says "solely or in part," and there is no way of getting around it.

Mr. CELLER. Of the general election, that is all. I do not agree with you; I am sorry.

The CHAIRMAN. It does not say anything about general, special or primary election. It covers the waterfront. There is no doubt about it. Evidently it has not occurred to you that it would cover the election of a councilman in the city of New York.

Mr. CELLER. That was thoroughly discussed in the committee.

The CHAIRMAN. I do not care whether it was discussed in the committee. I am trying to get at what is in the bill.

Mr. CELLER. We approved the bill and the wording of the bill and went over this very carefully. We felt it did not have the implications or the connotations you ascribe to it.

The CHAIRMAN. A lot of people think it not only has the connotations, but it is intended by this little word "or in part" to include the election of the city councilmen in New York, the justice of the peace in Virginia, and every State officer elected.

Did you intend that or not?

Mr. CELLER. I am probably violating my own admonition not to disclose executive sessions, but I will take the risk—an amendment was offered to have this apply to all elections and the committee refused to accept it.

The CHAIRMAN. You do include all elections by these three little words "or in part."

Mr. CELLER. I will give it thought.

The CHAIRMAN. I have seen some very strong legal opinions that it does include all elections, and I have no doubt on that.

Mr. SMITH of California. I think it is a moot question as far as California is concerned, but we just have one ballot on the final election. We start out with the Governor and the Lieutenant Governor and on down to Congress and on down to the judges and the sheriff and every single officer.

Would this mean if we did have the problem, the voter could only check his vote for those Federal officers and he could not vote for the others? He is in a private booth in a machine.

Mr. CELLER. They would probably have to conform, there is no doubt about it.

Do you have just one ballot?

Mr. SMITH of California. One ballot. If it is a presidential year, one ballot. We start with the President and go on down to everyone elected.

Mr. CELLER. It would apply where you had one ballot the same as in New York. This only concerns Federal elections. The State could change if it wishes and have two ballots.

Mr. SMITH of California. That would be a lot of trouble. You cannot go in the ballot booth and say you are only going to vote for the Federal officers.

Mr. CELLER. Where you have a poll tax, you have the same situation.

Mr. SMITH of California. I can see a lot of confusion on that, Mr. Chairman.

Mr. MADDEN. In California, do you have a regulation out there where a person is entitled to vote for a Federal officer and not entitled to vote for a local officer?

Mr. SMITH of California. The question is moot so far as California is concerned. We just have two elections. In the final election, each winning the primary, a Democrat or Republican, are on the final ballot for every office.

San Francisco has an exception. They elect their mayor at an odd time. The rest of us elect them right on down. We do not have justices of the peace any more, but the municipal judges, the sheriff, and all. The ballot sometimes contains 150 or 200 names.

Mr. MADDEN. Regardless of how this is worded, it would not interfere with California?

Mr. SMITH of California. It is a moot question.

If we did have some of the problems of some of the other States, I suppose we would have to have two ballots and say here, you can vote for Federal officers and not State.

Mr. MADDEN. If a voter is entitled to vote for a Federal officer, would you not think he would be entitled to vote for a local office?

Mr. SMITH of California. In California they can vote for any officer.

Mr. MADDEN. Is there anything wrong in giving a citizen full franchise? Why prohibit him from voting for a sheriff and allow him to vote for a Congressman?

Mr. SMITH of California. We do not. I am saying just that the language could present a problem.

The CHAIRMAN. The simple way to do that would be to say "in all elections, general, primary and so forth." I do not see any use of putting this boobytrap in here to fool anyone.

Mr. O'NEIL. As you read from lines 19 on down, "for the purpose of electing or selecting any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives," does that "in part" mean the way Senators come up one-third every 2 years in a presidential election? Is that what you mean?

Mr. CELLER. That is what it was intended to mean.

Mr. O'NEIL. If you leave "in part" out and if you read it without "in part," it means the whole slate of Federal officers, but if you leave "in part" in, it means one elective officer?

Mr. CELLER. That is correct.

Mr. O'NEIL. Did your subcommittee not report it would include all elections? Is that not one of the changes in the bill?

Mr. CELLER. Yes.

Mr. AVERY. May I ask a short question?

May I say this in the other context?

Is it not true, Mr. Celler, that the only elections you are exempting would be municipal elections held on a different day than an election for a Federal officer, or a State election held on a different day, such as the State of Virginia, that held their State election in 1963?

Mr. CELLER. This language does not cover any State——

Mr. AVERY. That is what I am saying; are those not the only exemptions?

Mr. CELLER. No.

Mr. AVERY. What are the others then?

Mr. CELLER. All State and local elections are not covered.

Mr. AVERY. If they are held on the same day, all State elections held on the same day——

Mr. CELLER. It does not make any difference when they are held.

Mr. AVERY (continuing). As a presidential election, when the voter is voting in the same booth for a President, a Senator or a Member of Congress, would not that election be covered, regardless of whatever else might be at issue?

Mr. CELLER. Not by this language. The mere fact the State holds its election on the same day, one ballot might embrace it.

Mr. AVERY. "Might" it, or would it?

Mr. CELLER. Might.

Mr. AVERY. How could it not?

Mr. CELLER. If it was one ballot, it might embrace it.

Mr. AVERY. It would embrace everything voted on that same day on that same ballot if it were on one ballot.

Mr. CELLER. It may have some sort of an effect of that sort. We are only legislating here as far as Federal elections are concerned. The fact it may spill over into State elections, that is possible. That is possible.

Mr. AVERY. I am not particularly in disagreement, but so help me, I think you ought to be able to tell us exactly what this covers. I am getting a little reservation myself.

Mr. CELLER. I would say specifically this language is not intended to cover State elections, or municipal elections.

Now, it is possible it might cover where there is an election on the same day and there is one ballot.

Mr. AVERY. We can agree on that.

If it is on the same day on the same ballot, it covers every issue that might be decided at that time.

Mr. CELLER. It is possible; yes. I will say "Yes."

Mr. SISK. Is that certain?

Mr. AVERY. That is what I want to get at. We are certain; we are agreed on that?

Mr. CELLER. I think that is correct.

Mr. AVERY. May I take the second question?

If there are separate ballots, the same issues we have agreed upon, but they are on separate ballots, for instance, if the mayor of New York City was on a separate ballot from the Presidential ballot, would it or would it not be covered?

Mr. CELLER. It would not be covered. If it were a separate ballot, the restrictions here would only cover the Federal election and the Federal ballot.

Mr. AVERY. How would the election clerk know what ballots to give a man? He is either qualified to vote or he is not. You could not hand him one ballot and say, "You go in here and vote for President, but you cannot vote for the Governor."

Mr. CELLER. This only applies to the qualifications for voting. This is the literacy test on page 40.

I beg your pardon. It goes beyond literacy.

Mr. AVERY. We are talking about eligibility to vote. It reduces itself down to one election.

After our rather extensive colloquy, it seems to me the only two categories that would be elected would be simply a municipal election on a different day than a Presidential election.

Mr. CELLER. Or separate ballot.

Mr. AVERY. Or a State election on a separate day, and now you say separate ballot. That is the final point.

Mr. CELLER. I think it would have to be a separate ballot.

Mr. AVERY. It is inconceivable to me how you could have an orderly election under that description.

Mr. CELLER. It is a question of whether you want to apply this to all elections. We wanted to make it to Federal elections, and the State could change its law if it wished.

Mr. SISK. I just want to ask one further question on this voting business.

It seems to me we are in a very confused state. We may have some idea of what you are attempting to do, but I do not think we have any idea of what you are actually doing. In the first place, the man has to qualify to vote, right?

Mr. CELLER. That is right.

Mr. SISK. So then he gets on some kind of a list, right?

Mr. CELLER. Correct.

Mr. SISK. In other words, he is either registered to vote, as he would be in California—we call it registering to vote and he is either on the register or he is not.

Mr. CELLER. That is right.

Mr. SISK. Would Virginia, in order to comply with what I understand your interpretation of this to be, have to have two register lists, and a man could come in qualified to vote for the Congressman and for the President, but not qualified to vote for Governor?

Mr. CELLER. He is registered to vote. That is one process. Now, when he tries to vote and there is discrimination, in a Federal election then this law applies. If they do not give him the ballot, or for some reason they refuse to let him use the voting machine, and those voting machines and ballots contain State candidates, that may in a certain sense cover State elections. Then it is up to the State to make changes if it wishes.

Mr. COLMER. You say it would be up to the State to make the changes. What changes?

You are taking away in this bill the right, as most of us construe it, to regulate the elections. Yet you say it would be up to them to make changes. What changes?

Mr. CELLER. We are only seeking to qualify the voters and we are laying down certain rules with reference to their qualification.

Mr. COLMER. Very well. Then I come back to what has already been said here. The voter comes in there and he is either qualified or not.

Mr. CELLER. That is right.

Mr. COLMER. Now—yet you are suggesting that they might get around it by having two ballots. Now, what is going to happen? Where is the confusion going to stop when that voter comes in there?

There are lines of them half a mile long coming into the voting precinct. Is the voting official going to stop to see which ballot the voter is entitled to and thereby he is going to vote one portion of the candidates and he is not going to vote for the other?

I call the gentleman's attention to the fact there are 36, if I recall correctly, States of the Union that hold their elections for their State officials at the same time they do their Federal officials. What kind of confusion are you going to have?

Mr. CELLER. The confusion will be dissipated if there is no discrimination. If a man wants to vote and he is not discriminated against, that is very simple. There would be no discrimination.

Mr. COLMER. You are sending up here what is discrimination and what is not discrimination?

Mr. CELLER. That is correct. We are saying if a man wants to vote for a Federal officer and they refuse to give him the ballot, or they refuse to allow him to use the voting machine because of the color of his skin, they are discriminating against him.

Mr. COLMER. I would like to just suggest to the very learned and astute gentleman who is always interested in minority groups that he might be setting up something here he did not intend to. He might set up some machinery here that would bring about discrimination and result in confusion.

Mr. CELLER. I doubt that. We are willing to take our chances on that. I do not think that is so.

Mr. COLMER. The gentleman has certainly changed his position since he started out in his testimony on this phase of the bill. He has changed it entirely. First he said it only applied to Federal elections, but now he says that it might overlap into State elections.

Mr. CELLER. I was very careful to make this statement: This bill applies to Federal elections. It may have an effect on State elections also. There is no question about that. But this language applies to Federal elections. If the States so arrange their procedure that they have elections on the same day on the same ballot, perhaps they are overlapping, yes.

Mrs. ST. GEORGE. Mr. Celler, I am a little astonished at the fact you said these three words "or in part." Originally you said they meant very little. It seems to me if you take those words out, you will be in the realm of utter confusion from your own testimony.

First of all, you say this applies only to Federal elections. Now you say it may very well apply to State elections. I do not see how it can fail to.

In our own State of New York, we go in and vote on a voting machine. We start with the President and we go right down through to the assemblyman and further down. It will apply to all of them. Not that we care. I agree with you there. But it is bound to apply to State elections. The only way you make it workable is by putting

in these words "or in part," and I think the chairman's point is well taken.

Mr. CELLER. The important thing in this provision is the setting up of conditions under which the voter may qualify. That is the important thing in this provision.

Mrs. ST. GEORGE. I can understand that. I think your meaning is very clear in this paragraph.

I think to say it only applies to Federal offices is going much too far because I do not think it does. I think it will apply to the entire ballot. There are some States where you can even pull one ballot for the Republicans and one for the Democrats. What are you going to do in that case?

Mr. CELLER. How would you arrange it otherwise, Mrs. St. George?

Mrs. ST. GEORGE. I think you should stress the point your "or in part" is essential, and if you strike those words you, from your point of view, nullify the whole thing.

Mr. CELLER. I indicated I did not wish to strike those words.

Mrs. ST. GEORGE. I did not think you were very emphatic about it.

Mr. CELLER. I said that in answer to the chairman's question, I would not want to change that.

Mrs. ST. GEORGE. In other words, you admit those words are very important?

Mr. CELLER. I think they are, and they are put in for that reason.

Mrs. ST. GEORGE. That is what I am trying to get at. It seems to me you confuse the whole issue.

Mr. SISK. Since we are on this subject, could I just make a further comment, or ask a question on this voting?

Actually, then, after all this discussion is said and done, and as I understand your final comment, what we are actually doing is setting up Federal regulations for qualifying for election.

Mr. CELLER. That is correct.

Mr. SISK. And eliminating any further consideration of State requirements for qualification. We are changing this situation. Whether we should do it constitutionally, or legislatively, we are doing it legislatively. That is the practical effect, right?

Mr. CELLER. I do not like to admit that.

Mr. SISK. I think we should be honest about what the practical effect of this is.

Mr. CELLER. We are legislating here on Federal elections. It may have that other effect. I am dubious about it.

Mr. SISK. I am not arguing the merits. I am saying this: We ought to lay it on the table what we are actually doing.

Mr. CELLER. The bill does not require any State to elect its officials at a Federal election. The State can elect its officials any time it wishes. It does not have to make State elections coincide with the Federal elections and the States can make the change if it wishes, and in that sense we do not seek to regulate State elections.

Mr. SISK. I understand that.

Mr. CELLER. I think that is the answer. We do not seek here to change the State elections.

Mr. SISK. Is not the issue here——

Mr. CELLER. If these results happen, the State can very well, if it wishes, change the date of its elections and method of election. We

do not by this legislation change or affect State elections in the sense we lay down rules for the State.

Mr. SISK. Is this not being done exclusively in order to try to meet a constitutional question, and that is the only reason?

Mr. CELLER. That is correct.

Mr. SISK. Basically, the objective we seek to achieve is to set up Federal rules for qualification for all elections, and we cannot do it constitutionally without restricting it to Federal elections unless we go to the constitutional amendment.

Mr. CELLER. I do not agree with that.

I think we have a perfect right to do what we have done here. If it has the effect of affecting State elections, the State has a perfect right to make any change it wishes—change the date of its election of officers, or make any other change so it will not coincide with the Federal election. We do not lay down rules for the State at all. If it has this effect that has been mentioned around the table, the State can make the changes, but we do not say the State must do thus and so.

Mr. SISK. That is because of the constitutional question.

Mr. CELLER. That is right.

I think we are perfectly within the four squares of the Constitution by this section.

Mr. O'NEILL. Is not the truth of the matter most elections coincide, and where a man has been denied his rights, he will have an opportunity to go into a Federal court on a Federal matter?

Mr. CELLER. There is no question about it. I want to make that clear to the gentleman from California, we do not say the State should do thus and so. We say in a Federal election this must happen. This is the line to be drawn.

If that line converges on a State line, the State can change if it wishes, that is all. This may have that effect of changing State practices. We do not do that here.

Mr. SISK. I was simply discussing the practical effects and really the basic overall objective here that is going to be achieved by this.

Mr. CELLER. I do not want to have this misunderstood here by the members of the committee.

In the first place, we do not, by this language, affect the qualifications of the voter in the elections. We do not do that at all.

We do not seek to affect the method by which State officers are elected in their elections. If it has that effect, then the State can make any change it wishes. We do not tell the State what it shall do here at all. That is the important thing.

Mr. SMITH of California. The Federal Government sets its elections in accordance when the States sets their primary to elect their State officials. The Federal Government comes in on the State dates so the State will pay. It has always been that way. You do not have a State election and a Federal election.

Mr. CELLER. You do not mean to say we direct the State what it shall do with reference to its voters here?

Mr. SMITH of California. The effect may be that.

Mr. CELLER. The State could make the change. We do not say it in so many words here. That is the important feature of this. We do not say what the States shall do, and therefore, we do not

do anything that is unconstitutional here. It is a very thin point, but I think it must be understood.

The CHAIRMAN. I want to get away from that and to the next booby-trap.

Mr. BOLLING. Did the Attorney General's testimony appear in executive session?

Mr. CELLER. In the executive session.

Mr. BOLLING. Under normal circumstances, the testimony would not be printed?

Mr. CELLER. Correct.

Mr. BOLLING. Now, the chairman of the Committee on Judiciary indicated he had considerable difficulty in retrieving various copies of the transcripts which were submitted to the members, presumably to correct their own testimony.

Mr. CELLER. Correct.

Mr. BOLLING. And he indicated one copy was at least in the hands of a member who had not returned it?

Mr. CELLER. Right.

Mr. BOLLING. Would the chairman mind telling me the name of the member?

Mr. CELLER. I do not think I should do that.

Mr. AVERY. A parliamentary inquiry.

I would like to know the chairman's pleasure as to the schedule this afternoon and for the hour immediately ahead.

The CHAIRMAN. It is the pleasure of the committee.

Mr. AVERY. Speaking only for myself, it seems to me we ought to take a break here. It is my impression that Mr. Celler might be with the committee some time yet.

The CHAIRMAN. I was getting along right fast.

We sprang this on you pretty quickly this morning. Later on you might want to give further clarification with regard to that clause "in whole or in part."

Mr. CELLER. I think I have expressed myself sufficiently on that.

The CHAIRMAN. I will read the testimony.

I want to pass on to the public accommodations provisions of the bill.

I think you quoted the President as saying this changes the pattern of life existing over the centuries, which is very true, particularly in many areas of the country. You understand the Civil War is over. We down south of the Mason-Dixon line are still part of the United States now. That should be kept in mind when passing on this legislation.

On this title 2, public accommodations, I notice you have a provision in here which defines what is State action and you say we must not have any State action——

Mr. CELLER. What page is that?

The CHAIRMAN. I am going to read to you from page 44:

> Discrimination or segregation by an establishment is supported by State action within the meaning of this title if such discrimination or segregation (1) is carried on under color of any law, statute, ordinance, regulation, custom, or usage.

Now, do you mean to say that if it is a custom in certain places that something should be done, or refrained from being done, that that is law?

Mr. CELLER. If, for example, there is an ordinance that provides there must be segregation——

The CHAIRMAN. I am not talking about the law. I am talking about custom or usage.

Suppose it has been the custom of a community for a long time to do a certain thing, you are coming along and prohibiting that under color of law.

That is not a very legal way to do things.

Mr. CELLER. May I just read some of the cases, Mr. Chairman:

"A long line of decisions has made it clear that State action," for purposes of the 14th amendment, is a broad concept which may be satisfied by any number of circumstances. Sufficient State involvement may result from "State participation through any arrangement, management, funds or property" (*Cooper* v. *Aaron*, 358 U.S. 1, 4). Any significant "degree of State participation and involvement in discriminatory action" may bring it within the prohibitions of the 14th amendment, *Burton* v. *Wilmington Parking Authority*.

As will be shown below, sections 201 and 202, the provisions of title II which rely on the 14th amendment are based upon a concept of State action or involvement well supported by judicial precedent.

Section 202 would preclude discrimination at any establishment or place—

if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule, or order, of a State or any agency or political subdivision thereof.

The section would reach only cases in which there is actually "on the books" a State or local law requiring discrimination.

Not only it is beyond dispute that any such law is patently unconstitutional, but it seems clear that racial segregation or discrimination which is or purports to be required by State law is prohibited by the 14th amendment, *Peterson* v. *Greenville*.

When the State has commanded a particular result, it has saved to itself the power to determine that result and thereby "to a significant extent" has "become involved" in it and in fact, has removed that decision from the sphere of private choice (*Peterson* v. *Greenville*).

The constitutional propriety of that portion of section 201 based on the 14th amendment is no less clear. Section 201(b) would preclude discrimination or segregation at any of the establishments specifically enumerated in that section (for example, hotels, motels, restaurants and other eating facilities, gasoline stations, places of public entertainment) "if such discrimination or segregation is supported by State action." This provision thus is applicable only to situations in which the constitutional requirement of State action is met.

Section 201(d) provides that discrimination or segregation is supported by State action if it is "carried on under color of any law, statute, ordinance, regulation, custom, or usage." The quoted phrase is taken from section 1 of the Civil Rights Act of 1871, 42 U.S.C. 1983. The constitutionality of that provision, as an implementation of the 14th amendment, is clear (*Munroe* v. *Pape*, 365 U.S. 167, 171–187).

Section 201(d) also provides that discrimination or segregation is supported by State action if it is "required, fostered, or encouraged by action of a State or a political subdivision thereof." It has already

been shown that action "required" by a State is also clear that State action falling short of a requirement may constitute a sufficient degree of State "participation and involvement" to warrant a holding of State action in violation of the 14th amendment.

It is settled that governmental sanction need not reach the level of compulsion to clothe what is otherwise private discrimination with "State action" (*Simkins* v. *Moses Cone Memorial Hospital* (C.A. 4, Nov. 1, 1963)).

"Overt State * * * approval" may in some cases be sufficient (*Simkins* v. *Moses Cone Memorial Hospital*, *supra*, 17, 18). Indeed, in some circumstances, the failure of the State to prevent discrimination in facilities in whose operation it is involved may constitute State action to which the 14th amendment applies.

Depending on the circumstances——

The CHAIRMAN. Excuse me, Mr. Chairman. What are you reading from?

Mr. CELLER. I am reading from a brief that was prepared by the Attorney General.

The CHAIRMAN. Is that his language or the Court's language you are reading now?

Mr. CELLER. I have read—when I say quotes, that is the Court language.

The CHAIRMAN. Is this the Court language you are just reading now, which said that if a State did not prohibit something being done——

Mr. CELLER. Court language.

"Overt State approval in some cases may be sufficient," *Simkins* v. *Moses*.

The CHAIRMAN. Who is saying that, the Attorney General?

Mr. CELLER. The Court.

The CHAIRMAN. The Supreme Court of the United States?

Mr. CELLER. That is the Supreme Court of the United States.

The CHAIRMAN. All right.

Mr. CELLER. To go further, thus the fact that a private establishment is allowed to use publicly owned property and facilities, or receives substantial financial or other benefits from the State, may tend to establish State action. (*Burton* v. *Wilmington Parking Authority*, 365 U.S. 715; *Turner* v. *City of Memphis*, 369 U.S. 350; *Simkins* v. *Moses Cone Memorial Hospital* (C.A. 4, Nov. 1, 1963)).

State action may be found in "State participation" in the functioning of an establishment or institution, "through any arrangement, management, funds or property" (*Cooper* v. *Aaron*, 358 U.S. 1, 4).

State action may be found in the grant by a State of special franchises or privileges or in the delegating to a private organization of quasi-governmental powers. In *Steele* v. *L. & N.R. Co.*, 323 U.S. 192, 198, the Court indicated that Congress could not confer exclusive bargaining rights on a labor union without placing it under a duty to refrain from discriminating against Negro workers. See also *Brotherhood of Railroad Trainmen* v. *Howard*, 343 U.S. 768, and so on, and the cases seem to imply that, particularly in the *Lombard* case, which was decided in the Supreme Court, State action may, under some circumstances, be involved where the State lends its aid to the enforcement of discriminatory practices carried on by private persons.

Mr. Justice Douglas in the *Lombard* case has expressed the view that State licensing and supervision of places of public accommodation constitutes sufficient State involvement to make applicable the prohibitions of the 14th amendment, *Lombard* v. *Louisiana*, 373 U.S. at 281–3 (concurring opinion).

In other words, these are rather close cases, but where the State has concurred or raised no objection to long-established practices of discrimination, there has been a tendency in the courts to hold that that is equivalent to State action and within the confines of the 14th amendment.

The CHAIRMAN. And that is what you are driving at in using the words "customs or uses."

Mr. CELLER. That is right.

The CHAIRMAN. That is a rather nebulous situation.

Now, you base that upon——

Mr. CELLER. I think I haven't got the name of the case; there was a case in New Orleans recently decided—it is the *Lombard* case—which held that usage and custom was sufficient to bring in the 14th amendment and the usage and the custom could be ascribed to the local authorities, to the city of New Orleans, which was apathetic or which did nothing to prevent that particular usage or custom of discrimination.

The CHAIRMAN. That is an extraordinary decision, if it is one.

Now, you base your answer to my question on the act of 1871, and that is what this grew out of. That was declared unconstitutional.

Mr. CELLER. No. There were two phases of it. One phase was declared constitutional and one was declared not. One phase concerned an inn or a hotel, and the other concerned, I think it was, a store or a place of public accommodation privately owned. The latter was declared unconstitutional. However, the case turned on the interpretation of the 14th amendment. It did not turn on any other amendment. There was no mention in the congressional statute, implied or otherwise, or expressed, concerning the commerce clause, and the Court ruled that since Congress intended that the basis of the statute was the 14th amendment, it held, as far as the store was concerned, the act unconstitutional, but as far as the inn was concerned, which catered to transient guests, constitutional. In this act we provide for a basis, a constitutional basis, not only the commerce clause of the Constitution, but also the 14th amendment.

The CHAIRMAN. If this thing of custom and usage is as you say it is, then you are placing the burden upon the States to police everything that goes on in the State to see that there isn't any custom or usage that some people don't like.

Mr. CELLER. The idea being that custom and usage as a result of many years may have the effect of a law or an order or an ordinance.

The CHAIRMAN. Nothing can have the effect of law that isn't in the book.

Mr. CELLER. It may not involve sanctions but it is the equivalent.

The CHAIRMAN. You are going far out on the limb. It might break out with you under that proposition.

Mr. CELLER. Cases have a tendency in that direction and this *Lombard* case is almost squarely, is squarely on that point.

The CHAIRMAN. I haven't read it. I will.

I don't want to detain you on that.

Mr. CELLER. Of course, it is a very simple situation there, Mr. Chairman. There are no sanctions involved here. If, for example, there is a question whether or not operation of a public accommodation privately owned is or is not included, the case can be brought and then can be determined. There is no sanction invoked against anybody, there is no punishment. There is nothing criminal about the statute. Either he stops—either the individual stops, if he is accused, or he continues, and then the case is brought into a court to determine whether the law is applicable to him or whether the law is unconstitutional as to him. I am reminded also that if the person who brings the case against the individual loses, he has to pay costs and attorney's fees.

The CHAIRMAN. I wasn't talking about that. I was talking about custom and usage. Probably that is a pretty good provision.

I wanted to pass to something else. I don't want to keep you.

Mr. SISK. A parliamentary inquiry, Mr. Chairman. Does the chairman have any idea when we may break for lunch?

The CHAIRMAN. Whenever you want to.

Mr. SISK. I have an appointment and I have to go to another meeting.

Mr. MADDEN. Maybe the law of custom and usage should come in on that luncheon.

Mr. SISK. I think so myself, I will say to my good friend from Indiana.

The CHAIRMAN. May we settle this question? What time do you want to quit?

Mr. DELANEY. Right now.

The CHAIRMAN. We have got a long ways to go.

Mr. COLMER. Mr. Chairman, it is obvious, as has been observed here previously, that Mr. Celler might want to be around with us for quite a little while. The Chair hasn't finished examining him.

The CHAIRMAN. You all interrupted me.

Mr. COLMER. Some of the rest of us may want to ask him some questions.

Mr. BOLLING. Could we reconvene at 2?

Mr. COLMER. Maybe we could quit for a while. As far as I am concerned I would be willing to quit permanently but there is a question whether we would come back this afternoon or tomorrow.

Mr. CELLER. I would prefer this afternoon, Mr. Chairman.

The CHAIRMAN. Do you all want to come back this afternoon? What time would you say, 2 o'clock?

Mrs. ST. GEORGE. I could come at 2 and continue until 5 or 6.

The CHAIRMAN. I want to get you back on this public accommodations here because you have got some right stringent things in here that seem to me to infringe upon the freedom of speech of persons and the press. That is a right important thing. I wanted to ask you about that. We will take a recess now and come back.

Mr. O'NEILL. What are your plans for tomorrow?

The CHAIRMAN. I haven't any. What are your plans?

Mr. O'NEILL. I have somebody formulating my plans. He sits at the end of the table.

The CHAIRMAN. We will have to go along with the thing. I am at the pleasure of the members of the committee.

Mr. MADDEN. A point of information, and this is a point of information. I understand, Mr. Chairman, that the chairman of the Judiciary Committee has requested 15 or 17 hours debate.

Mr. CELLER. Fifteen to twenty hours debate.

Mr. MADDEN. And after the 15 to 20 hours debate when this bill is reported on the floor, then we go into open rules. Isn't that true?

Mr. CELLER. That is correct.

Mr. MADDEN. That may last 4 or 5 days. You requested an open rule; isn't that true?

Mr. CELLER. That is correct.

Mr. MADDEN. Don't you think that a great deal of this work that we are going through here is more or less of a performance and exercise you might say? There are 15 here, but the other 420 Congressmen have 15 hours and then 4 or 5 days of the 5-minute rule. We could help them iron out a lot of these things on the floor of the House. That would save a lot of time in this smoky room here.

The CHAIRMAN. If you want an answer to that, I would say that before they begin that operation it would be well to have some illumination of what is in the bill and the booby traps in it so they will know what to debate about.

Mr. MADDEN. They will have 17 hours debate before we go into amendments and the amendments will last 5 or 6 days and I don't think we ought to deprive the other 420 Congressmen.

The CHAIRMAN. We won't. They will have plenty of time.

Mr. MADDEN. They should have an opportunity to have something to say about this bill. We are not going to settle this bill in this room.

Mr. AVERY. How about 2 o'clock this afternoon?

Mr. MADDEN. That is all right with me.

(Whereupon, at 12:45 p.m., the committee was recessed to reconvene at 2 p.m., the same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will be in order. Very well, you may proceed.

Mr. CELLER. Mr. Chairman, when we adjourned this morning, we adjourned on a note of difference concerning places of public accommodation. I think you wanted to be satisfied with reference to section 201, subsection (d), which is at the bottom of page 44:

Under color of any law, statute, ordinance, regulation, custom, or usage.

That section would come under the nomenclature, color of law, and therefore under the 14th amendment.

I call attention to the case of *Lombard* v. *Louisiana*, recently decided in the October term of the U.S. Supreme Court. That was a case of a sitin in a Woolworth 5- and 10-cent store lunch counter. The mayor and chief of police made public announcemnts approving of the practice and custom of forcing Negroes away from the lunch counter with whites.

The Court, among other things, stated at page 6 of the opinion:

But we need not pursue this inquiry further. A State, or a city, may act authoritatively through its executive as through its legislative body. See *Ex*

parte Virginia, 100 U.S. 339. As we interpret the New Orleans city official statements, they here determined that the city would not permit Negroes to seek desegregated service in restaurants. Consequently, the city must be treated exactly as if it had an ordinance prohibiting such conduct.

Although there was no ordinance, the Court held the city must be treated exactly as if it had an ordinance prohibiting such conduct.

It was just held in *Peterson* v. *The City of Greenville*, where an ordinance makes it unlawful for owners or managers of restaurants to seat whites and Negroes together, a conviction under State criminal processes, employed in a way which enforces the discrimination mandated by that ordinance, cannot stand.

Equally, the State cannot achieve the same result by an official command which has at least as much coercive effect as an ordinance. Official demand here was to direct continuance of segregated service in restaurants and to prohibit any conduct directed toward its discontinuance.

This was a case with no ordinance at all. It had been a practice which had grown up over the years of segregation. The chief of police said the practice should continue. The Court there held that although there was not any ordinance, the effect of all this would be the same as if there were an ordinance. I checked with Black's Law Dictionary.

The CHAIRMAN. Before you leave that, may I comment on the *Lombard* case? In the *Lombard* case, what happened there? Was it the police officers who stepped in and directed and ordered that this custom be followed? You did not finish reading all it said. Here is the concluding sentence in that opinion:

Therefore, here——

Mr. CELLER. What page is that, sir?

The CHAIRMAN. The next page.

Mr. CELLER. Seven?

The CHAIRMAN. I have a different volume from yours. If you will just follow your paragraph on down to the concluding sentence, it says:

Therefore, here, as in *Peterson*, these convictions, commanded as they were by the voice of the State

that is, the police officers—

directing segregated service at the restaurant cannot stand.

Based upon the fact that the police officers, speaking for the State, did this, that is the point. It was not usage and custom. That did not enter into it.

Mr. CELLER. What right had that policeman to do it on his own?

The CHAIRMAN. That is the ground that the Court decided the case on. It was State action when the police officer stepped in and said you cannot do this.

Mr. CELLER. That is right.

The CHAIRMAN. Speaking for the State.

Mr. CELLER. There is no law, no ordinance; there was no statute. There was a practice and custom. This police officer of his own accord said, follow the practice. I do not think there is any difference than if he had not said it.

The CHAIRMAN. You covered the waterfront. You have not confined it to those cases where the police officer undertakes to enforce it. You said any usage or custom.

Mr. CELLER. I am quite sure that in the progression of cases, as we have it from the Supreme Court, I have no doubt that that section (d) on page 44 will be declared constitutional for other reasons. If for no other reason, if we want to eliminate the 14th amendment, it can be supported by the commerce clause. Under the commerce clause I think it would be held constitutional.

Beyond that, let me read from Black's Law Dictionary, which says:

Custom: 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. *Adams* v. *Insurance Company.*

There is a number of other cases.

Bouvier's Law Dictionary, Rawle's third edition, volume 1, page 374:

Custom: Such usage as by common consent and uniform practice has become the law of the place or of the subject matter to which it relates. Custom is a law established by long usage. *Wilcox* v. *Wood*—

and other cases.

I think that is sufficient to ground this provision of subsection (d) on page 44 as to constitutionality.

If you want me to argue on the question of the commerce clause, I will be glad to do it because I think any kind of segregation of that sort would affect the stream of commerce. There are any number of cases holding where it affects commerce that it is constitutional. So that I have no qualms on that score at all.

The CHAIRMAN. You mean to say a custom in the local community comes under the commerce clause, interstate commerce?

Mr. CELLER. Not the commerce but the segregation, the discrimination and segregation caused by usage. It is the discrimination which would be a weight upon or would affect commerce because it affects trade. It would affect the free flow of commerce. Some people could buy in some places and some could not buy.

The CHAIRMAN. While you are on that, I have another question. You have said in this bill that anybody comes under the commerce clause who handles a substantial portion of goods that, as your expression is, "has moved in commerce." That means to say, I take it, that if the groceryman has a can of beans that were baked in Boston and shipped down to Virginia, if he has that can on his shelf, he is engaged in interstate commerce.

The question I want to ask you is this. Do you know of any other law—of course, we have gone very far in misconstruction of the commerce clause through the years—do you know of any other law that has used that expression, that a man is engaged in interstate commerce if he has on his shelf goods that previously have moved in interstate commerce?

Mr. CELLER. The National Labor Relations Act is very much akin to that.

The CHAIRMAN. They use the expression, "affected commerce." That runs through all these New Deal laws, "affecting commerce." I am asking you the question, if an article has ever moved in commerce

in the past, whether that expression has ever been used in any previous legislation.

Mr. CELLER. I do not know as to this particular example, that it has been tested in the courts, but we have cases very much akin to it.

The CHAIRMAN. I was not speaking about akin to it. I wanted to see if this is not another extension of the commerce clause to further cover the waterfront on everybody and everything.

Mr. CELLER. You manufacture those kinds of words, which make this thing absurd. This is not true, of course, and I cannot accept it that way.

The CHAIRMAN. I do not manufacture anything. This says in your bill, "has moved in commerce." I wear this suit of clothes to work every day. I do not have but one suit. I cross the river. My suit moves in commerce every day. Am I engaged in interstate commerce when I wear a suit of clothes across the river?

Mr. CELLER. No.

The CHAIRMAN. This suit has moved in commerce every day for a long time.

Mr. CELLER. Let me illustrate one or two cases. Take a window washer. That would be deemed pretty local. Yet, that has been held under labor statutes to be affecting interstate commerce. Congress has a right to legislate thereupon.

The Pure Food, Drug, and Cosmetic Acts cover all manner and kind of trifles, the tiniest pills are involved. Congress has a right to regulate the sale and distribution and manufacture of those items whether on a shelf of a druggist or not. We have any number of those kinds of statutes.

The CHAIRMAN. Mr. Celler, I was just interested to know whether this was a new invention to put everybody under interstate commerce that has not already been under it.

Mr. CELLER. No.

The CHAIRMAN. I did not expect you to be able to answer that question right off the bat, but I wish you would at a later time tell us if there is any legislation that has ever been on the books up to now that has broadened the Interstate Commerce clause by interpretation to the extent that it covers anything that has ever moved in interstate commerce.

Mr. CELLER. I would mention pure food and drug. That is pretty revolutionary.

The CHAIRMAN. I was not asking about imagination. I thought surely that question could be answered by your staff anyway, whether that language is new, that this is the first time it has ever been used.

Mr. CELLER. It is the first time it has been applied for purposes of segregation. The commerce clause can be used for many purposes, for the welfare of the country, for labor, for health. It has been used in all those cases. Let me read you some other provisions under welfare.

What about the so-called Mann Act?

The CHAIRMAN. I am not familiar with that.

Mr. CELLER. You are not familiar with that? I am not famliiar with it, either. It has just been mentioned to me.

The CHAIRMAN. You seem to be speaking with some authority.

Mr. CELLER. I just speak from memory.

The CHAIRMAN. If you would give us that some time later, please, I would appreciate it.

Mr. CELLER. Very well.

The CHAIRMAN. If I might digress a minute, I want to remind you of something you probably already know. The Father of the Constitution, James Madison, when he was President, vetoed the first rivers and harbors bill on the ground that the Constitution did not mean means of transportation but it meant the goods themselves that were being moved and only while they were being moved. You see how far out on the limb we have gone.

Mr. CELLER. A good deal of water has flowed over the dam since Madison's day, and a lot of new concepts have been developed.

Mr. Chairman, what is a heresy today may be orthodoxy tomorrow.

Mr. COLMER. That water just about wiped out the Constitution, did it not?

The CHAIRMAN. Had you finished?

Mr. CELLER. Go ahead. I am never finished, of course.

The CHAIRMAN. I did not want to cut you off.

Mr. CELLER. You go ahead.

The CHAIRMAN. I want to pass to another subject.

Mr. CELLER. We said something about free speech, I think, when we were leaving.

The CHAIRMAN. I have not gotten to that yet. I have something before that. What I wanted to ask you about right now is this. You exempt private clubs.

Mr. CELLER. That is right.

The CHAIRMAN. I just wondered how good that exemption is. For instance, we have many States that have laws of this nature, do we not? I think you mentioned how many States have such laws. You say, I believe, over half the States already have those laws.

Mr. CELLER. 30-odd States.

The CHAIRMAN. All those States doubtless exempt private clubs just as you do.

Mr. CELLER. I have the laws here. I have not winnowed them to see just exactly what they do.

The CHAIRMAN. I expect they do.

Mr. CELLER. I imagine so.

The CHAIRMAN. This law is supposed to exempt, but you have section 202 on page 45, which says:

> All persons shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by—

a State law.

You have got a State law that exempts private clubs, and that is in violation of this law because section 202 says so. Therefore, would clubs under your law and under that section 202, would they not be included where they are exempted by State law?

Mr. CELLER. I do not think so.

The CHAIRMAN. I know, but why not? The language is clear.

Mr. CELLER. There is no necessity, you may not need section 202 because it is in the Constitution.

The CHAIRMAN. Why not leave it out?

Mr. CELLER. This is exactly what the Constitution says. In other words, if there is discrimination and segregation by a State agency or any political subdivision, that is discrimination under color of law. The 14th amendment would apply.

We simply put it in the statute here to make it statutory and as an appropriate means of carrying out the constitutional intention. I do not think it will have the effect you speak of concerning private clubs.

The CHAIRMAN. The State laws discriminate when they exempt private clubs. Your section 202 says if they do, they come under this law.

Mr. CELLER. Then the Constitution does it. The Constitution does it also then because all this does is put in the statute what the Constitution says. I do not think it has that effect.

The CHAIRMAN. Maybe you do not, but I happen to belong to some of those organizations, and I want to be sure about it. I have had communications from the Masonic fraternity. I have had communications from the attorney for the National Society of Sororities, and they are disturbed about it. I do not particularly want to depend upon your opinion or mine. The law should be clear.

Mr. CELLER. My counsel points out a distinction here. On line 12, page 45, you got the word "required." The State statutes do not have the requirement, they do not require discrimination.

The CHAIRMAN. It is required by State law that private clubs are exempted from the operation of the act.

Mr. CELLER. No; that is not what this says:

> All persons shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law * * *.

The CHAIRMAN. Is it not required when you exempt them?

Mr. CELLER. Not required.

The CHAIRMAN. It is required that you cannot do anything to them.

Mr. CELLER. You have State laws that require State discrimination, State law, of a private club? Do you have any such State law?

The CHAIRMAN. They are required to exempt them. They are required not to be considered by the law. You think this word "required" saves them?

Mr. CELLER. I do not know of any State that says a private club must discriminate. They may discriminate, but there is no statute which says that the burden is on them, that they must discriminate.

The CHAIRMAN. They are exempted from the operation of the act?

Mr. CELLER. That is right.

The CHAIRMAN. They are required by law to be exempted. I do not want to argue the point with you, but I have had those inquiries.

Mr. CELLER. I think they are without foundation and unrealistic.

The CHAIRMAN. I would like to see the language clear, though.

There was another thing about private clubs. You said that they should not be exempted if they served the customers of any institution such as a hotel that was included under the act. For instance, many hotels, I think, have arrangements with the local country club that their guests can, under certain conditions, go there and play golf.

Mr. CELLER. That would not apply to the club. The club would be exempt.

The CHAIRMAN. Would it?

Mr. CELLER. Yes sir; the club is not within the confines of the hotel. It is outside the confines of the establishment of the hotel.

The CHAIRMAN. You overlook section (e) on page 45:

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 (b).

Mr. CELLER. If 20 persons are given the privilege by the hotel at the golf club and the golf club discriminates among those 20 persons who have been privileged by the hotel to operate, then the golf club is in trouble. But ordinarily that would not happen. The golf club itself would not be involved except as the permission is given to individuals by the hotel, and those individuals cannot be discriminated against by the golf club.

The CHAIRMAN. It does bring them under it, then, if the golf club has a discriminatory policy?

Mr. CELLER. Under that limitation.

The CHAIRMAN. Then it is brought under this law, this private club is brought under this law if they have a policy of discrimination; is that right?

Mr. CELLER. If the hotel is covered by title 2——

The CHAIRMAN. All hotels are covered.

Mr. CELLER. Yes.

The CHAIRMAN. No ifs about that.

Mr. CELLER. If it gives this permission to a score of people or so and then there is discrimination by the club itself, then that is different.

The CHAIRMAN. Then the club is brought within the provision of this law?

Mr. CELLER. It would be under those circumstances in a limited way.

The CHAIRMAN. Then it is not absolutely exempt. I am glad to know that. I think some of the clubs will be glad to know that, too. They may want to change their policies.

I have another question about that. Barbershops are exempted under this law.

Mr. CELLER. Yes, sir.

The CHAIRMAN. Beauty shops are exempted under this law and like things. But you said this morning that if they are in a hotel—as you know, of course, most of the great hotels, particularly in the cities, have a first floor devoted to commerce, they rent it out. Anybody that goes in there, no matter if their business is totally local, comes under the provisions of this act.

Mr. CELLER. If they are within the premises of the hotel, they are covered.

The CHAIRMAN. A great many barbershops are located in those kinds of places, in some building that may be under the act, because a barbershop cannot own a building of its own. They have to rent. If they are in any building where the people that own the building or run the building are under this act, then the barbers come under the act.

Mr. CELLER. Let me get it straight. Are you speaking of a hotel now or a building?

The CHAIRMAN. Either one.

Mr. CELLER. Is the whole building a hotel?

The CHAIRMAN. Assume that it is.

Mr. CELLER. I beg your pardon?

The CHAIRMAN. Yes.

Mr. CELLER. If the whole building is the hotel, the barbershop is in the hotel, and the barbershop is covered.

The CHAIRMAN. I am asking about a type of hotel, there are a great many of them, where the first floor is given over to stores and shops.

Mr. CELLER. Yes.

The CHAIRMAN. Every store in that building, because the hotel is under the clause, comes under this section, does it not?

Mr. CELLER. If the barbershop is part and parcel of the hotel, it is covered.

The CHAIRMAN. That is not my question. Suppose he is a tenant in the building?

Mr. CELLER. It is covered.

The CHAIRMAN. He is a tenant, not part and parcel of the hotel; he is a tenant.

Mr. CELLER. He is covered.

The CHAIRMAN. Because he is located in that building he comes under this act?

Mr. CELLER. He would come under that act.

The CHAIRMAN. A beauty shop under similar conditions would come under this act?

Mr. CELLER. Yes.

The CHAIRMAN. There are a great many of them so located; are there not?

Mr. CELLER. There are, and there are many not located near hotels.

The CHAIRMAN. A fellow with a barbershop across the street——

Mr. CELLER. He would not be covered.

The CHAIRMAN. He would not be covered?

Mr. CELLER. That is right.

The CHAIRMAN. I believe a good deal has been said about discrimination in this act. Would you call that discrimination between barbers?

Mr. CELLER. No; because the law often makes discriminations of that sort. For example, in the various labor statutes we hold Congress has the power to pass laws that apply to one class of persons and not another.

For example, employers of eight persons are not taxed under social security. I cite you the case of *Stewart Machine* v. *Davis*, 301 U.S. Those who have more than that are taxed. We have any number of cases where the laws make distinctions between one and another.

The CHAIRMAN. You have some of that kind of discrimination in the bill.

Mr. CELLER. We have it in many bills.

The CHAIRMAN. You have Mrs. Murphy's boardinghouse, where a lady has 5 rooms to rent, she does not come under the act; but if she has 6 rooms, she is covered by the act.

Mr. CELLER. That is correct.

The CHAIRMAN. What is magic about the number "5"? There must be something.

Mr. CELLER. It must be owner-occupied.

Mr. COLMER. If the chairman will yield to me——

The CHAIRMAN. Yes.

Mr. COLMER. I certainly agree with my chairman, that that is the rankest type of discrimination even among the races.

We in this country on the question of barbers—I do not know to what extent it prevails in other countries, although I guess to the ratio of the races probably—but the barber business, the people who pursue that for a living do a segregated or, if you prefer, a discriminatory business. As a matter of fact, I have had any number of barbers tell me that they are not equipped, they are not trained, they are not capable of cutting hair of the opposite race.

I am just wondering if you are going to insist on that provision in here, if you had no better make some provision in here, as we are doing now for displaced coal miners and depressed areas, to give these barbers some training so they can go into this new business. That is not farfetched.

Mr. CELLER. We have had cases in the States which have these kinds of statutes and public accommodation statutes, and that very defense was raised, but the courts pooh-poohed it.

You speak of discrimination. What about discriminatory laws in favor of women?

Mrs. ST. GEORGE. Yes, what about them?

Mr. COLMER. I am glad you asked the question.

Mr. CELLER. You cannot treat women the same as men for biological reasons.

The CHAIRMAN. I have just had a letter this morning, which I was going to bring to your attention later, from the National Women's Party. They want to know why you did not include sex in this bill. Why did you not?

Mrs. ST. GEORGE. If I may be facetious, is that another dim memory, Mr. Celler?

Mr. CELLER. Mr. Chairman, it reminds me of the Frenchman who was going up the Empire State Building in New York. Somebody said, "How do you like it?" He said, "Well, it reminds me of sex." "Reminds you of sex? Why is that?" The answer was, "Everything reminds me of sex."

The CHAIRMAN. You did not answer my question.

Mr. CELLER. This is a civil rights bill.

The CHAIRMAN. Don't women have civil rights?

Mr. CELLER. They have lots of them. They are supermen.

The CHAIRMAN. Was it not suggested in your committee that the word "sex" be put in here as well as "race"?

Mr. CELLER. I do not think it was ever raised. No, it was never raised.

The CHAIRMAN. I have not found out yet why you did not put "sex" in.

Mr. CELLER. Do you want to put it in, Mr. Chairman?

The CHAIRMAN. I think I will offer an amendment. The National Women's Party were serious about it.

Mr. CELLER. If I remember rightly, whether in 1957 or 1960, an attempt was made to amend the civil rights statute by somebody from

California, I believe Mr. McDonough tried to put it in, and it was voted down.

The CHAIRMAN. It was voted down?

Mr. CELLER. I think so. You better check it. I am not sure, but I think it was.

Mr. SISK. I did not know we had a civil rights bill in the 83d Congress.

Mr. CELLER. It passed the House; it may have been in the 84th Congress.

The CHAIRMAN. Getting back to the immediate question before you about private clubs, a great many of these clubs, I reckon all of them, like the Kiwanis, Rotary, and other clubs of that nature, they have a regular place where they go for their weekly lunches and they have an arrangement with a hotel. Let us assume they are a segregated private club and they go in a hotel and in accordance with this act they would then become subject to the provisions of this bill.

Mr. CELLER. Would they raise the question if they are treated separately? They would not raise the question.

The CHAIRMAN. Somebody else might raise the question.

Mr. CELLER. Who else?

The CHAIRMAN. Somebody else who wanted to get in the club might.

Mr. CELLER. And then if the hotel continued to segregate, the hotel is in trouble.

The CHAIRMAN. The hotel has to integrate but I am talking about the private club that is in the building with the hotel and meets there.

Mr. CELLER. And the victuals are furnished by the hotel?

The CHAIRMAN. The victuals are furnished by the hotel and the quarters are furnished by the hotel.

Mr. CELLER. They are up to their hips. The club itself is not involved but the service in the hotel is.

The CHAIRMAN. Then what does this language here mean, that if they are "within the premises" they are subject to the law?

Mr. CELLER. What line is that, Mr. Chairman? The club itself would not be involved. It is only the service that would have to be on a nonsegregated basis. If it is on a segregated basis the one who serves is in trouble.

The CHAIRMAN. But the hotel does not serve anything to the barbershop?

Mr. CELLER. That is another phase. If the barbershop is on the premises of the hotel——

The CHAIRMAN. So is the Kiwanis Club. That is the only premises they have.

Mr. CELLER. They are not involved.

The CHAIRMAN. Why aren't they involved?

Mr. CELLER. The club is not a public accommodation open to the public.

The CHAIRMAN. The barbershop is not either.

Mr. CELLER. Yes; the barbershop is a public accommodation and the Kiwanis Club is not a public accommodation.

The CHAIRMAN. It does not have to be a public accommodation. That provision says that if they are in the same building they come under the act.

Mr. CELLER. You have to read the beginning of the provision. On page 43, line 22, it reads "which holds itself out as serving patrons of such covered establishment." The club does not do that.

The CHAIRMAN. You are right. I think that exempts a private club.

Mr. COLMER. If you will pardon me, Mr. Chairman, if I understood the distinguished gentleman who is testifying, a moment ago he said if somebody else who possibly wanted to get in the club raised the point it would be involved?

Mr. CELLER. No, sir.

Mr. COLMER. You did not say that?

Mr. CELLER. No, sir.

The CHAIRMAN. Mr. Celler, I want to direct your attention to page 45, to at least two lines. That is section 203 and it provides that no person shall withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any person of any right or privilege secured by this act, and the last subsection provides "or incite or aid or abet any person to do any of the foregoing."

Now, I think that is an infringement on the freedom of the press and the freedom of speech because a lot of people will be agitating, just as some of us are agitating, against this bill. The hotel might say, "We are not going to observe this law," and the newspaper might come out in an editorial and say, "The hotel is right. This is an invasion of our natural rights and our constitutional rights and we don't blame them." The newspaper is inciting them to continue the violation of the law. What do you have to say about that?

Mr. CELLER. In the first place, the freedom of speech and the freedom of the press is not absolute. It is limited; for example, by the laws of libel, slander, it is hedged around by sedition laws, it is hedged around by breaches of the peace. As Judge Holmes said, you have no right to go into a crowded theater and yell "Fire!" when there is no fire. Freedom of speech and the freedom of the press has limitations. If you put on a theater "For Whites Only" or "We Will Not Serve Whites," which is sort of an encouragement or incitement to violate this law, I think it is right to say that is a violation, and so it is with the newspaper.

If the newspaper prints something which has a tendency to incite people to violate the law, I think you can get after that newspaper. If it is editorial comment and there is no direct causal relation between the editorial comment and the act contemplated, that is proper. But if there is a causal connection between what the newspaper says and the act itself, I think the newspaper is in trouble.

As I said, the freedom of speech is not unlimited. It is circumscribed in many respects.

The CHAIRMAN. Suppose he says, "I don't believe in this law, I hope this hotel will continue its policy."

Mr. CELLER. I think we must follow what Judge Holmes said in that case where the man hollered "Fire." Does the statement they make constitute a clear danger that the law shall be violated? If it is a proper comment, editorial or otherwise, it is perfectly all right. I have the right to say, as I did during the prohibition days, "I don't like prohibition. I think it should be repealed." But if I said, "I know where there is a speakeasy and if you will come with me I will

show you where you can violate the law," that is a different matter. If there is a direct causal relation between the incitement and the act itself, you are in trouble.

The CHAIRMAN. There is a certain curtailment, under this bill, of the editorial policy of the newspaper. Suppose this law, unhappily, is passed and I am running for Congress, as I have run several times, and I am against it in my speeches and say this law it outrageous, it destroys the rights of citizens and I think it ought to be repealed and I am not going to obey it.

Mr. CELLER. You have a right to say it.

The CHAIRMAN. I have a right to incite people?

Mr. CELLER. That is not incitement because I do not think there is a causal connection between the incitement and the doing of the act.

The CHAIRMAN. You have some mighty fine points in this bill.

Mr. CELLER. The answer is that in any event the remedy is an injunction and the court would determine whether or not freedom of speech or freedom of the press is involved.

The CHAIRMAN. I will just ask you one more question.

Mr. CELLER. Only one more?

The CHAIRMAN. On that point. You use the words "incite or aid or abet." Let us assume here is a hotel that in view of the sentiments in the community and for fear of losing all of its business says in an advertisement: "Mr. Celler has passed this law saying we have to integrate this hotel, but we are not going to do it and we want our customers to know we will continue our same policy in the future as in tlhe past."

They put that advertisement in the newspaper. Has the newspaper aided and abetted them in violating the law?

Mr. CELLER. I do not think the newspaper would be involved there.

The CHAIRMAN. Why not? They say, "Violate this law. We think you should violate it."

Mr. CELLER. I do not think the newspaper intended by that to have the law violated. They simply accepted the advertisement and I do not think the newspaper had any intent of violating the law.

The CHAIRMAN. You say you don't think it did, but what might some judge think about it?

Mr. CELLER. I do not know what the court would think, either.

Mr. MADDEN. If the chairman will yield, on the same theory suppose my opponent for Congress ran an ad in the paper, I could not find fault with the newspaper but I could with my opponent.

Mr. CELLER. That is another matter.

The CHAIRMAN. Do not depend on that too much.

Mr. MADDEN. I have been relying on it all these years.

The CHAIRMAN. I point that out to you and I think there is danger there. Of course the thing that might stop it is that on page 48 you conclude this chapter on public accommodation by saying:

> Proceedings for contempt arising under the provisions of this title shall be subject to the provisions of section 151 of the Civil Rights Act of 1957.

I believe that was when we had the squabble about the jury trial and wound up by saying if this fellow violates the law he can go to jail for 45 days and be fined $100 without a jury trial.

Mr. CELLER. That is right.

The CHAIRMAN. I did not say that was right. That is the law.

Mr. CELLER. But if it is beyond that, he has a right to a jury trial. That passed the Congress. That was the result of a conference report.

The CHAIRMAN. Then you had a chapter on public facilities. That is the next chapter.

Mr. CELLER. Title III.

The CHAIRMAN. I notice in that you again authorize the Attorney General to bring suits in the name of the United States and make the United States the plaintiff in those suits and the taxpayers will pay all the expenses and attorneys' fees. That is under "Desegregation of Public Facilities." The only thing I see in that that is new is that you authorize the Attorney General to bring all these suits, but I am wondering why that was not in the President's bill? He did not have that in the bill he sent down and that you introduced.

Mr. CELLER. I do not think you should complain if we weakened the bill.

The CHAIRMAN. No, you strengthened the bill. The President did not recommend that in his bill; the one you first introduced. The bill you first introduced did not have anything about that in it.

Mr. CELLER. The very predominant majority of the Judiciary Committee approved this provision.

The CHAIRMAN. That is what I am complaining about. I wondered if they knew what was in it, in view of the way it was reported out. We have been talking all the time about President Kennedy's civil rights bill and I will proceed to show you later on that there are three titles in this bill that were not in the President's bill.

Mr. CELLER. Mr. Chairman, many members submitted civil rights bills. You can call this President Kennedy's bill, but it is a composite of about 180 bills that were submitted. I had a bill too, and Mr. McCulloch had a bill.

The CHAIRMAN. That is what I am getting at. This is not President Kennedy's bill that we are considering.

Mr. CELLER. Well, unfortunately President Kennedy is not here and I do not want to raise any questions about that, but he had some share in fashioning the bill, to his credit.

The CHAIRMAN. I will not raise any more questions about that.

You have title IV. That is substantially the same as the administration bill, I believe?

Mr. CELLER. I think so.

The CHAIRMAN. There is one thing in there that disturbs me. Of course you have the Attorney General in here again suing in the name of the United States for a private litigant.

Mr. CELLER. Forgive me if I am wrong, but does not the Attorney General always bring these suits in the name of the United States?

The CHAIRMAN. Yes, as far as I know he does. I do not think he has any right to sue as the Attorney General in his own name. He brings the suit in the name of the United States but when he does under this bill he brings a suit really as attorney for a private individual at the expense of the taxpayers of the United States.

Mr. CELLER. Don't you think he should have that right, to test a constitutional question? Don't you think he should have that right?

The CHAIRMAN. I don't think he should do so for individuals. I do not think if John Jones comes in and says, "I have a complaint.

My constitutional rights have been stepped on," the Attorney General should bring suit for him. He could go in court and do it himself.

Mr. CELLER. But this action is against public authorities and I should think he should have that right.

It might interest the gentleman to know that he can bring an antitrust suit, and the Attorney General can intervene for a private individual under the antitrust law. He can do it there and he ought to be able to do it where a constitutional right is involved.

The CHAIRMAN. I will not bother you any more on that, but under title IV, "Desegregation of Public Education," that is substantially equivalent to the original administration bill. There is a provision in there that authorizes the Commissioner of Education to make grants to schools for assistance, to teach them how to enforce integration in the schools, teach them how to do it, and there is no limitation on those grants. Of course we have had a lot of public education bills around here for a long time. I am just wondering, are you going to leave this authorization wide open?

Mr. CELLER. I can give you the cost of this particular title if you wish.

The CHAIRMAN. Yes, I would like that. It is not in the bill. The authorization is wide open.

Mr. CELLER. We have figures that the total in the Department of Health, Education, and Welfare is $10,095,000 and the cost in the Department of Justice is $699,000, a total of $10,794,807.

The CHAIRMAN. I am asking about grants.

Mr. CELLER. That is the whole thing. That is what they contemplate this whole title would cost.

The CHAIRMAN. Grants to public education is not in the jurisdiction of your committee, is it?

Mr. CELLER. I am speaking of what the cost of title IV would be.

The CHAIRMAN. I am not talking about that. What I am talking about is your getting in this educational field and authorizing the Commissioner of Education to make grants. You will find it on page 52. There the Commissioner is authorized, upon application of a school board, to make grants to such board to pay, in whole or in part, the cost of giving to teachers and other school personnel inservice training in dealing with problems incident to desegregation, and employing specialists to advise in problems incident to desegregation, and so forth. What I want to know is, you have not put any limitation on that authorization?

Mr. CELLER. No; we have not.

The CHAIRMAN. How much can the Commissioner of Education spend?

Mr. CELLER. We asked the Department of Health, Education, and Welfare how much it would cost and we got a little more than $10 million to cover those grants.

The CHAIRMAN. $10 million a year?

Mr. CELLER. $10 million a year.

The CHAIRMAN. I thought that came under the jurisdiction of the Committee on Education and Labor. We have been right prolific in education.

Mr. CELLER. It was an omnibus bill and it was given to me and I accepted jurisdiction when it was sent to me, as a good soldier.

The CHAIRMAN. Keep on. We will get the facts of how the bill got here.

Mr. CELLER. Don't tell too much, Mr. Chairman.

The CHAIRMAN. I am sure the gentleman did what he thought he should do, and I agree he is a good soldier to bring this monstrosity here. The thing that disturbs me, you know I read a great deal about this imbalance in integration, what they call imbalance in integration, where they will take a white neighborhood and import from the other part of the city colored children, and they will take children from a white neighborhood and transport them to a colored school so that they can say the schools are fully integrated.

You have omitted any reference to the term "imbalance" in this bill?

Mr. CELLER. We wiped that out.

The CHAIRMAN. You wiped out the slogan but did you wipe out the custom? I refer you to page 54.

Mr. CELLER. What line, Mr. Chairman?

The CHAIRMAN. You had better begin with line 13, where the Attorney General is authorized again to sue in the name of the United States and at the expense of all the taxpayers. He is authorized to institute—

a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate.

That covers the waterfront again.

Mr. CELLER. He can't hobble a court as to what the relief will be. The definition of "desegregation" is on page 50, line 10:

"Desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin.

The court may have a number of ways by which it can bring this about. You cannot hobble a court.

The CHAIRMAN. What concerns me is that under that language they could insist upon moving some white children into colored schools and some colored children into white schools.

Mr. CELLER. The court could get the parties together and tell them to work it out among themselves.

The CHAIRMAN. The court could do that, but the court could issue an order under that clause.

Mr. CELLER. You have to go back again to your definition of "desegregation":

"Desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin.

That would answer your question.

The CHAIRMAN. Under what authority are they doing it now in the larger cities?

Mr. CELLER. If there is a violation and they have made certain arrangements based on race, the courts would say they cannot do it.

The CHAIRMAN. They are doing it in your city.

Mr. CELLER. Under a court order?

The CHAIRMAN. I did not say under a court order. You said the courts would have a right to do it.

Mr. CELLER. In Westchester County they tried to do that. They were trampled on.

Mrs. ST. GEORGE. Mr. Chairman, they are doing it in New York City. There has been a great deal of complaint about it.

Mr. CELLER. Mrs. St. George, correct me if I am wrong, but wasn't there a State supreme court decision that held they could not do it in Brooklyn?

Mrs. ST. GEORGE. I do not mean to say it has ever been done by court order but it was done by the board of education.

Mr. CELLER. I think I remember they said that was done on the basis of race and they could not do it. That was in Brooklyn, I believe.

Mr. SISK. If the gentleman will yield, I would like to get this straight. Under this grant authority, they cannot use any funds under the grant authority to do this at all?

Mr. CELLER. No, sir.

The CHAIRMAN. The court can do it under this language if the court thinks it is an appropriate remedy.

Mr. CELLER. I do not think they can.

The CHAIRMAN. They can give whatever relief they think is appropriate.

Mr. CELLER. Those words must be correlated with the definition of desegregation on page 50.

Mr. COLMER. Mr. Chairman, will you yield there?

The CHAIRMAN. Yes.

Mr. COLMER. Taking the other side of the coin, Mr. Celler, it has been said it is being done in your city now, and I happen to know it is being done in other cities, for instance, in some of the cities in California I understand children are hauled as much as 30 miles back and forth and there is a great howl on the part of people in all white communities that they have to haul their children to other districts. Is this language broad enough to authorize the court to issue an order?

Mr. CELLER. I can say this, we are not free from guilt up North at all.

Mr. COLMER. I am not going into the relative guilt. After all, it is all a matter of numbers, this whole problem. You are handling it in the North for the first time. But what I am getting at, if the court could do that for the relief of the white children, which you say they could, why couldn't they also order it for the colored children?

Mr. CELLER. For the what?

Mr. COLMER. For the colored children.

Mr. CELLER. They can order it for either one or the other if there is segregation. It makes no difference who the complainant is. It does not say only a white man can make a complaint. A colored man can make a complaint.

Mr. SISK. Will the gentleman yield?

Mr. COLMER. Yes.

Mr. SISK. I am either getting lost or confused, maybe both. As I understand, you have said the Court would have no authority under the provisions we are talking about under this bill to require the shifting of students from one school to another for any reason, isn't that true, for any reason?

Mr. CELLER. No, I don't say that. I don't say that at all. The Court can prevent discrimination and that is all. For example, this em-

powers the Commissioner of Education to ask for relief so that he can in general facilitate desegregation. That is the general import of this statute.

Mr. SISK. In order to cite an example, let us take an area, and we will use California because this exists in California as in every State in the Union, I suppose, where 95 percent of the schoolchildren are Negro. Another area on the other side of the tracks, the schoolchildren are 99 percent white. You are not saying there is any language in here under which the Court could come in and force the board of education to transfer these colored children or white children?

Mr. CELLER. There is nothing in here at all that would permit that.

Mr. SISK. And secondly, then, there is nothing in here that empowers the Commissioner of Education to make grants to do those things?

Mr. CELLER. No, sir.

Mr. SISK. Thank you.

Mr. SMITH of California. Mr. Chairman, inasmuch as California has been brought out, in 1927 I went to Belmont High School and they said I did not live in that district and had to take a bus and go to Hollywood High School. It happens some areas are predominantly Negro. Some children decided they did not want to go to a predominantly Negro school, they wanted to go to a predominantly white school. Every fourth white child has been bussed to another school based on what they think this bill will do. We never had any trouble in our district before this was proposed and now everybody is getting ideas on each side.

Mr. AVERY. Will you confirm that this bill will not do what he fears will be done in California?

Mr. CELLER. No, sir, title IV does not cover anything like that.

Mr. SMITH of California. The board said they are entitled to go to any school within the unified school district.

Mr. AVERY. But that is separate from this bill. It is not predicated on this bill?

Mr. SMITH of California. No, but we never had any trouble until 3 months ago.

Mr. ELLIOTT. Will the gentleman yield?

Do I understand from the chairman of the Committee on the Judiciary that there is no language in the title which we are reading now, title IV, that gives legal sanction to the type of situation that the two gentlemen from California have described?

Mr. CELLER. That is correct.

Mr. ELLIOTT. And anything that is being done with respect to the factual situation they have described is being done as a local school district situation?

Mr. CELLER. That is right.

Mr. SMITH of California. Do you anticipate the Attorney General will go in and say, "It can't be done that way"? One of our high schools may have to be shut down because of what is happening there. They had to discontinue football because of this situation.

Mr. ELLIOTT. I would certainly hope the Attorney General would not go beyond this language.

Mr. SISK. If the gentleman will yield, I want to be absolutely certain we do not give the Attorney General the right to do that.

Mr. CELLER. If the Attorney General went beyond that I would do all in my power to call him back.

The CHAIRMAN. It is a fact the Attorney General is authorized in this language on page 54 to bring a civil suit on behalf of anybody in the name of the United States and at the expense of the taxpayers in which he can ask for such relief as may be appropriate in his judgment?

Mr. CELLER. It must be a case where the children have been denied admittance to or not permitted to continue in attendance at a public college by reason of race, color, religion, or national origin. There are conditions under which he has to bring this action.

The CHAIRMAN. But when they go to another school which is not in their geographical district and they say, "You are not in this district," they can say, "You are denying me admittance to this school because I am colored," and there you go.

Mr. CELLER. I think it is a matter of proof.

The CHAIRMAN. How will you prove the intent in the school board's mind?

Mr. COLMER. What is to prevent, under the broad powers you give the Attorney General, his going in and filing such suit?

Mr. CELLER. Suppose a child has been denied a right to go to any school, or denied a right to go to a public college——

The CHAIRMAN. Just a minute. You read subsection (2) beginning on page 53, but you did not read subsection (1) and that is the one under which he can do all these things. It says whenever the Attorney General receives a complaint signed by a parent or group of parents to the effect that his or their minor children, as members of a class of persons similarly situated, are being deprived of the equal protection of the laws by reason of the failure of a school board to achieve desegregation——

Mr. CELLER. What does desegregation mean?

The CHAIRMAN. That is what I would like to know.

Mr. CELLER. It says on page 50:

"Desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin.

If the assignment is with regard to their race, color, religion, or national origin, it is a violation. It must be done without regard to their race, color, religion, or national origin.

Mr. COLMER. But when these complaints are made by groups to the Attorney General, he is authorized under this bill to bring suit?

Mr. CELLER. No. He is hobbled there too. There are certain conditions. Read on further on page 54:

and the Attorney General certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the public policy of the United States favoring the orderly achievement of desegregation in public education—

then—

the Attorney General is authorized to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

Mr. COLMER. What is in that language to prevent a crusading Attorney General from doing that?

Mr. CELLER. He has no absolute power. The court will have to pass judgment on this thing. There is nothing to permit a crusading Attorney General now to do a lot of things you or I would not relish. He is bridled by what the courts would do.

Mr. COLMER. You don't know what the courts would do, either, because we have a new brand of philosophy in the judiciary, particularly across the plaza.

Mr. AVERY. Will the gentleman yield? Where would the burden of proof rest? Would it not rest on the plaintiff?

Mr. CELLAR. Always, and the Attorney General has the burden of proof.

Mr. ELLIOTT. Mr. Chairman, as we go along do you desire us to ask questions? Will we also have the right to ask questions after you finish?

The CHAIRMAN. Yes, but I do not mind your asking questions as we go along.

Title V provides for the Commission on Civil Rights. Under the President's bill that Commission expires in 1967. It was created as a temporary Commission. Under the bill you have reported you have not only increased the salaries of these bureaucrats by 50 percent, but you have made it a permanent institution. Are we going to have this problem with us forever?

Mr. CELLER. If you ask my personal opinion, I did not seek to have it permanent but that was the will of the committee.

The CHAIRMAN. The will of the committee. It was not in the bill when it was handed to you, was it?

Mr. CELLER. I was willing to accept a shorter duration.

The CHAIRMAN. The President, in his bill, did not want it to be permanent?

Mr. CELLER. We did not give the President everything he wanted. We made changes in the bill.

The CHAIRMAN. You did not make changes in this bill, did you?

Mr. CELLER. Oh, yes.

The CHAIRMAN. I am talking about the bill you reported. There were no changes made in that?

Mr. CELLER. You must remember we went through quite a process. We covered almost 2 weeks with all sorts of changes of bills.

The CHAIRMAN. I am not talking about what somebody did downtown in the Department of Justice. I am talking about what your committee did. Your committee never crossed a "t" or dotted an "i" after this bill was laid on your desk.

Mr. CELLER. That bill was a result of a continuing process of changes, also.

The CHAIRMAN. In which your committee did not participate?

Mr. CELLER. Some members did. Some members of the committee did participate.

The CHAIRMAN. You are not telling me that you discriminated against the members of the Judiciary Committee by letting them in on this secret?

Mr. CELLER. That is a forbidden word, discriminate. We just favored a few.

The CHAIRMAN. Anyway, they were not involved in this because this caucus wrote this bill, or whatever it was that wrote it?

Mr. CELLER. I do not either affirm or deny that, sir.

The CHAIRMAN. You plead the fifth amendment.

I gather from what you just said that you are not particularly in favor of making this permanent?

Mr. CELLER. That is my personal feeling, but that is the will of the committee and I bow down to the will of the committee. I said before that I was a good soldier and I abide by the committee.

The CHAIRMAN. I admit it.

Mr. COLMER. Mr. Chairman, may I interrupt for just one moment. It is 3:30 now and I would like to get some idea about what we are going to do.

Mr. CELLER. I cannot hear you, Bill.

Mr. COLMER. I directed this to the chairman, but I think the gentleman would be interested in what I am going to say.

Mr. CELLER. I am always interested.

Mr. COLMER. It is 3:30 now and there are a lot of questions that need to be presented to Mr. Celler before he leaves us. I am sure that we will want him to answer them but some of us have other things to do and I have an appointment, for instance, and I have some things I want to do, and I am sure other members of the committee do, also.

I wonder how long you are going to run here today. Do you want to come back tomorrow? That is all right with me. I would like to have some idea about this because I want to ask Mr. Celler some questions myself and I would like to know what I can do tomorrow or the next day. I will not be able to do it today.

Mr. CELLER. Maybe we can finish today. I do not know, perhaps with me at least.

Mr. MADDEN. Let me say that my friend from Mississippi has a number of questions and I, myself, have about 50 or 60 questions to ask, but Judge Smith has covered every one of them so I will not need any time at all. Maybe Mr. Colmer is in the same position I am in.

Mr. COLMER. No; but I can say that since the gentleman from Indiana and I approached these problems in a different way, what effect they have on the liberties of all of the people and not just a few, I do not know where to approach these things.

I am not always like the billy goat at the convention, already voted for or against you.

I would like to know what is in the bill and personally, Mr. Chairman, I would very much like to absent myself here very shortly.

I would like to ask Mr. Celler some questions but I am not going to be able to do it this late in the afternoon. If you want to come back tomorrow, and if the committee wants to come back tomorrow or Saturday, that suits me all right.

The CHAIRMAN. I understood that it is not convenient for Mr. Celler tomorrow. Usually we sort of hole up here on Thursday night. I will be here and I will go on this evening as long as you want to go on. It has been a pretty strenuous day for me.

Mr. COLMER. I am sure it has for Mr. Celler, too, and the rest of us.

The CHAIRMAN. I hope that we can adjourn this evening until the first of the week anyway. I think if we held sessions like we usually do, Tuesdays, Wednesdays, and Thursdays——

Mr. CELLER. I could get this transcript ready for you by Monday and print it.

The CHAIRMAN. The Attorney General's?

Mr. CELLER. Yes.

The CHAIRMAN. Good; I would like to see it.

Mr. COLMER. I understand the gentleman will be available Monday?

Mr. CELLER. Yes, sir.

Mr. COLMER. For further questions?

Mr. CELLER. Yes, sir.

The CHAIRMAN. Tuesday?

Mr. CELLER. I will be here Monday.

Mr. ELLIOTT. Mr. Chairman, Tuesday we have to have a little time to do a few other things.

Mr. BOLLING. Mr. Chairman, I would have to say at this point——

Mr. CELLER. Mr. McCulloch will be willing to go on tomorrow if you wish to continue.

Mr. SMITH of California. I think we ought to finish with you first. I think we ought to complete your testimony before we change to another man. That is my suggestion, Mr. Chairman.

Mr. BOLLING. Mr. Chairman, I would like to make a brief comment. I do remember 1 or 2 years we had similar matters before us and as the hearings stretched out and stretched out we got into the very embarrassing situation of having to deny some members the opportunity to be heard because things had gone on too long. It seems to me that it is important to recognize the more time we put into a certain number of days, the more likely we are to avoid that embarrassing circumstance.

Mr. COLMER. If I might reply to that very briefly, Mr. Chairman, some of us are here practically all the time and as the time consumed here by Mr. Celler and others, I think the committee will agree—the gentleman from Missouri will agree with me—that once we exhaust the inexhaustible supply of Mr. Celler's knowledge and Mr. McCulloch's that it will not take very long for these other witnesses.

Mr. BOLLING. I hope that is correct. I fondly hope that is so.

The CHAIRMAN. I think it is.

I think Mr. Celler and Mr. McCulloch explored this thing pretty thoroughly. They both worked on the bill. That is an unusual situation when the majority and the minority agree. There must be something peculiar about it.

Mr. CELLER. There would be something peculiar if Bill and I would not agree.

The CHAIRMAN. Well, I do not know about that.

Other members of the committee do not agree and they would want to be heard, but I think when we get through with Mr. McCulloch and Mr. Celler we ought to move along pretty rapidly.

We can expect to get this bill to the floor by the end of the month anyway.

Mr. BOLLING. I did not hear what the chairman said.

Mr. BROWN. I am sorry I was late because of another engagement that I could not break, but you mentioned a moment ago the testimony of the Attorney General being ready to be printed by Monday; is that correct?

Mr. CELLER. We will have that by Monday, I am sure.

Mr. BROWN. When did he give that testimony?

Mr. CELLER. Mid-October, the 14th and 15th of October.

Mr. BROWN. What is the delay? Why is it not ready now?

Mr. CELLER. Before you had come into the room, I explained the reason for the delay. We had to circulate the testimony among the various members which entailed considerable delay. They had to correct their testimony.

Mr. BROWN. You mean they passed judgment upon the testimony of the Attorney General? I thought only the Attorney General could do that himself.

Mr. CELLER. There were questions put.

Mr. BROWN. It seems like there has been a lot of delay on this bill somewhere or other. I do not know who is responsible.

Mr. CELLER. In truth and in fact, we have still the transcript out and one of the members still has the transcript.

Mr. BROWN. When did you start your hearings on civil rights?

Mr. CELLER. May 8.

Mr. BROWN. When did you file your final report here?

Mr. CELLER. November.

Mr. BROWN. November what?

Mr. CELLER. The 20th of November.

Mr. BROWN. That is a considerable length of time; is it not?

Mr. AVERY. Mr. Chairman, may I say that I always thought we established our agenda in executive session. I cannot remember that we ever previously discussed it like this.

Mr. BROWN. We are not discussing our agenda, but his agenda.

Mr. AVERY. We were previously—may I suggest that the chairman, of course, can proceed to establish the agenda of the committee under the regular schedule. I think all members will be here to participate on that basis.

The CHAIRMAN. If I do it, I will do it according to what we usually do.

Mr. AVERY. That is my suggestion.

The CHAIRMAN. A lot of the members are away on Saturday and Monday and that is a fact of life you have to recognize. A good many members do not get back until Tuesday and that is another fact of life you have to recognize.

I think we could work strenuously on this Tuesday, Wednesday, and Thursday and give the members the rest of the time to do what they want to do and have to do.

Mr. AVERY. That was my suggestion.

The CHAIRMAN. If that is agreeable to the committee, that is what we will do. If you want to run along here, that is all right with me.

Mr. MADDEN. Mr. Chairman, I think because of the fact Mr. Celler cannot be here tomorrow, I do not see any reason why the committee has to lay over until Mr. Celler comes back. Let us take up another witness and proceed and then have Mr. Celler finish his testimony later.

Mr. BROWN. Why not let the members question Mr. Celler, those that are ready to question him now?

Mr. MADDEN. That is all right with me.

Mr. BROWN. If you are not ready, we will have to call him back. I am talking about the others here who might want to question him.

The CHAIRMAN. I do not know how long that would be. Of course, I have already asked him a few questions and I have not finished. I am about half way through the bill.

Mr. BROWN. He is a pretty durable witness.

Mr. SISK. Mr. Chairman, could I make a suggestion we stop at 4 o'clock to give the members time to, at least, sign their mail tonight?

Mr. COLMER. I do not know that we can agree on that.

Mr. MADDEN. The only thing I am trying to avoid is being here next Christmas Eve.

Mr. AVERY. Quite a few members did not like that.

The CHAIRMAN. Let me say to you that I have publicly stated a number of times that we are going to proceed with these things in an orderly way and rapidly. I am not going to try to delay it. However, there are certain things in this bill that there have never been any hearings on and I want to know something about them. I hope to do that.

Now I have predicted that this bill will get out of this committee about the end of this month and it seems to me that that is a fair schedule in view of the fact we have had it here, and I will work to that end.

I do not think, after we get through with two or three of the top witnesses, the other witnesses will use up much time. I think in 2 or 3 weeks, going 3 days a week, we will——

Mr. CELLER. I want to say that is eminently satisfactory, Mr. Chairman.

The CHAIRMAN. If that is satisfactory to you, it ought to be satisfactory to the committee.

Mr. ELLIOTT. Mr. Chairman?

The CHAIRMAN. Proceed until 4 o'clock and then we will adjourn.

Mr. Celler, I had finished with title 5 of the bill, the Commission on Civil Rights and except for one brief question that I do not know requires any answer. It is at the conclusion of that section on page 61 where you give the Commission this power:

> * * * The Commission shall have the power to make such rules and regulations as it deems necessary to carry out the purposes of this act.

There are lot of purposes in this act and I think that is a pretty broad power to give to a commission.

Mr. CELLAR. You think it should be the purpose of the title, I suppose——

The CHAIRMAN. No; I think it is too broad.

Mr. CELLER. Do not all commissions make the rules and regulations, Mr. Chairman?

The CHAIRMAN. Yes; but you say "carry out the purposes of this act." The purposes of this act are pretty broad and what I have in mind is this: I think I have mentioned this before, but the Masonic Order and——

Mr. CELLER. Kiwanis.

The CHAIRMAN. And others, have gone as far as employing counsel to protect their rights.They are now receiving from the advisory committee of some of this Commission personnel, about when they are going to desegregate, why they have not desegregated, and so forth and so on.

The Commission has no earthly power to do that.

Mr. CELLER. I do not think they have any power at all in that regard.

The CHAIRMAN. None at all. When you turn them loose with a vague power to make rules and regulations to carry out the purposes of this act, Lord knows where they are going to stop. They have got no business fooling around disturbing fraternal orders and they are doing it.

Mr. CELLER. I think, if you feel it is proper, I would be very glad, as chairman of the committee, to address a communication to the Commission asking them the whys and wherefores of this.

The CHAIRMAN. I think it would be a wise thing to do. You never had any such idea as that and neither did your committee.

Mr. CELLER. I would be glad to do that.

The CHAIRMAN. Let us now get into section 6, nondiscrimination in federally assisted programs.

That is a lulu, that one. I believe you stated this morning in a general statement, that this provision in title 6, nondiscrimination in federally assisted programs, would not affect the recipients of relief or help under the program; did you understand that?

Mr. CELLER. I did not get the first part of your question; would not affect what?

The CHAIRMAN. Would not affect the recipients?

Mr. CELLER. No; that is correct.

The CHAIRMAN. You made that——

Mr. CELLER. Beneficiaries. Not recipients. There is a distinction; beneficiaries.

The agency is the recipient.

The CHAIRMAN. I will clarify it by asking you about the farmers. You say it does not affect the recipients?

Mr. CELLER. Yes, sir.

The CHAIRMAN. Take the farmer and most of them have some kind of a thing under the farm program where they can rent their farms to the Government or they can do this, that, or the other thing. The language in here, it seems to me, is pretty clear every Federal department is directed with respect to any grants, contracts, or loans to effectuate the provisions of section 601, which says there shall be no discrimination.

Further on, it says they shall make rules and regulations to achieve this purpose. You say that would not apply to recipients?

Mr. CELLER. No, sir.

The CHAIRMAN. Let us say that a farmer is under that and you say that would not apply?

Mr. CELLER. No, sir.

The CHAIRMAN. To the ultimate consumer, so to speak?

Mr. CELLER. If the farmer gets an allotment or subvention grant, or whatever it is, he can practice discrimination. Of course, he might

be subject to the terms of title 7 under certain conditions, but I am not referring to that.

The individual would not be subject to title 6. It is only the Federal department or agency that would be affected, not the individual.

The CHAIRMAN. I happen to disagree with you about that, very positively.

Here is the language in your bill. You say it does not apply to the recipients?

*** * * Compliance with any requirement adopted pursuant to this section may be affected by termination of or refusal to grant or to continue assistance under this program or activity to any recipient.**

That is exactly contrary to what you just said.

Mr. CELLER. No; it is the agency that would be cut off.

The CHAIRMAN. No; the agency is not the recipient.

Mr. CELLER. The Farm Bureau would have its moneys or grants or the county would have its grants cut off, not the individual.

The CHAIRMAN. It says the recipient, the fellow who gets the money and puts it in his pocket. He is the recipient.

Mr. CELLER. The recipient of the grant is the one in charge of the program or activity. The program or activity is mentioned seven or eight times here on lines 11, 13, and 20, and so forth. It is the program that is administered that would be cut off. The agency that would be cut off, because the agency would have funds cut off because it practiced discrimination. For example, if the agency doles out the funds to the farmers and would discriminate in that doling out, among the farmers, that agency would have its funds cut off. It might affect the farmer, of course, but if, after the farmer gets the money and there is discrimination by the agency, the farmer can do anything he wishes. He can discriminate as far as labor is concerned, migrant labor or anything else.

The CHAIRMAN. I do not see why there should be any discussion about this because it is just as plain as the nose on your face.

Mr. CELLER. The purpose of the act—that is not the purpose at all.

The CHAIRMAN. The mandate to the agency is that each agency empowered to extend Federal assistance to any program or activity, and so forth——

Mr. CELLER. The purpose of this title is to cut off funds and that is the only purpose, as to who gets the funds. In the first instance, it is the agency that gets the funds and they would be cut off. For example, if a hospital practiced discrimination——

The CHAIRMAN. It does not say that, Mr. Celler.

Mr. CELLER. I do not see——

The CHAIRMAN. This is contrary to that. I think you ought to clarify that before you go to the floor.

Take page 62 and study that language and you are bound to come to the conclusion that the ultimate recipient of that thing is included.

Mr. BOLLING. I would like to ask the gentleman to yield.

What difference does it make whether it is the agency or the farmer if there is no money?

Mr. CELLER. What is that? I did not get that.

Mr. BOLLING. What difference does it make if the money to the agency is cut off? Is there going to be any money to the farmer? I

understand the program—I cannot pretend to be an expert on it—but money is often distributed through various agencies?

Mr. CELLER. Yes.

Mr. BOLLING. It goes to the farmer ultimately?

Mr. CELLER. By the agencies?

Mr. BOLLING. Right. If the agency is cut off from its money, what money will it have to distribute to the farmer?

Mr. CELLER. The amount payable to the farmer would not necessarily be cut off because the other portions of the bill provide sort of flexible power. For example, on line 22 it says, "By any other means authorized by law."

In other words, they may try conciliation so the authorities, the HEW, or the Department of Agriculture may go to the agency and say, "Here, you are discriminating and we want you to stop discrimination."

That is the other means they may try. It is flexible in that sense.

Mr. BOLLING. If the agency gets cut off, the farmer gets cut off?

Mr. CELLER. If the agency gets cut off, the farmer does. Why shouldn't he?

Mr. BOLLING. I agree. I did not understand what you were talking about.

Mr. CELLER. In other words, a Government agency should not encourage discrimination.

Mr. BOLLING. Right; I agree with that entirely.

Mr. SMITH of California. What they are talking about in the next line is to notify the person or persons of failure to comply. A person is not an agency. This is covered on lines 24 and 25. They cannot do it until they notify the appropriate person or persons of the failure to comply.

Mr. BOLLING. That may be persons in the agency.

The CHAIRMAN. As I see that paragraph, it directs every agency of the Government to enforce this law by seeing that none of the recipients of that program do what it is forbidden to violate. If they do violate, that language is so clear it cannot mean what you say.

Mr. CELLER. May I point this out, Mr. Chairman: Let us assume you have workmen's compensation partly arranged for by the Federal Government. If that State agency that distributes that money has two queues, one for Negroes and one for whites, that would be discrimination I should think. Then the Federal Government could say that we are not going to give any more of extra workmen's compensation but we will cut off your funds for your employees and arrange for some other method by which those who are unemployed could get the funds.

It is very flexible here as to how this could be accomplished.

The CHAIRMAN. That is what I am really complaining about, the flexibility of all of these provisions.

Mr. CELLER. You would not want to make it——

The CHAIRMAN. They will do a lot of things you do not contemplate.

Mr. CELLER. You would not want to make it hard and fast because you might injure individuals. You might actually cut off funds to people who are entitled and not responsible for discrimination. That is why we make it flexible.

The CHAIRMAN. What you told Mr. Bolling is that you would cut them off?

Mr. CELLER. In general, yes, sir.

The CHAIRMAN. That has nothing to do with the violation.

Mr. CELLER. If all other means fail, we will have to cut off.

The CHAIRMAN. This makes a Federal agency enforce the law. I do not think that I can convince you.

Mr. CELLER. Suppose you had a case where money was given to a hospital and the hospital has discriminated in the employment of its help by separate beds. I am not talking of the Hill-Burton and so forth, but the Commissioner of Education or HEW would go to the board of trustees of that hospital and say, "Here, you are guilty of discrimination and we want this stopped. Unless you stop it, we will cut off funds."

They will say, "It is awfully hard for us to make these changes overnight. Give us a period of time to make the adjustment."

I think under this arrangement, a period of time could be granted to make the adjustment. You would not want it so inflexible as to cut off the funds of that hospital immediately. That would create a lot of havoc.

The CHAIRMAN. I am not talking about that at all. I am talking about this bill. The language here is so clear there is not any room for dispute about what it means. There is not a bit of use of my talking any further. If you do not think it goes right down to the farmer himself and right down to every individual that has got a contract with the Government—and it says "contract"—or if the fellow who has a contract to build a bridge does not comply with this law, they can cut him off right that minute and throw his people out of employment. It says so and all you have to do is to read it. There cannot be any mistake about it.

Mr. CELLER. I do not read it that way, Mr. Chairman; I am sorry.

The CHAIRMAN. You had better read it again.

You did not write this bill; did you? If you had, I would have had more confidence in it.

Mr. SISK. Mr. Chairman, could I present an illustration as an example to you? Maybe this is farfetched but since we have been talking about the farmer and the effect on the farmer, let us, for example, take a farmer who is today operating under a Government program. For example, let us take cotton. Let us say he is a cotton farmer and he is practicing discrimination in housing. He works 100 people and he has the Negro people housed in one area and the whites in another area, and he will not mix them. He is discriminating there because he is segregating.

If the Commodity Credit Corporation is financing his cotton under the farm program, as I understood your first explanation, the Commodity Credit Corporation would then be cut off if they continued to pay him——

Mr. CELLER. No, no, I would not say that. He would not be cut off.

Mr. SISK. Who would not be cut off?

Mr. CELLER. The farmer could get his money from the Commodity Credit Corporation.

Mr. SISK. Continue to get it from the Commodity Credit Corporation?

Mr. CELLER. Despite the fact he discriminates. Title 7 would catch him.

Mr. SISK. I am talking about title 6.

There would be no way to stop that kind of discrimination under title 6 at all?

Mr. CELLER. No; because the discrimination must be under the program and on line 7, page 62——

Mr. SISK. In other words, title 6 does not go to individual discrimination?

Mr. CELLER. No, sir.

Mr. SISK. It has no bearing whatsoever?

Mr. CELLER. No, sir.

Mr. SISK. It is only the agency itself?

Mr. CELLER. Look at line 7, page 62, discrimination in any program or activity. It must be under that program.

Mr. SISK. That is what I tried to start with, but after some of the discussion, that is why I wanted to bring this example out, to clarify it in my own mind. So, the farmer would not be cut off?

Mr. CELLER. No, sir.

Mr. SISK. Thank you.

Mr. CELLER. Of course, he would come under section 7.

Mr. SISK. Under FEPC; I agree.

The CHAIRMAN. Have you finished?

Mr. SISK. Yes, Mr. Chairman.

The CHAIRMAN. I had several other questions but now we have been talking about farmers and I am wondering again about a title in this bill whcih is not in the President's bill. I am wondering why it is in there at all. Does not the President have the power to issue an Executive order to take care of all of this from time to time?

Mr. CELLER. There are a lot of questions as to whether or not the President has the power to do that.

The CHAIRMAN. Has he not done that in housing?

Mr. CELLER. I beg your pardon?

The CHAIRMAN. Has he not done that in housing?

Mr. CELLER. There has been an awful howl about it.

The CHAIRMAN. Is it being done anyway by Executive order?

Mr. CELLER. Yes, sir.

The CHAIRMAN. I am just wondering why you put a very controversial one in there and on which there is evidently much difference of opinion as to what it means, and why you put it in here at all, when the President did not ask for it at all.

Mr. CELLER. In the first place, Mr. Chairman, you probably do not realize that if aid is cut off here, there is a proceeding in the court to test it as to whether it should or should not be cut off. It is given the right of judicial review and this is right in this act.

The CHAIRMAN. But it can be done. It is cut off now, and they go to court?

Mr. CELLER. Is it not better to have it done this way by the agencies with judicial review? A man gets his day in court and an agency gets its day in court.

The CHAIRMAN. This way rather than by Executive order?

Do it this way instead of by Executive order; is that what you meant to say?

Mr. CELLER. Yes. I said, is it not better this way?

The CHAIRMAN. Far preferable, but I have grave doubts whether the President had the power to issue an Executive order to have the effect of law. That is for Congress.

Mr. CELLER. That is one of the reasons why we put this in. We allow appeal under the Administrative Procedure Act and on line 13——

The CHAIRMAN. You did not repeal the other Executive order?

Mr. CELLER. No.

The CHAIRMAN. If you think it is wrong, why not repeal it in this bill? Get this straightened out and do it the way it ought to be done.

Mr. CELLER. You might offer a bill to that effect and when it comes to us we will consider it.

The CHAIRMAN. I have had bills over there before. I have one over there now that has been there 3 years that you have not considered.

Mr. CELLER. I always consider your bills. I certainly did and I gave you action on H.R. 3.

The CHAIRMAN. You have not taken any action on it lately.

Mr. CELLER. Remember, Mr. Chairman, we passed H.R. 3. It was killed in the other body.

The CHAIRMAN. You did not give it another chance.

I was going to ask you about numerous programs where I think people can be cut off under this provision, but you differ with me so violently about this language and what it means I do not think it worth while to consider that any further.

I think this puts all individuals that have any contract or receive any benefits from the Federal Government under this clause and they can be cut off at any minute if they do not comply with all of the provisions of this law.

That applies to most any kind of business you can speak of.

I spoke about farmers but how about bankers? How about homeowners and a multitude of things where the result is aiding people and where the Government has contracts with people? Under my construction of this law, and I am very firm in that opinion, I think anybody can be cut off if he does not comply with whatever the Bureau thinks they ought to comply with. The language is pretty broad.

Well, it is after 4 o'clock now and we decided to stop at 4 o'clock.

Mr. CELLER. When do you want me back, Mr. Chairman, Monday or Tuesday? What is the arrangement?

The CHAIRMAN. Let us say Tuesday.

Mr. CELLER. What time; 10:30?

The CHAIRMAN. Yes.

Mr. CELLER. Thank you.

The CHAIRMAN. We will have a morning and afternoon session then.

(Thereupon, the hearing was adjourned at 4:05 p.m.)

CIVIL RIGHTS

TUESDAY, JANUARY 14, 1964

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RULES,
Washington, D.C.

The committee met at 10:30 a.m., pursuant to adjournment, in room H-313, the Capitol, Hon. Howard W. Smith (chairman) presiding.

The CHAIRMAN. The committee will be in order. We will resume with Mr. Celler. Mr. Brown, you may proceed.

STATEMENT OF HON. EMANUEL CELLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK—Resumed

Mr. BROWN. Mr. Chairman, I feel I should apologize to both you and Mr. Celler for the fact that I had to miss most of the first day's testimony and am not fully up on all the questions asked or answers given.

Naturally, we are all very much interested in this particular piece of legislation. Probably there is no bill which was ever introduced in Congress that created more discussion or brought about heavier mail to Members of Congress than has the civil rights legislation. Of course, the bill before us had no hearings, as I understand it, before your Judiciary Committee, whatsoever. There were no hearings held on the bill now before us; is that correct?

Mr. CELLER. That is not quite correct.

Mr. BROWN. What is correct?

Mr. CELLER. There was not any phase of this final bill that was not——

Mr. BROWN. I am not talking about phases. I am talking about the bill.

Mr. CELLER. The content of the bill that finally developed was contained in what is called the subcommittee bill. Every single phrase and sentence of that bill was most maturely discussed and winnowed down and change so that there was a complete understanding of the provisions of that bill. Then all during the months——

Mr. BROWN. Let me interrupt. You say there was a complete understanding of that bill. You mean of this bill which was brought in and reported out in 40 or 45 minutes?

Mr. CELLER. No. Of course, it is true——

Mr. BROWN. Many members told me they did not know what was in the bill at the time it was voted on.

Mr. CELLER. I do not think that is an accurate reflection because the bill as finally voted out contained provisions and subject matter that

was gone over time and time again, not only in the hearings but before the full committee, because we had considered the subcommittee bill before the full committee.

The full committee had ample opportunity to go through every conceivable factor in the subcommittee bill, which contained everything that was in the final bill that was passed.

Mr. BROWN. When did you vote this out? What day in October?

Mr. CELLER. The 29th.

Mr. BROWN. When did you finally file your report?

Mr. CELLER. November 20.

Mr. BROWN. If the bill had been gone over so carefully and was completely understood by everybody on the committee, why did it take practically 30 days to get the report?

Mr. CELLER. The report contains so many opinions and views.

Mr. BROWN. I thought everybody understood everything in the bill. Did they have different views on it?

Mr. CELLER. You spoke a moment ago of a comprehensive bill, one the like of which has never been before the Congress before. Members wanted to express themselves on the bill. There was not only a majority report and a minority report, but there were concurring views, concurring in the majority and concurring in the minority, by separate members. We had to wait until all these members had concluded the writing of their reports. That took an inordinate length of time, which is why there was such delay.

I could not very well file any report while there was pending a request of a member to write an opinion. I had to wait until all those members had concluded their opinions and put them in writing.

Mr. BROWN. Before they could form an opinon, they had to have opportunity to read the new bill, did they not?

Mr. CELLER. That probably was one reason. That was up to the individual writing the opinion. I do not think it was due to the fact that they did not know the contents of the bill.

Mr. BROWN. Was the new bill read in its entirety after it was introduced the day you reported it?

Mr. CELLER. No; not in that way.

Mr. BROWN. Not in that meeting?

Mr. CELLER. The bill was read, excuse me; is that what you said?

Mr. BROWN. I asked if it was read in its entirety.

Mr. CELLER. Yes, it was read.

Mr. BROWN. Was it explained?

Mr. CELLER. It was not explained paragraph by paragraph, no, because, as I indicated, there seemed to be no need for that because we had gone over that so many, many times, over those terms and conditions.

Mr. BROWN. It would not be a new bill if it had not been different, would it?

Mr. CELLER. I do not know why it should be called a brandnew bill. It was not a new bill. It was a refurbishing of the old bill.

Mr. BROWN. You mean just a retread?

Mr. CELLER. I would not say a recast. It contained less, far less than the original bill.

Mr. BROWN. You mean you eliminated some bad features or what you thought were bad features in the original bill?

Mr. CELLER. We eliminated some features to which many of the members voiced opposition.

Mr. BROWN. The reason I ask this is those of us who are not as skilled as the gentleman from New York in parliamentary procedure around here find it difficult to understand why a committee would take from the first week in May until the last week in October to consider a legislative bill or bills and then wind up on the last day in 45 or 50 minutes reporting a new bill that was not even discussed paragraph by paragraph, sentence by sentence, and seemingly, according to your testimony, they wanted to give their views in the committee report, different views on different sections of the bill.

There was no unanimity of opinion about this bill. It is a little difficult to understand why all of a sudden this particular rush act was put on if the legislation had been considered properly in the first place during all those months that preceded your action in late October in reporting this particular measure.

Mr. CELLER. Apparently the preponderating majority of the members of the Judiciary Committee do not have that view, and they voted 23 to 11 to report that bill out, which is now before you.

Mr. BROWN. After it was introduced at the last minute.

Mr. CELLER. I mean 23 members of the Judiciary Committee represents a very fine viewpoint because, as you know, our committee are all lawyers. They have attained high position usually in their own home districts. They are men of understanding.

Mr. BROWN. Is it not a fact that prior to that time your full subcommittee that had been placed in charge of preparing this legislation had unanimously reported another bill, which was a stronger bill than the bill which was finally reported? Is that not correct?

Mr. CELLER. It was a stronger bill.

Mr. BROWN. Had they not reported, the subcommittee you named to consider this civil rights legislation, had they not reported favorably a bill which was much stronger in its provisions than the pending legislation?

Mr. CELLER. I do not quite get the import.

Mr. BROWN. Was it a unanimous report of the subcommittee?

Mr. CELLER. No, it was not a unanimous report of the subcommittee. I will be very free to confess I personally did not agree to all terms of the subcommittee bill. I felt it was too drastic.

Mr. BROWN. When did you get that feeling?

Mr. CELLER. When did I have that feeling?

Mr. BROWN. Yes. After a few telephone conversations or before?

Mr. CELLER. No.

Mr. BROWN. I will withdraw that. I would not embarrass my friend for the world.

Mr. CELLER. There is no embarrassment, but there was no such thing.

Mr. BROWN. I know it is difficult to do. I appreciate that. I am a little cognizant of what went on about that time. I just happened to be here on the Hill at the time. I am just wondering why we had all these maneuvers and pulling and hauling on this piece of legislation.

Do you favor this bill in its present form or do you feel—you said other members of the committee in their reports wanted to state

their position on different sections of the bill. Do you have any sections of this bill that you feel should be changed?

Mr. CELLER. No, I do not. I think it is a good bill.

Mr. BROWN. You are for every section as is?

Mr. CELLER. Yes, sir, and I think it should be adopted.

Mr. BROWN. You were not for the other bill?

Mr. CELLER. I was not for some parts of the other bill, which I felt were too drastic.

Mr. BROWN. Then you will offer no amendments to this measure yourself? You have no amendments to propose to this bill?

Mr. CELLER. You mean when the bill comes to the floor. There are some technical changes that have to be made.

Mr. BROWN. I understand that.

Mr. CELLER. I have no substantive amendments which I intend to offer.

Mr. BROWN. Crossing the "t" or dotting the "i"?

Mr. CELLER. Nothing beyond that, sir.

Mr. BROWN. You and I know from rather long experience in public affairs that any piece of legislation, any rule or regulation or decision, is just as good or as bad as its administration or enforcement. This law will be no different if this bill becomes law.

Under the present law, does the Civil Rights Commission have the right and authority to inquire into the membership and activity of fraternal organizations?

Mr. CELLER. No, they do not. We are addressing a communication to the Civil Rights Commission asking why they have attempted to do something like that. I think they did it in one State. I personally feel they have no such right.

Mr. BROWN. The reason I ask that question—we might as well bring it out in the open—is I have had a number of complaints filed with me from fraternal groups and organizations that the Civil Rights Commission will have authority under this bill, if it becomes law, to require a fraternal organization to give full and complete disclosure as to its membership, ratio, and so forth.

For instance, I am thinking of one organization especially, Panhellenic, made up only of fine people of Greek extraction. They have their own organization. You and I, not being Greeks, are not eligible for membership in the Panhellenic group as such. Yet the demand has been made that they furnish complete information. The question of discrimination has been raised that they discriminate against non-Greeks.

Then some of the college fraternities and some church organizations are also concerned. I can see where they may be religious organizations that have a feeling that only members of their church should belong to that religious organization or that particular type of a lodge, or whatever you want to call it. I am just wondering if there is anything in this bill—you seemingly did not have much of a hearing on it over there, but you have seemingly studied it since—is there anything in this bill now that would give the Commission or anybody else the power and authority to do what the Commission is already doing now?

Mr. CELLER. No, there is nothing.

Mr. BROWN. To harass these people, who are pretty good citizens? They do not discriminate against people. They do not mistreat anyone. It is not a matter of color. But you are confident that they do not have that power at present?

Mr. CELLER. They do not. I will say the complaint we had was from Utah where the Advisory Committee of the Civil Rights Commission had addressed communications to some of these fraternal organizations.

Mr. BROWN. That is one case, but it happened in other places, I think you will find. Your committee has taken cognizance of that?

Mr. CELLER. We are checking on them.

Mr. BROWN. Are you making certain that in this legislation now pending before the committee things of that sort cannot happen? In other words, as you protect the rights of individuals—most of us believe that we ought to protect the civil rights on a fair and equal basis—we want to be certain we do not violate the civil rights of other people by so doing.

Mr. CELLER. I heartily agree with you. When the bill comes up on the floor, I shall nail that down with a statement.

Mr. BROWN. I am talking about similar cases. You may find other instances like that. I do not believe real sponsors of legislation of this type are at all interested in seeing this thing go so far that it violates civil rights in many instances instead of protecting them. This instance here sort of makes you shudder if you have a commission cloaked under the cover of the law that says that we have authority from Congress to demand this information and to compel you to furnish it and make you people believe if you do not you will be guilty of some act against the Government. That thing should not be permitted to continue for 1 minute, now or later on.

I do think your legislation should be very carefully drawn to guard against anything of that sort. While we extend civil rights to people that need protection of the civil rights, we do not want to destroy civil rights of others.

Mr. CELLER. I think if you look on page 70 of the bill, line 4, you have this very significant language:

> 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 * * *.

Mr. BROWN. That is employment.

Mr. CELLER. That is one indication that there may be certain cases where it is essential——

Mr. BROWN. That comes under the FEPC title.

Mr. CELLER. Yes; I wanted to say there is one particular provision.

Mr. BROWN. That may be all right. I think that reads pretty good, but what about this general situation?

Mr. CELLER. As I said, that requires careful watching insofar as the——

Mr. BROWN. I suggest your committee prepare an amendment that will pin that thing down forever or you may have trouble with it.

Mr. CELLER. That is being done, sir.

Mr. BROWN. A number of States have fair employment practices laws. I think we in Congress have had legislation of this type before the House and before the Senate in the past, but the Congress has never enacted a National Fair Employment Practices Act.

Has your committee studied the effect of this particular section, fair employment practices section, on the fair employment practices laws that are now in existence in your own State and in my own State and in a number of other States and seemingly working fairly well in a great many instances?

Will this interfere or will this supersede or will this be piled on top of the other? Will there be two agencies delving into employment practices or is it a combination of the two?

Mr. CELLER. It is a combination of the two and there are exhortations in this bill that the Fair Employment Practices Committee must consult with the State FEPC before they take any action.

Mr. BROWN. That is, the Federal shall consult with the State?

Mr. CELLER. Yes.

Mr. BROWN. Of course, Federal law under some court decisions, to which you objected, Judge Smith, supersedes State law; is that correct?

Mr. CELLER. There is no preemption here.

Mr. BROWN. No preemption?

Mr. CELLER. No, sir.

Mr. BROWN. What about the use of property?

Mr. CELLER. In the FEPC?

Mr. BROWN. In the bill itself. We have in Ohio a pretty strict law.

Mr. CELLER. Are you talking about public accommodations?

Mr. BROWN. Yes; public accommodations, right to use of public facilities and property. Has this been checked with the State laws?

Mr. CELLER. Yes.

Mr. BROWN. We have a very strict law in Ohio on that, as you know.

Mr. CELLER. There are quite a number of States that have statutes which prevent discrimination in places of public accommodation privately owned, even including your own State.

Mr. BROWN. Is there any danger this will set aside that Ohio law?

Mr. CELLER. There is no preemption here.

Mr. BROWN. We have had very little trouble on that in comparison with many States.

Mr. CELLER. We anticipate no trouble on that score at all.

Mr. BROWN. Will you have two bodies running the show? In other words, the State group on the one hand and the Federal group on the other?

Mr. CELLER. I might point out to you, Brother Brown, on page 47, line 17:

> The remedies provided in this title shall be the exclusive means of enforcing the rights hereby created, but nothing in this title shall preclude any individual or any State or local agency from asserting any right created by any other Federal or State law not inconsistent with this title, including any statute or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right.

Mr. BROWN. Does that mean that an aggrieved person could proceed under the Ohio law, where they can collect damages under the Ohio law, as well as get a court order and then proceed also under the Federal law against someone who refuses accommodations?

Mr. CELLER. That is possible, but it is not likely because no action would be taken. I doubt if the court would consider any action of that sort under the Federal statute. It would not be practical.

Mr. BROWN. Of course, it would be under the State law that damages are paid to the person.

Mr. CELLER. There are no damages under the Federal statute.

Mr. BROWN. In comes your aggrieved person, files under a State law, goes before the nearest magistrate, files his case, gets it, the award is given, and the person that violates the right of the individual is fined and must pay the award. Then the aggrieved individual goes and files another charge against that man under the Federal law. Would that be right?

Mr. CELLER. The practicality of the situation is if the action is started under Ohio law or some similar statute and damages are collected, I do not know——

Mr. BROWN. It is not a suit for damages. It would be a different action entirely under this.

Mr. CELLER. All they could do under the Federal statute is obtain an injunction to prevent him from continuing a discrimination; and if he fails to abide by the injunction, he would be in contempt of court.

Mr. BROWN. The man has already been fined for doing it and has paid his penalty.

Mr. CELLER. If he continues——

Mr. BROWN. I am trying to get this in my mind as to how it will actually work, because we feel we have a pretty good law in Ohio now. We do not want something to upset it.

Mr. CELLER. I do not see how this would upset it because if the man is fined, and after he pays his fine——

Mr. BROWN. And pays his award, he has to pay damages, we will say, of $500.

Mr. CELLER. And if he continues the discrimination after that, he could come into the Federal jurisdiction and the person aggrieved could bring an action against him under this title and an injunction could be obtained. It would supplement the State law in that regard. I do not think that would happen. If a man has been fined, he is not likely to continue his wrongdoing.

Mr. BROWN. I would not think so, but people are peculiar at times—so are laws and sometimes so are the people who administer the laws or attempt to do so. When we draw laws, we want to put around them every possible safeguard we can in order to be sure there will be no abuse of power and authority, and yet the law will accomplish that which we want to accomplish and do so properly.

Mr. CELLER. We try to avoid, for example, any damages in this section. We felt an injunction would be sufficient, like a warning to stop. If he does not stop, sanctions will follow.

Mr. BROWN. Taking a man to Federal court for an injunction would be costly to the individual, which is somewhat of a punishment. Also you are held up to public view. In Federal court procedure against an individual, it is generally thought he has committed a great crime. So that might be very effective.

That is all for the moment, Mr. Chairman.

The CHAIRMAN. Mr. Celler, I do not want to exhaust your patience—I know you have been very patient with me. I did not get through with everything I had in mind. I will keep you just a few minutes on one or two things on what is called fair employment practices provisions of this bill.

That is one of the three titles in this bill that was not contained in the original administration bill, the bill under consideration. That was never in this bill before. There are just two or three things about it that I think are going to be very irritating to the business community in this Nation.

One provision, for instance, requires every employer who comes within this bill to keep records. He may have a perfect record of nondiscrimination, there may be no question at all of his coming within this bill; nevertheless, under this bill he is required to keep all these records to show when an inspector comes around whether he has been guilty of discrimination or not.

I think that is entirely too broad. I think if you will study that provision, which you did not have opportunity to do when you reported this bill after 1 hour's reading, that you will want to change it. I want to call your attention to that.

Mr. CELLER. Yes, sir; I appreciate your perturbation in that regard. I do not think that is burdensome or onerous. The National Labor Relations Board requires employers to keep records. The Income Tax Bureau requires records. The Taft-Hartley Act and various labor acts—the Landrum-Griffin Act requires records. There is nothing new in the Government requiring entities or certain employers to keep records.

The CHAIRMAN. You are going to get drowned in records later on.

Mr. CELLAR. Maybe they are drowned already. They may be drowned a little more.

The CHAIRMAN. I just call your attention to it. I did not expect to get favorable consideration of my concern about this thing, but I am really serious about it.

Take a corporation like General Motors, with a great many establishments all over the United States. Each one of those establishments has to keep records to show how many white people they employ and how many colored people they employ. Nobody, as far as I know, ever complained of their being guilty of discrimination. There are many other of the larger corporations in this country that will be put under the same burden. They will have to go to the extent of keeping a separate set of records for that purpose. I do not expect to get favorable consideration of this, but I am just laying it on the record.

They also require, whether they have been guilty or even under suspicion of discrimination, they are also required to post any kind of a notice that may be prepared and directed to be kept by the Commission. I could conceive of a record that might be rather insulting to the corporation that it is required under penalties to keep posted on its bulletin board. I do not expect to get any favorable consideration from you for that suggestion.

Mr. CELLER. May I just make comment on that, sir?

The CHAIRMAN. Yes.

Mr. CELLER. I would not shed any tears about General Motors, a corporation that makes over a billion dollars profit a year.

The CHAIRMAN. Do you object to that?

Mr. CELLER. They should not have much trouble keeping records. It is no hardship on them to do so.

If you look on page 80, lines 11, 12, and 13, we have the following:

* * * 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 * * *.

The CHAIRMAN. Which regulation or order is that?

Mr. CELLER. Any of them.

The CHAIRMAN. That leaves it entirely in the discretion of the Commission, whether they shall be exempted even though they have a perfect record.

Mr. CELLER (reading):

> * * * or (2) bring a civil action in the U.S. district court for the district where such records are kept.

They can do that if they are aggrieved. I do not think that is an undue burden. They can get exemption from it by applying to the Commission. If the Commission refuses, they can go into a court.

The CHAIRMAN. It also provides that every corporation shall permit inspectors of the agency to come in and examine these separate records they are required to keep.

Mr. CELLER. That is correct.

The CHAIRMAN. That is another nuisance and an expensive thing.

Mr. CELLER. I beg your pardon?

The CHAIRMAN. To have inspectors coming in. I was told of an instance not too long ago where some businessman was called upon to have a conference with respect to his business. He said, "I can't do it. I have five different inspectors from five different agencies of the Government, and that is taking up all the time of my office force."

That sort of thing is getting burdensome. You are adding to it unnecessarily, it seems to me.

Mr. CELLER. The Alcohol Tax Unit has a right to go in, the Pure Food and Drug has a right to have inspectors go in.

The CHAIRMAN. That is what I am fussing about. Too many of them have the right to go in and disrupt people's business just to keep their inspectors busy.

You say everything in here is no particular penalty and all you have to do is go to court and get yourself straightened out. I find a disturbing provision on page 83 at the bottom of the page. It reads:

> The provisions of section III, title 18, United States Code, shall apply to officers, agents, and employees of the Commission in the performance of their official duties.

I was a little curious, knowing this thing was full of boobytraps, about what was in section III, title 18. I got down my code and looked to see what it is.

Section III, title 18, provides that in case of resistance to these officers and inspectors, there is a criminal penalty of up to 3 years in the penitentiary and a fine of $5,000. That sounds to me like being pretty punitive. What do you say about that?

Mr. CELLER. That applies to almost all Federal employees who have a right to go in and inspect. I do not see how we could avoid putting that in there. Otherwise a man may come in, the employer says no, prohibits him from searching the records and having access to the records. If he does not have something involving sanctions, it would be abortive. It would be just as useless as a 2-foot yardstick to have these provisions if you could not enforce them.

The CHAIRMAN. You have been using that 2-foot yardstick pretty extensively in the bill.

Mr. CELLER. I do not have the provisions of section III, title 18, before me. However, I think the word "forceful" is there. If an em-

ployer uses force against a Federal employee, it should not be tolerated.

The CHAIRMAN. If an inspector comes in and they talk about this iniquitous regulation imposed upon them and, the first thing you know, they are in a fist fight, this fellow is up for 3 years in the penitentiary.

Mr. CELLER. Who started the fight?

The CHAIRMAN. I do not know. Both sides will claim the other side struck the first blow. I just call your attention to those things. I will not pursue it any further.

Mr. Colmer, do you have anything?

Mr. COLMER. Mr. Celler, I would like to lay down before I ask you any question a statement of my own philosophy about this bill. I hope that in view of my record in this Congress it will not be misunderstood.

I approach the consideration of this bill not from the standpoint of race. I would be opposed, as I have said many times here, to this legislation or this type of legislation if there were not a Negro in my State. I am rather opposed to this type of legislation because of its centralization of power here in the Federal Government at the expense of the States, counties, municipalities, and the rights of the individuals and liberties of the individuals of this country.

Bearing in mind that your ancestors and mine fled the old countries to get away from the autocracies, from the iron fist of the rulers of those countries, they came over here to establish a form of government where they could be free from the mailed fist of the autocrats, where they could live their own lives, enjoy liberty and freedom. That is what this whole thing is about, it seems to me.

I wonder sometimes when I see people of your intelligence and accomplishments and ability, who style yourselves as liberals—I might say, if you object to that term, I know I am regarded as a conservative and I have no apologies to offer for that—but I am amazed that you liberals would continue this attrition, this erosion of the rights and liberties of the individual citizens and the States and other subdivisions of government. I wonder if you do not find yourselves kind of coming back sometimes.

It is with that philosophy that I approach consideration of this bill. I want to leave that now and start at the beginning, although it has been fairly well covered here. Some of us have been mighty disturbed about the way this bill was handled in your committee. I think we have a right to be. I do not want to get personal and do not propose to, but I think the record speaks for itself.

I am going to read you here the first paragraph of the minority report of some six dissenting members. Here is what it says:

> This legislation is being reported to the House without the benefit of any consideration, debate, or study of the bill by any subcommittee or committee of the House and without any member of any committee or subcommittee being granted an opportunity to offer amendments to the bill. This legislation is the most radical proposal in the field of civil rights ever recommended by any committee of the House or Senate. It was drawn in secret meetings, held between certain members of this committee, the Attorney General, and members of the staff, and certain select persons to the exclusion of other committee members.

Is that an accurate statement or not?

Mr. CELLER. I might comment. I do not think it is quite accurate. I do not think it lies in the mouths of those very distinguished and gallant gentlemen that you mention to make that statement. With the exception of one of those members, they all voted for what is known as the subcommittee bill, the very drastic bill, the terms of which I even opposed. They swallowed that hook, line, and sinker. How can they complain about this milder bill when, if they had their wishes, that stronger bill would have prevailed?

Mr. COLMER. Was that in executive committee?

Mr. CELLER. I beg your pardon?

Mr. COLMER. Was that in executive committee?

Mr. CELLER. Executive committee, but it has been made public more or less by what the gentlemen have indicated and the whole business has been more or less bruited about.

In justification, I have to make this statement: I would not have made this statement if that had not appeared in the record and you read the same.

Mr. COLMER. You made another statement just a moment ago and if the gentleman would pardon me, just to get the record straight, about how such members voted. I did not read that to you.

Mr. CELLER. Of course, distinguished as they were, they did not state that they voted for the much stronger bill.

Mr. COLMER. That is what I am talking about. You are telling us something now that was in executive session and yet when we get down to pinpointing this, where this matter was handled, you hide behind the executive session.

Mr. CELLER. I cannot remain here and refrain from exculpating myself at that sort of an accusation brought against me. I have to defend myself.

Mr. COLMER. Very well. Let us have the whole story then about how it was handled. How about that?

Mr. CELLER. What is that?

Mr. COLMER. The best exculpation, if I may pronounce your word, would be for you to just tell us now.

Mr. CELLER. No, I would not.

Mr. COLMER. What did happen, rather than just portions of it to serve——

Mr. CELLER. Only in the event——

Mr. COLMER (continuing). Your purposes.

Mr. CELLER. Only in the event there is some sort of an accurate statement that reflects upon my conduct as a chairman will I be compelled to make a statement similar to the one I made now. These were executive sessions and I do not think I have the right to make disclosure in public.

Mr. COLMER. I am hearing a lot about how to answer these questions of these reporters, and so on.

Mr. CELLER. I am sorry——

Mr. COLMER. Things that happen in executive session.

Thank you very much for that contribution.

Mr. CELLER. May I make an answer to the other?

The CHAIRMAN. Before we get away from that, may I ask this question?

Mr. COLMER. I yield.

The CHAIRMAN. On that feature of how the bill was handled, when it was voted out, or before it was voted out, did you ever have a vote in the subcommittee meeting?

Mr. CELLER. Yes, sir; indeed we did.

The CHAIRMAN. Prior to this?

Mr. CELLER. Yes, sir; prior to this.

The CHAIRMAN. What was the result of that vote?

Mr. CELLER. It was defeated.

The CHAIRMAN. By what vote? I understood the majority of them were going to vote that bill out with the very obvious purpose of killing it when it got to the floor.

Mr. CELLER. It was decisive. I can say to the chairman it was decisively defeated.

The CHAIRMAN. But you are not going to name the other people who voted for and against it?

Mr. CELLER. No, sir. I do not think it is proper for me to respond to those questions.

The CHAIRMAN. There was a motion to report the other bill?

Mr. CELLER. Yes, sir.

The CHAIRMAN. I understood that before that motion was voted upon there was an adjournment and then this bill was brought in?

Mr. CELLER. There was a vote on that at exactly the same meeting. There was a vote for a substitute and it was decisively beaten, I can state that.

The CHAIRMAN. Thank you.

Mr. COLMER. Mr. Celler, I know very well, and you know as well as I do, and everybody in this room——

Mr. CELLER. Mr. Colmer, would it make any difference if we had a different procedure in the House? Would you still be opposed in committee to the bill?

Mr. COLMER. Yes, sir. I would be opposed to the bill, just as I told you to start with.

Mr. CELLER. When I give you one answer, you ask for more. You are very much like—and I say this with all respect——

Mr. COLMER. Let us get personal for a while.

Mr. CELLER. You are like the man who gets a cloth and then he asks for the lining.

Mr. COLMER. Yes, sir. You are like the man who gets them both and then somebody else tells you that you should not have that, you should have something else, and you change your opinion and bring out a new cloth and a new lining.

Mr. CELLER. That is possible.

Mr. COLMER. As you did in this bill.

Mr. CELLER. Because a new cloth is probably better than the old one.

Mr. COLMER. Now we are getting away from that angle of personalities. I did not think I got any more personal than anybody else here.

Mr. CELLER. There is nothing personal in this bill.

Mr. MADDEN. Will you yield?

Mr. COLMER. Yes.

Mr. MADDEN. I remember my friend, Mr. Colmer, getting very excited about democracy in your committee.

I was a member of the Labor Committee during the 80th Congress when the Taft-Hartley law was up. Eight of us did not have an opportunity to even read the bill, a 70-page bill, which was laid before us. We were called on to vote on it and we never even read it. I remember that my good friend, Mr. Colmer, did not shed any tears at all in that case. Almost half of the members of that committee did not even have an opportunity to read a 70-page bill and they were called upon to vote. That was that "good-for-nothing 80th Congress," remember?

The CHAIRMAN. Would the gentleman yield to me for a moment?

Mr. MADDEN. I want to compliment you, Mr. Celler, on the democracy your committee showed because every item of this bill was thoroughly gone over for months and months before the present bill was presented.

The CHAIRMAN. You referred to the procedure——

Mr. MADDEN. I remember our chairman never shed any crocodile tears as to how we were treated on that Labor Committee.

The CHAIRMAN. I was not on that committee.

Mr. MADDEN. No, but you were also on Rules then.

The CHAIRMAN. Let me ask you a question. Do you not think that was a horrible procedure?

Mr. MADDEN. Dreadful.

The CHAIRMAN. Good.

Mr. COLMER. Has the gentleman finished?

Mr. MADDEN. I am through.

Mr. BROWN. He has to repeal the Taft-Hartley Act yet.

Mr. MADDEN. A lot of things in there should be repealed.

Mr. COLMER. Mr. Celler, is it not a fact—or is this beyond and behind the cloak of executive session—that when this substitute you reported out was sprung upon the committee that morning, there were cries from members of the committee requesting an opportunity to offer amendments, to discuss the bill, and to follow the usual procedure?

Mr. CELLER. I must continue my very grim silence on that point.

Mr. COLMER. Is that the type of silence that gives consent? Well, let me follow Mr. Madden's comments.

Does the gentleman regard that as democratic procedure in a legislative committee?

Mr. CELLER. There is nothing before us to characterize democratic or undemocratic because I have refused to answer.

Mr. COLMER. In other words, the gentleman again draws the cloak——

Mr. CELLER. Draws what?

Mr. COLMER (continuing). About that. I think we all know how that bill was railroaded or strong-armed, either way you want to put it, out of that committee.

Mr. CELLER. I could not railroad anything. There were votes there. It was voted in a bipartisan manner.

Mr. COLMER. There are votes here of a bipartisan nature.

Mr. CELLER. Only one man was not present at the full committee. He was in Europe and not present. The vote was very substantial, a preponderating vote in favor of the final bill.

Mr. COLMER. Mr. Celler, getting down again to the bill— and I do not want to be repetitious—on the voting rights provisions, you set up certain qualifications. You set up certain qualifications for voters and among them literacy tests of a sixth grade education level.

What bothers me—and I am no great constitutional lawyer, and I know you are buttressed by quite a staff there, but what bothers me is the constitutional provisions which provide—and I have references in here but it is not necessary to refer to them—that provide, in effect, the electors, the voters for Members of Congress, the House and the Senate and presidential elections, shall be the same as the most numerous body of the State legislature.

The States fix those qualifications.

I know you have an answer but I would like to get the benefit of how you get around those constitutional provisions.

Mr. Brown might be interested in that, too.

Mr. CELLER. I should like to read, if you wish, a statement on that if I may.

First, I want to say there is such a thing as the 15th amendment which says that no State shall deny anybody the right to vote on the ground of his color or his race or his national origin, and the Congress shall have the power to pass appropriate legislation implementing that provision. That is what we are doing here. We are implementing that provision to prevent discrimination against Negroes. Is there discrimination?

Let me point out something in that regard. I do not think that even you could be satisfied with the situation that exists in some of the counties in your State and in your neighboring States. For example, I do not see how any man can be indifferent to these facts, in one county the white population of over 21 is 2,624; registered whites, 2,810.

In other words, whites are registered to the extent of 107.1 percent.

The Negro population—may I have your attention, Mr. Colmer, because this is important—the Negro population, 2,250; Negroes registered, none.

So in that county, for example, 107 percent of the whites are registered and no Negro is registered.

Another county: The white population over 21, 1,900; registered whites, 2,250.

In other words, 108 percent of the white population is registered.

Negro population, 5,121; Negroes registered, none.

Another county: White population, 4,000——

Mr. COLMER. Pardon me. Are these, again, in my State or——

Mr. CELLER. These are figures given us. One of these counties may be in your State.

Mr. COLMER. I am sorry. I did not get that.

Mr. CELLER. What was that?

These figures were given us by the Civil Rights Commission.

If you have such a tremendous disparity, the conclusion is inescapable that there is discrimination and there is a violation of the 15th amendment.

Therefore, we have a right, particularly insofar as the hearings disclosed that literacy tests were used for the purposes of discrimina-

tion, to provide for legislation which shall carry out the intent of the 15th amendment which is to prevent discrimination.

That is sufficient ground. What we do here with reference to literacy tests—look, also, there is the 14th amendment which provides for equal protection under the laws. There is no provision for equal protection under the laws when you have this kind of a disparity. Therefore, we feel that we are eminently within the four squares of the Constitution. If you want any cases, I will be glad to give them to you. As far as these provisions are concerned——

Mr. COLMER. I have no objection.

Mr. CELLER. All right.

In case of congressional elections, article I, section 4 it authorizes Congress to regulate the time, place, or manner of holding elections. A review of historical authority reveals that it was intended by this section to extend broad authority to Congress to control the substantive and not merely the mechanical aspects of elections. Furthermore, the Supreme Court has long held that the right to vote in Federal elections is derived directly from the Constitution of the United States and not through the State laws (*U.S.* v. *Classio*, 313 U.S. 299 (1941); *Ex parte Yarbrough*, 110 U.S. 651 (1844)).

Since the restrictions on State voting proceedings in the bill are limited to Federal elections, ample authority exists under section 4 to sustain these items in congressional elections.

In addition, the 15th amendment prohibits a State to deny a citizen the right to vote because of his race or color. State laws which attempt to do so are in direct infringement upon this amendment (*U.S.* v. *Raines*, 362 U.S. 17 (1960)).

Aside from direct infringements, such as through legislative means, the amendment also prohibits contrivances by States or State officials to deny the equal voting rights of all citizens. "Sophisticated as well as simple-minded modes of discrimination" are forbidden, and the use of "onerous procedural requirements" which handicap the exercise of the franchise are also prohibited (*Lane* v. *Wilson*, 307 U.S. 268 (1939); *Guinn* v. *U.S.*, 238 U.S. 247 (1915)).

These are all Supreme Court decisions I am citing.

Mr. COLMER. I have no objection to your reading them.

As I say, if you want to do so and to take the time, go ahead.

Mr. CELLER. I did not want to take up the time to read all of them but I think we have ample justification constitutionally for the passage of these provisions.

You must remember, sir, that this is nothing new. We passed provisions not unlike this in the 1957 act and in the 1960 act. They went further in those two acts. They specifically cover both State and Federal elections and the U.S. Supreme Court has passed upon the constitutionality of the 1957 act and the 1960 act and found them sound.

I do not see how we can now say that this act would be unconstitutional.

Mr. COLMER. Does the gentleman contend now, after looking further into this matter after his colloquy with the chairman the other day that this bill does not cover State elections?

Mr. CELLER. I said this and I repeat: This bill covers Federal elections and we so state. We do not mention State elections here. The

effect of it may be an effect on State elections. It states that once it gets out from under the State it could pass separate statutes. I will say that in the sovereign State of Virginia they have done exactly that.

There is now pending an amendment to the Constitution, of which I and Senator Holland are the authors, concerning a poll tax. It provides there shall be no poll tax in Federal elections. The sovereign State of Virginia——

Mr. COLMER. Would the gentleman——

Mr. CELLER. Would you let me finish my thought?

The State of the chairman has now passed a statute recently providing for separate ballots for State elections and Federal elections. In the State elections the poll tax will have to be paid because anticipating the passage or the approval and ratification of the poll tax amendment, they then feel they can exact a poll tax in State elections.

They now have a bobtail affair, or will have a bobtail affair, in future elections in the State of Virginia. In your State, or if your State wishes to have a bobtail affair, you can have separate elections on separate days, or you can have two kinds of ballots. The literacy would not apply——

The CHAIRMAN. I do not like that word "bobtail." What about longtail?

Mr. CELLER. I would rather have long-john. It is better Scotch.

Mr. COLMER. Has the gentleman finished? May I ask my question now?

Mr. CELLER. Certainly.

Mr. COLMER. I do not want to be facetious, Mr. Celler, but you, together with Senator Holland, are the authors of the constitutional amendment to prohibit the poll tax?

Mr. CELLER. Yes, sir.

Mr. COLMER. If you already had the power under the nebulous 15th amendment to abolish the poll tax, why do you go to all of the trouble of having a constitutional amendment and having the various States of the Union pass on it? Do you not recognize there that it is a constitutional question and therefore the correct way to correct it, it it needs correction, is by giving the people an opportunity to pass on it?

Mr. CELLER. Well, it is a good question that you ask.

At that time, there was some doubt as to whether or not the payment of a poll tax was a qualification of the voter. Therefore, it was deemed advisable to travel the constitutional route. Many people had differed on that score and said we could have done it by legislation, but in order to get rid of the poll tax, because there are only five States that have a poll tax since most of the States have abolished them and those States are your own, Alabama, Virginia, Texas, and Arkansas.

It is felt that maybe it would be an easy way to get it passed and we even limited it to Federal elections so as to make it even easier. We felt we had traveled that route.

I was in conference with the leadership on this score at the time with the Senate and the House, and we felt that we may as well try it that way. I personally felt we could have done it the other way,

but I said, "All right. I am willing to go along with the constitutional route because there was"——

Mr. COLMER. You were one of the authors?

Mr. CELLER. That is right.

Mr. COLMER. You were more than willing?

Mr. CELLER. There was a question about qualifications.

In other words, with the payment of a poll tax.

I was concerned whether it was or was not then——

Mr. COLMER. Let me ask the gentleman then the distinction between the qualification for a poll tax payment or for a literacy test.

Mr. CELLER. Yes; I think there is a difference.

Mr. COLMER. Does the gentleman want to comment on that?

Mr. CELLER. We are not abolishing the literacy test but we simply say that the literacy test shall not be unevenly applied. I think the literacy test is somewhat of a qualification and it is something inside the voter. It is a question of whether he is qualified intelligently to vote.

Mr. COLMER. Why not take the safe course, the constitutional course, and submit that to the people by constitutional amendment?

Mr. CELLER. Do you think I would get a constitutional amendment on a bill like that? That is not in the cards.

Mr. COLMER. I did not get that.

Mr. CELLER. I could not do that.

Mr. COLMER. You mean the States would not approve it?

Mr. CELLER. On a bill containing how many pages? We want to get going.

Mr. COLMER. I am talking about the literacy test.

Mr. CELLER. I see. No, I do not think we should do it piecemeal when we have the opportunity and the votes to do it in this wholesale manner.

We have the votes. I am a pragmatist. I am a practical politician. We have the votes and let us use them. That is what you would do if you had them.

Mr. COLMER. I wish that I had the votes you think you have in this yet. I will be as honest as you are.

Mr. CELLER. Remember the song, "Praise the Lord and Pass the Ammunition"? We have the ammunition.

Mr. COLMER. Yes, and you propose to railroad it through, do you not?

Mr. CELLER. No, sir.

Mr. COLMER. You have the emotional hysteria about this thing that you think will give you the ammunition to shoot down the rights, privileges, and the constitutional provisions of our Founding Fathers?

Mr. CELLER. No, no.

Mr. COLMER. I would like to pursue your policy a little bit.

Mr. CELLER. May I answer that question?

Mr. COLMER. Maybe my State, and then get on something else.

Mr. CELLER. May I ask you one question, Mr. Colmer?

Mr. COLMER. Sure, I will take the opposite seat.

Mr. CELLER. Do you think that we should remain complacent and Congress should remain complacent when, at the snail's pace of integration presently, it would take until the year 2063 to get real integra-

tion? In the face of that, do you think we should do nothing and just continue the status quo? Do you think we should do nothing?

Mr. COLMER. There are a number of ways that could be answered. I would say that if it was for the best interests of the freedom and the rights and the liberties of the majority of the people of this country to follow at a snail's pace, I would follow it. I would not feel that simply because I had the impetus of an emotional issue behind me and thereby the ammunition, that I would ram this thing through.

In that connection, Mr. Celler, and again I want to make my position clear because I am going to refer to the former President, Mr. Kennedy for whom I had a great personal affection but with whom I often, very often, differed.

President Kennedy, as I recall—and if I am wrong I am sure you will correct me, and others here will know about it—started out last year by saying there was not going to be any haste about any civil rights legislation. Suddenly, there was a bill sent down to you which you introduced and then which later you changed and later you changed back.

Now, what really precipitated all of this rush to get the so-called civil rights bills through? What was it that caused that? You have been pretty frank.

Mr. CELLER. You do not mean to say there was any rush to get this bill through? I offered the bill, the administration bill, way back in February; way back in February and then the——

Mr. COLMER. Then you just sat there. You did nothing until June?

Mr. CELLER. No; there was reason for it.

Mr. COLMER. That is what I am asking and that is my question.

Mr. CELLER. The administration leaders said, "We want the tax bill out first" and I said, "All right."

I am guilty of dragging my feet on it and I will accept that responsibility. I dragged my feet because the idea was to get the tax bill out of the way first. The tax bill was passed by the House and after the tax bill was passed by the House, I then went into gear and started hearings and tried to get this bill through; but I followed instructions again. There was no rush. It has been over a year since we have been working on it.

Mr. COLMER. When was the tax bill passed, Mr. Celler?

Mr. CELLER. I beg your pardon?

Mr. COLMER. When was the tax bill passed?

Mr. CELLER. I do not remember.

Mr. COLMER. September, was it not?

Mr. CELLER. We started, put it that way, I started hearings and I did not hasten those hearings. They continued and continued and continued almost ad infinitum while the tax bill was being considered. I did not put any "finis" on the hearings until the tax bill had reached a point where I was sure there would be consideration in the House.

I followed along and treaded very gingerly and when the tax bill was out of the way, as I said, I put on the gas.

Mr. COLMER. You were not proceeding very gently in that executive committee back there.

Mr. MADDEN. Mr. Chairman?

Mr. COLMER. Just a minute.

Do you want me to yield?

Mr. MADDEN. Yes.

Mr. COLMER. All right.

Mr. MADDEN. Mr. Smith and I have a rule coming up.

Mr. SMITH of California. Mr. Sisk has another one.

Mr. MADDEN. I wanted to clarify one thing. I am somewhat confused and in justice to my good friend, Bill Colmer, I think you made a statement that should be clarified.

You must be mistaken when you stated there were some counties down there and one county in particular that had 107-percent white, and another county 100-and-something white votes?

Mr. CELLER. I said in one county there was a white population of over 21 of 2,624; registered whites, 2,810. Or more than that.

There was 107 percent——

Mr. MADDEN. How could that be? There must be some mistake.

Mr. CELLER. There is no mistake whatsoever.

Mr. MADDEN. That would be unconstitutional and I know my friend, Mr. Colmer, would never tolerate a situation like that because of the unconstitutionality.

Mr. CELLER. It only means there were more people voting than were registered.

Mr. MADDEN. They must have voted early and often down there. How could that happen?

Mr. CELLER. I do not know. I am giving you the figures.

The Negro population was 2,250 and there was not a single Negro registered. There is no confusion about that. I am just giving you the facts.

Mr. MADDEN. Were any steps taken to correct that picture down there? Especially, where more whites voted than there were white population?

Mr. CELLER. Yes, sir; that happened in a number of counties, and I will give you a different situation.

In another county the white population was 4,116; registered whites, 6,130, or 140 percent of the white population.

Mr. MADDEN. In answer to my friend Bill's question to you, maybe Mr. Kennedy heard about what was going on there and that is why he got very much aroused about legislation of this kind. That might have been one of the reasons.

Would this bill, do you think, correct that situation?

Mr. CELLER. We are going to try to correct it.

Mr. MADDEN. With this legislation?

Mr. CELLER. I think it would go a great way, especially on this literacy test.

Mr. MADDEN. If this bill does not pass, would that situation be corrected?

Mr. CELLER. No, unless within the State there is a feeling of redemption.

Mr. MADDEN. Or remorse?

That is all.

Mr. BROWN. Do you have a report on Gary, Ind.?

Mr. MADDEN. I wish that you had a report on Gary, Ind., because we believe in democracy.

Mr. CELLER. I will be glad to get it for you. We have none here.

Mr. MADDEN. For Mr. Brown's information, a Senate committee came to Indianapolis to investigate elections several years ago and

they paid a compliment to the First District of Indiana and its honest elections. I will get you a copy of that, Clarence.

Mr. BROWN. An old rule is that if you want to investigate, investigate yourself.

Mr. COLMER. Thank you, Mr. Madden.

Mr. MADDEN. You are welcome.

Mr. COLMER. I am always glad to have you clarify comments. I may want to come back to that. May I just comment on that and ask a question on this digression we just had?

I did not get the places where you said this happened, where they voted more white people than were registered. I think it ought to be made public. If it happened in my district or my State, I want it to be publicized.

Mr. CELLER. I do not have the names of the counties, but I will be glad to furnish them to you.

Mr. COLMER. Of course, I do not approve of that any more than you do. Mr. Celler, in that connection, your general reference there to Negroes not voting in certain areas—and I assume it was aimed at my section, if not my particular State—I wonder just how familiar you are with the situation in some of the Southern States where the Negro population approaches being a 50–50 proposition or 25 to 30 percent, and so on? I happen to know a little something about that and I have lived down there. Negroes have been voting in my county ever since I can remember. They still vote there but I suspect you and any unbiased member of the Commission, any one of these commissions that we set up around here to study these things select sometimes, I feel, biased people to go in and make their investigations and if so they would find a total lack of interest among so many of these people in wanting to vote. You people who sit in ivory towers or the people who talk about this stuff and get up these statistics might learn something if they investigated this a bit and approach it in an objective way.

Mr. Celler, I will now come back to this voting thing.

There is nothing that bothers me about it if the Congress has the right to set up a literacy test, to repeal the poll tax, which evidently they did not think it did have, and to do these other things, but what then is the next step? Is Congress going to provide for registration?

Would you say that Congress has the right to say that every person in Mississippi or New York was entitled to register and vote?

Mr. CELLER. Is entitled to vote?

Mr. COLMER. Entitled to register and vote; yes.

Mr. CELLER. No; the State has a right to set up a literacy test, if it wishes.

Mr. COLMER. It does?

Mr. CELLER. Pass the literacy test and vote and a residential test. A man may have to live in an area for a certain period. Those are just normal requirements.

Mr. COLMER. Yes; that is what we have always thought until you come in with these poll tax repeals and these additions to the literacy tests, et cetera.

What is the difference, Mr. Celler, from the constitutional point of view of the State having the right to set up a literacy test and Con-

gress having the right to amend that literacy test, or to place circumventions and restrictions.

Mr. CELLER. I cited the strongest argument that I can give you; namely, the 15th amendment, that if States discriminate in these tests, and there is ample evidence that they do, then Congress can, by appropriate legislation, carry out the terms of the 15th amendment which prevents discrimination by the States when it comes to voting.

We have a perfect right.

It is a very broad and sweeping power.

Mr. COLMER. I know it is very nebulous, if I may put my interpretation upon it.

My point is that if the Congress can prescribe the type of literacy test, why cannot——

Mr. CELLER. We do not——

Mr. COLMER. Abolish it entirely?

Mr. CELLER. We do not decide the literacy test here. We simply say——

Mr. COLMER. You say it is rebuttable.

Mr. CELLER. We say there is a rebuttable presumption. If the person has been through the sixth grade, then it is up to the State to carry the burden of proof that the individual is not literate. That is all that does.

Mr. COLMER. Is not the Congress then providing the literacy test?

Mr. CELLER. No, sir; it is not. The State provides the literacy test. Then we properly say that if he passes the sixth grade, without anything else, that is a presumption that the person has qualified under the State literacy test. If the State thinks otherwise, it must bring proof to bear that it is otherwise.

Mr. COLMER. Then if the Congress can say arbitrarily that a sixth grade education is the test, why could not the Congress say the second grade?

Mr. CELLER. It does not say it is the test.

Mr. COLMER. Yes, it does. In effect it does.

Mr. CELLER. It says that the presumption is not absolute.

Mr. COLMER. Could it not say a second grade was the presumption?

Mr. CELLER. It could say that.

Mr. COLMER. Yes; in other words, what you are really doing here is that you are prescribing the test that the States can exact of their prospective voters?

Mr. CELLER. I did not say that, sir.

Mr. COLMER. I did. I wanted to get into another phase of that matter but I do not want to belabor it too much. It may well have been covered.

Mr. Chairman, I want to go onto another title, but how long will we go on?

The CHAIRMAN. We will go on as long as we can. That was just the second bell. We are going right along on Mr. Celler. We have a long way to go and I want to keep going as long as we can.

Go ahead for a while and then we will recess until 2 o'clock.

Mr. ELLIOTT. Mr. Chairman, do I understand from the chairman we will meet this afternoon?

The CHAIRMAN. Yes.

Mr. CELLER. Will this marathon continue all afternoon, sir?

The CHAIRMAN. Sir?

Mr. CELLER. Will this marathon continue all afternoon with me?

The CHAIRMAN. I hope not. You have been enjoying it.

Mr. CELLER. I have enjoyed it. I always enjoy appearing before you, Mr. Chairman, because I admire the way you conduct these hearings. I always did; but I have other things, other chores, and that is the only thing.

The CHAIRMAN. We will go along as fast as we can.

Go ahead.

Mr. COLMER. I think when we were interrupted a moment ago we were on the question of haste for this thing.

Mr. Celler, there was an interim there from February until June, somewhere thereabouts, in which this thing just laid dormant. What got it so stirred up.

Mr. CELLER. We started hearings on May 8.

Mr. COLMER. Was it these acts of sit-ins and marches? If you would ask the question, I am sure you would say it was violence by these minority groups that preciptated this?

Mr. CELLER. I did not remember those dates that you mentioned, Birmingham, and so forth. They were after May when we started hearings.

Mr. COLMER. No; as I recall, they have been going on even into the year before, but they were stepped up in the spring and summer. Did that have any effect upon the administration and upon your committee?

Mr. CELLER. I do not think so, but it undoubtedly had an effect, those disturbances had an effect, upon many, many people throughout the length and breadth of the land.

They had an effect upon the late martyred President when he said in one of his remarkable addresses—and his quotation was:

> The fires of discord and the fires of frustration are burning in many places.

That was his exact phraseology. That was the reflection of these disturbing elements that you mentioned.

Mr. COLMER. In other words, are you saying because these State laws were being violated by these demonstrations, that out of a fear we began this?

Mr. CELLER. No, sir.

Mr. COLMER. Stepped up this legislation?

Mr. CELLER. No, sir. I could not say that; no more than the 1957 act or the 1960 act was a result of those demonstrations. There is no doubt that these demonstrations and particularly the peace march on Washington had its effect upon the general public. There is no doubt about that but I do not think it motivated us to start these hearings.

Mr. COLMER. Of course, the reaction was a two-way street but I was just wondering about whether we were legislating here in and atmosphere of fear of minority groups, or attempting to legislate in an atmosphere of emotional hysteria. I am sure that the very learned chairman of the Judiciary Committee would not approve of legislating in that atmosphere.

Mr. CELLER. I said a few moments ago I even refused to accept in my own mind what I called a drastic bill. The bill reported out by the subcommittee, of which I was chairman. I did not like some of those

provisions. I would not say, therefore, that I was legislating out of hysteria or out of fear.

Mr. COLMER. As a matter of fact, Mr. Chairman, that was your bill, was it not?

Mr. CELLER. Yes, it bore my name but it was reported out by the subcommittee.

Mr. COLMER. You say now, or are you saying now, you did not have the ammunition to report that bill out?

Mr. CELLER. The ammunition was there.

Mr. COLMER. The votes?

Mr. CELLER. Again, I had voiced certain opinions on the bill.

Mr. COLMER. Mr. Chairman, I want to reserve the right to go into some other phases of the bill later.

The CHAIRMAN. We will take a recess until 2 o'clock.

AFTERNOON SESSION

The CHAIRMAN. The committee will be in order. Mr. Colmer has some more questions.

Mr. COLMER. Mr. Chairman, out of deference to some of the things said in your absence off the record and some said on it, I shall be rather brief from here on.

I want to come to public accommodations, Mr. Celler. This is possibly one of the worst and most vicious and most objectionable features of this monstrous proposal. You cover a lot of ground here.

One of the things that you do here is to make it a violation of the law for a restaurant operator—I do not believe you even make the same provision there that you do for Mrs. Murphy's boardinghouse. Regardless of whether you do or not, here is a man operating a restaurant in Podunk, N.Y., or Yazoo, Miss., and a Negro comes into that restaurant. Under your bill, he is required to serve him. There are 10 other people in this small establishment eating at that time, or 25, and they do not like it and they either get up and leave, as they have done in some places, or they say, "We don't like the way Clancy is running his restaurant, bringing people in here who are objectionable to us; therefore, we are not going to trade with Mr. Clancy any more. We are not going to his restaurant."

What are you going to do for Mr. Clancy? If he is required to serve, should not these 25 other people be required to come and eat there and enjoy his hospitality? Otherwise, you are going to destroy his business. In other words, if there is a duty to sell, should there not also be a duty to buy? What about that? Is that not discrimination?

Mr. CELLER. That is not discrimination. He is an unfortunate victim of a bill, of the bill. That happens very frequently in the passage of legislation. We passed a prohibition law which destroyed the rights of many, many people overnight. While it is true we repealed prohibition, during the period it was in operation much goodwill was destroyed, stores were forced to close, distributors, wholesalers, distillers, farmers were injured, farmers who raised grapes out of which wine was made.

Even now under the Pure Food and Drug Act the act would permit under certain circumstances the confication of private property if the

drugs or the food does not satisfy the requirements of the act. We do that frequently. Those are unfortunate victims of the common good.

Mr. COLMER. That is your answer to that?

Mr. CELLER. Yes, sir.

Mr. COLMER. I do not want to get too awful far from the subject, but I am pleased you raised that question of the prohibition bill. As I recall, you voted to repeal the prohibition law; did you not?

Mr. CELLER. Yes, sir. I campaigned on an antiprohibition plank.

Mr. COLMER. I thought I recalled that you had some very decided views on that subject.

Mr. CELLER. Incidentally, I remember during my first campaign my opponent, whose seat I was seeking to wrest from him, very proudly proclaimed off the tailend of a truck that I was a drinking man. Somebody in the audience yelled, "Wonderful; we won't have to break him in."

Mr. COLMER. That is a very interesting story, but it does not answer the question that I had in mind and was directing to the gentleman. Is there not a considerable analogy between the national prohibition law and the national integration law that you have here? Wait a minute, I may want to tell a little story. Is there not a distinct likeness between the two bills?

In other words, in years of hysteria about drinking we got everybody all stirred up and we passed a national prohibition law. We did a lot of these things you are saying we did. Then we turned around and repealed it. Why? Because of the very injuries that you spoke of, No. 1. Second, because we recognized that we could not legislate on the question of temperance.

Here you are attempting to legislate on a subject that will prove just as popular in the end, I predict, as the national prohibition law.

In that connection, we are hearing a lot now, in this emotional period and period of hysteria, about hatred. That seems to be the popular word now, the campaign issue. We do not have hatred down in Mississippi for Negroes. Do you have it in New York?

Mr. CELLER. Hatred?

Mr. COLMER. Yes.

Mr. CELLER. No.

Mr. COLMER. You do not have it?

Mr. CELLER. Hatred against the Negro?

Mr. COLMER. Yes.

Mr. CELLER. I do not think there is any hatred. There is some prejudice. We are not guiltless in New York at all. We sometimes vent our spleen, unfortunately, against the Negro, and we are guilty of discrimination. But we do not ask for any exemption from the statute. New Yorkers, if they are guilty of discrimination, should be on a par with people from your State who discriminate. We do not ask for any preferred status.

Mr. COLMER. With that I agree, but I am coming back now to the moral issue. You cannot legislate successfully in this field any more than you could in national prohibition that you opposed so much. You are attempting to tell people how they have to treat their fellow man in their social, economic, and other contacts with him. You know and I know and everybody in this room knows that you cannot do it that way.

You speak of prejudice. One of the things that disturbs me most about this thing, Mr. Celler—I think I know as much about it as you do—is that you are breaking down the good relations that existed between the white man and his colored brother. I can see it in my State. I can see it in other States.

In your own city of New York, if the papers report the facts correctly, you are having all kinds of trouble as a result of this effort to forcefully integrate the races. I read here about a year or two ago where you had to have more than a hundred extra policemen in the city of New York to maintain order, to prevent racial riots and disturbances where you forced integration in housing areas.

So a point, Mr. Learned Chairman, is that you are making the wrong approach to this thing. You cannot do it any more than you could legislate religion, morals, or anything else.

I see the gentleman smoking a cigarette—he was a moment ago. We have a lot of comment now going around. The air is full of it and the press is full of it as a result of the Government report and reports of others about the evils of that nasty weed that you are preparing to put in your mouth there now.

As the next step, are you going to bring us in a law from the Judiciary Committee that prevents people from smoking? Can you do it that way or do you do it by education, by the education process? Is that not the answer to this question?

Mr. CELLER. As to cigarettes, I imagine the next step will be that the Government will insist upon placing on the label of the package the quantity of nicotine and/or quantity of tar and let the gentleman or the lady beware. That is all you can do here.

Mr. COLMER. Is that not what you propose to do here except go beyond that and enforce it?

Mr. CELLER. We have done all that. We have issued exhortations, made all sorts of pleas to people in your area to accord the Negro his or her constitutional rights, but to no avail. There has been no progress.

For example, as I indicated the other day, the *Brown* desegregation decision was promulgated in 1955 by the Supreme Court. It is the law of the land. The Supreme Court said integration should be had with all deliberate speed; yet in three Sates, including your own, you cannot point to me a single school where a colored person associates or goes with a white person in any school below college level.

Do you think that is proper, after all these years, that three States—Mississippi, Alabama and South Carolina—still have segregation despite these constitutional provisions, despite the interpretation of the Constitution by the Supreme Court? Is that not sufficient exhortation, is that not sufficient placing of a warning on the label? Is that not sufficient indication to the people of your State that they should cleanse their Aegean stables and do something about it?

Mr. COLMER. Are you out of the stable now?

Mr. CELLER. I beg your pardon?

Mr. COLMER. OK. The answer to that, sir, is that I believe in segregation if you ask me my opinion. Also, I do not believe that people should be forced to send their children to schools that they do not approve of any more than you and many other people believe in certain other rights that the people have such as their religions. We all discriminate.

You keep referring to me and to my State, about the integration or lack of it there. I wonder if I would be going beyond the bounds of propriety if I asked you how many of these people that you are complaining about attend your church where you attend or your schools?

Mr. CELLER. How many Negroes attend?

Mr. COLMER. Yes, sir.

Mr. CELLER. We do not discriminate in any sense of the word against Negroes. Negroes are free to enter our public schools without let or hindrance. We have no laws against it, no customs against it. There are ghettos like in Harlem, unfortunately. As a result, Negroes have to congregate to a mighty extent in one particular school in the area. But we are trying to work plans out so that would not happen. We are trying to integrate as fast as we can, but it is a difficult problem, not easy. You cannot satisfy everybody.

Mr. COLMER. It is not easy, but that is not what I was talking about. I was talking about the people that attend parochial schools, people that attend the particular sect school that you belong to or somebody else belongs to.

Mr. CELLER. There is nothing in this statute which interferes with that.

Mr. COLMER. I am not so sure about that.

Mr. CELLER. Not at all.

Mr. COLMER. If I were to take the time to look it up, I know the other day, in looking over it, I came to that definite conclusion.

Mr. CELLER. Mr. Colmer, if I may be so bold, on page 50 I think there is a reference to what you say, on line 10. This is under "Desegregation of Public Education."

Desegregation means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin.

Mr. COLMER. I found another provision. I do not have the time nor the staff to look it up for me. I think it would cover the other schools.

The CHAIRMAN. What do you mean by other schools?

Mr. COLMER. Parochial schools. In that connection, you also have another provision somewhere in the bill under sanctions—I do not believe that is the technical term you use here, but that is what it amounts to—about denying any aid to any schools and agencies, et cetera, where segregation and discrimination is practiced. That is true, is it not?

Mr. CELLER. Page 62, you will find that we purposely eliminated religion in title 6, "Nondiscrimination in Federally Assisted Programs."

Mr. COLMER. I noticed that.

Mr. CELLER. We do not touch religion. Those schools would not be involved. That is one of the few places where religion is omitted.

Mr. DELANEY. Why?

Mr. COLMER. I will ask Mr. Delaney's question. Why?

Mr. CELLER. In some of the denominational colleges aid is given or is in the interest of national defense or various studies and grants are made for studies involving defense, and so forth. For instance, Fordham and Notre Dame.

The CHAIRMAN. Where is that?

Mr. CELLER. On page 62, title 6, "Nondiscrimination in Federally Assisted Programs." We avoided the use of the word "religion" there.

The CHAIRMAN. Section 404?

Mr. CELLER. 601.

The CHAIRMAN. "Nondiscrimination in Federally Assisted Programs."

Mr. CELLER. We do not use the word "religion" there.

The CHAIRMAN. You are talking about section 601?

Mr. CELLER. Yes, sir.

The CHAIRMAN. What is it you claim that does?

Mr. CELLER. I beg your pardon?

The CHAIRMAN. I would like to be clear on your statement with respect to that title.

Mr. COLMER. He says they leave out religion there, that they use it in all other titles and provisions but in this one it is left out.

Is that for the purpose of——

The CHAIRMAN. Nothing is left out in that provision:

> Notwithstanding any inconsistent provision of any other law, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Mr. CELLER. On the ground of race, color, or national origin.

Mr. COLMER. He leaves out the word "religion," which occurs in all other titles, as I recall it.

The CHAIRMAN. Race, color, or national origin. Would you suffer an interruption there?

Mr. COLMER. Certainly.

The CHAIRMAN. We have just passed a bill for aid to higher education; grants, loans, et cetera, to college. Any college that discriminated on account of race, color, and so forth, whether religious or not religious colleges, would be precluded from that assistance.

Mr. CELLER. This is a case where Federal tax money is involved, and the taxpayers' money is offered to various programs and various so-called activities in the form of Federal financial assistance by way of grant, contract, or loan.

Religion is not involved. It was not involved because a number of these grants are made to religious institutions where, for example, there are certain limitations concerning those of certain faiths. Therefore, they were excluded.

The CHAIRMAN. Let me ask you a specific question if you will excuse me. Let us say there is a Methodist college that discriminates against the colored race and does not permit anyone to come in except the whites.

Mr. CELLER. Their aid would be cut off.

The CHAIRMAN. Of course. That is what I was trying to get you to say.

Mr. CELLER. In that sense, yes.

The CHAIRMAN. We do not have to have religion in here to cut it off. The word "color" cuts it off.

Mr. CELLER. We are not cutting off aid to a Catholic university or a Methodist university or a Baptist university just because of the faith of that university.

The CHAIRMAN. No; but you are cutting it off on account of discrimination, which is what I was trying to get you to say.

Mr. CELLER. Yes; if they practice it.

Mr. COLMER. What does this section mean, then, if you have not excluded religious institutions?

Mr. CELLER. We do not say that because it is a Catholic university they cannot get any Federal funds, but if that Catholic university, which gets Federal funds, discriminates between people on the ground of race, color, or national origin, then their funds could be cut off.

Mr. COLMER. That raises a very interesting question. I find no place in this bill where religion is defined. What is religion?

Mr. CELLER. You are getting into a rather metaphysical discussion now. I presume religion is a set of tenets or principles that have been enunciated by a hierarchy or by a synod or by elders of a particular faith or teachings of certain prophets, which teachings and moral precepts are adhered to by certain groups. You asked me for a curbstone opinion. I do not know if that is correct.

Mr. COLMER. I will follow that curbstone opinion because, after all, you are not a curbstone lawyer. You are chairman of the House Judiciary Committee, and I think your opinion carries weight.

You and I could start a religion, could we not?

Mr. CELLER. I beg your pardon?

Mr. COLMER. Could not you and I start a religion?

Mr. CELLER. I guess we could. I suppose so.

Mr. COLMER. Of course, we could.

Mr. CELLER. But I am not in the particular mood to start a religion.

Mr. COLMER. I take it you are satisfied with your own, and so am I. But that is the way they get started.

When you talk about religion, I do not know what you are talking about.

Mr. CELLER. In the generally accepted sense of religion; I think that is pretty clear what we mean by that. There are certain types of religion which we name.

Mr. COLMER. I do not know what that administrator down there will say when he goes to issuing regulations and cutting off assistance. That is going to be the big thing. For the first time, you are starting here to do things that the Congress has repeatedly refused to do.

Mr. CELLER. That who refused?

Mr. COLMER. The Congress. We have had this question up practically every time we have had an education bill and assistance to education up on the floor of the House. Not one time has it ever prevailed. Yet in this dragnet proposition you are going to bring it in so that when the Members of Congress who want to vote for a civil rights bill, for one reason or another—we will not speculate on that—are going to have to take this dose that they have repeatedly refused to enact into law.

Mr. CELLER. All this bill does, Mr. Colmer, this section, is to refuse to give any aid or comfort by way of grant or assistance to an activity or program that violates the Constitution, that flies in the face of that which the bulk of the Members of Congress think is the proper thing to do.

It seems rather anomalous that the Federal Government should encourage with one breath that which it proscribes in another. It be-

comes a coconspirator against itself, as it were. It says you cannot discriminate and yet it would give money to those who do discriminate.

For years we gave money to the hospitals under the Hill-Burton Act. We provided for separate but equal facilities. One of the U.S. courts of appeals has declared that part of the Hill-Burton Act unconstitutional. I am sure when it goes to the Supreme Court, the Supreme Court will affirm or refuse to grant certiorari.

This provision to make it sure does away with the Hill-Burton Act and the Morrell Act providing for separate but equal, and I think it should be done away with. It does not seem right in this day and age to provide it.

Mr. COLMER. In brief, what you are doing here is you are saying that none of these institutions that receive governmental assistance—they are practically all doing it now—can practice desegregation. If they do, they are cut off. Is that not what you say?

Mr. CELLER. That is right.

Mr. COLMER. That not only applies to schools, education, but it applies to every agency of this Government, over a hundred agencies.

Mr. CELLER. That is right.

Mr. COLMER. That is correct; is it not?

Mr. CELLER. Yes.

Mr. COLMER. When you introduced the original bill, at the request of the President of the United States, the then President of the United States, you did not have that provision in there, did you?

Mr. CELLER. Which one is that? Part 6?

Mr. COLMER. Yes, sir; this cutoff of assistance, this practice of sanctions.

Mr. CELLER. I understand that, if I remember correctly, this provision has a judicial review. Anyone who feels aggrieved can go into court, but that was not in the original bill. The original bill, commencing on page 34, is even broader. We put in there—for example, we have guarantees in there which would cover loans to veterans and loans—insurance was cut out, we cut that out. We cut out guarantees; we cut out loans. So that banks would not be involved in that, banks that made loans. We made provision for anyone aggrieved to go into court. That was not in the original bill. This is a more palatable provision, I might say.

Mr. COLMER. I come back to your original answer that there are over a hundred Federal agencies—all Federal agencies that dispense Federal assistance are affected and covered by this section.

Mr. CELLER. I would say that is right.

Mr. COLMER. In other words, that is sanctions.

Mr. CELLER. You say it is a sanction? It is not a punishment. That is an imprecise and inexact word. They simply cut it off. It is not punishment.

Mr. COLMER. May I just go on. A great hue and cry is made here about enacting this as a memorial to our lamented President. As I recall, our President during his lifetime did not approve of this. I read to you now, after the Civil Rights Commission had recommended this very far-reaching punishment or sanction, giving the President power to cancel or suspend Federal aid funds to States which failed to comply, et cetera, and in the April 17 press conference the President was asked to comment on that recommendation. In response the President said, and I quote:

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.

Yet that is exactly what you propose to do here, a further concentration of power in the executive department at the expense of the liberties——

Mr. CELLER. That is a clear indication that we did not follow slavishly what the President wanted.

Mr. COLMER. I am not sure I got the import of that remark.

Mr. CELLER. That is an indication that we did not follow slavishly what the President may have wanted.

Mr. COLMER. Then you do not follow that this ought to be a memorial?

Mr. CELLER. What was the date of that press conference?

Mr. COLMER. April 1963.

Mr. CELLER. I think that the President may have changed his mind after that.

Mr. COLMER. Let us not go into that. After all, I do not think that would be fair to impute to a man that he changed his mind.

Mr. CELLER. May I say this. When we got the message later on from the President, I am quite sure that the import of the last message was to change his view from what you have just read. He changed his views, apparently.

Mr. COLMER. Who did?

Mr. CELLER. President Kennedy, the late President Kennedy.

The CHAIRMAN. What message?

Mr. COLMER. I was reading from a press conference he had in April of 1963. I would not undertake to impute to the late President any change of mind or heart about that matter. I am going by what is said in the record.

Now, Mr. Celler, is it not a fact that that title affects every lawyer, every banker, every farmer, every man that employs labor or engages in any business that receives directly or indirectly Federal assistance?

In other words, under our modern and complex society and government, the Federal Government is into everything. The Federal dollar goes into every avenue of business and activity. Yet you give this overwhelming power to a President of the United States when the last spoken word of the President was he did not think it was wise for them to have it.

Mr. CELLER. It does not go anywhere near that far, sir, because, as I indicated before, we eliminated the words insurance and guarantee. That leaves out FHA, loans to banks, which are insured, and so forth, FEPC.

Mr. COLMER. Loan contracts and something else?

Mr. CELLER. It does not cover anywhere near what you say.

Mr. COLMER. Here is a bank.

Mr. CELLER. It does not cover banks. A bank is not a recipient of funds except by way of Government guaranteeing what the bank loans, but the guarantee is out.

Mr. COLMER. Is that not part of the contract?

Mr. CELLER. No.

Mr. COLMER. The guarantee?

Mr. CELLER. We eliminated the guarantee.

Mr. COLMER. The bank is not going to take that loan unless the Government guarantees it. Therefore, if it does it in violation of your law, then the FDIC promptly withdraws protection from that bank.

Mr. CELLER. In what way does a bank get a direct loan?

Mr. COLMER. I was not speaking of a direct loan. I am speaking of an indirect one, the underwriting of these contracts.

Mr. CELLER. Underwriting is a guarantee, and that is eliminated.

Mr. COLMER. No, sir. I do not have it here now, but you take in every contract.

Mr. CELLER. We speak of a program or activity. That is what we speak of, some program or activity. It is repeated a number of times.

Mr. COLMER. What page are you reading from?

Mr. CELLER. Title 6. Read it very carefully, and you will find it has nothing like that. It says—

each Federal department and agency which empowered to extend Federal financial assistance to any program or activity, by way of grant, contract, or loan * * *.

Mr. COLMER. Is not the FDIC a contract? Is not the veteran loan or small business loan——

Mr. CELLER. No, because that is eliminated when we took out the words insurance and guarantee. It is not a program or activity.

Mr. COLMER. I think if the gentleman will read it carefully, he will find it is.

Mr. CELLER. A small business loan might be covered—I take it back—if the individual practices discrimination. In that sense, yes.

Mr. COLMER. And the bank collaborates and underwrites.

Mr. CELLER. The bank does not collaborate usually.

Mr. COLMER. Yes, they do.

Mr. CELLER. With a small business loan.

Mr. COLMER. Yes, sir; they do.

Mr. CELLER. It is the recipient——

Mr. COLMER. Do you prefer "participating"?

Mr. CELLER. It is the recipient. The small businessman who gets the loan, if he practices discrimination, he is the one that can have the loan cut off or additional loans cut off by the Small Business Administration, not the bank, because the bank is not the recipient of the grant or money.

Mr. COLMER. I do not agree with the gentleman at all in his construction of that phase of it. We will follow that further later on with somebody else's views on it.

Mr. CELLER. It says on line 21, it speaks of recipient, to any recipient. That is the keystone of that provision. The bank is not the recipient.

The CHAIRMAN. We have a rollcall going on now, which is a motion to recommit the bill that is now pending, the airport bill, an automatic rollcall. I would suggest that we stop now and go down and all of us answer as quickly as we can and come right back.

(Short recess.)

The CHAIRMAN. In the interest of saving time, Mr. Celler, and if the committee does not mind—Mr. Colmer has not gotten back yet since I think he is waiting for a second rollcall—I thought we would go on to the others, and then come back to you.

Do you have any questions, Mr. Madden?

Mr. MADDEN. Mr. Chairman, I had about 50 or 60 questions but I find that my chairman and Mr. Colmer have practically asked about every question I was going to ask and in the interest of saving time, I will yield to Bill Colmer. Here he is.

The CHAIRMAN. I am glad you have been duly impressed.

Mr. Colmer, go ahead.

Mr. COLMER. Mr. Celler, very briefly we have done a lot of talking around here about various phases of this matter and some of us who are always concerned about governmental spending, balanced budgets, et cetera, cannot help but raise the question about this new program.

How many additional millions is this going to cost?

Mr. CELLER. I think you will find that on page——

Mr. COLMER. In one place you say it is going to cost $11 million. That is one phase of it, but I am talking about the overall.

Mr. CELLER. The overall cost is about $20 million and that is on page 2772 of the hearings on civil rights.

I do not know if you have that but that is in part 4. Do you have that before you? It is about $20.8 million.

Mr. COLMER. In the hearings or the report?

Mr. CELLER. The hearings, part 4.

Mr. COLMER. Taking that as a figure, and I do not know where you get it, does that cover everything? Does that cover all of the additional attorneys, U.S. marshals, and, I might add, additional Federal judges that it is going to take to police all of this?

Mr. CELLER. I cannot answer whether any additional judges, marshals, are embraced in the enforcement. They are already paid.

Mr. COLMER. The additional ones are not?

Mr. CELLER. If there are any additional marshals, there is nothing in this bill to provide for additional marshals.

Mr. COLMER. Mr. Celler, how are you going to enforce all of this without additional marshals?

Mr. CELLER. Congress would have control of that in the appropriation bill for the Department of Justice, if they wish. That is where that would come up.

You asked me what the program would cost and we have it itemized by various titles on page 2772. I cannot give you any more than that, sir.

Mr. COLMER. I would like to talk with the gentleman about a year after this goes into effect and get his evaluation of how much it is going to cost. However, as important as that is, it is relatively unimportant compared with all of the regimentation that will result if this bill becomes a law, the regimentation of the people, the loss of their liberties, the loss of liberties of the majority, because I think we must all agree you cannot bestow special privileges upon one group without taking them away from the larger group; that is, the minority group, without taking this away from the larger group.

I just cannot see how you can carry all of this without substantial losses to the majority of the people.

The way I see this bill after studying it, and I have studied it, it just about sums up that there is about 10 percent civil rights and about 90 percent regimentation and Federal control.

Now I want to go back just a minute and out of deference to everybody, I will quit after this although there are many, many other questions on things I would like to talk about with the gentleman.

When the bill was up in 1957 and in 1960, I interrogated the distinguished gentleman here at some length on the question of jury trials and what rights the accused or the charged would have for jury trials.

Then and now I must confess I did not get too far with the distinguished gentleman who is entirely too—well, I have used the word "smart" or "brilliant" for me to fence or cross swords with, but one of the inherent rights that the people of this country have had is the question of jury trials, the right to be confronted by 12 good, honest, true gentlemen who sit on the jury to pass their judgment.

You do not say anything about that in this bill but you do perpetuate the provision or nonprovision for jury trials that was in the acts of 1957 and 1960.

Is that a correct statement?

Mr. CELLER. That is correct.

Mr. COLMER. In other words, under this bill—and I believe the Chair discussed this with you the other day—anyone charged here or enjoined can be put in jail for 45 days or sentenced to pay up to a $300 fine, or both, without the benefit of a jury trial; is that correct?

Mr. CELLER. That is correct.

Mr. COLMER. I wonder if this does not violate my liberal friend's ideas and concepts of our system of jurisprudence. Does the gentleman think that is a proper thing?

Mr. CELLER. We put a clause in the 1957 act that if the attempted citation resulted in an imposition of sanctions involving more than $300 and/or 45 days in jail or more, then the defendant could have a trial de novo before a jury in the district court.

Mr. COLMER. Right.

Mr. CELLER. That is continued.

Mr. COLMER. That is right. Does the gentleman feel or has the gentleman heretofore felt under different circumstances there should be jury trial?

Mr. CELLER. When the bill got over in the Senate they made the change and in conference we agreed to the Senate provision.

Mr. COLMER. The gentleman is the chairman of a powerful committee of this House and certainly he has some rights. Certainly he had some persuasive abilities not to agree to that, to resist such a provision as the Senate put in.

Mr. CELLER. I probably felt some unseen hand that was exerted by your good self which caused me to do that; I do not know. I ameliorated it. I thought I was doing something that might be more palatable to you and those who think like you in this matter.

Mr. COLMER. You mean not to have jury trials?

Mr. CELLER. With the idea of having a trial de novo in a district court before a jury.

Mr. COLMER. I certainly appreciate the gentleman's consideration of me and those who feel as I do about that, but it is a little difficult for me to follow, I must confess.

Back at the time of the consideration of the labor case, another minority group, the gentleman had a different idea and I am going to quote from the gentleman's statement.

Mr. CELLER. What was that on, the FEPC?
Mr. COLMER. No; on Norris-LaGuardia.
Mr. CELLER. Norris-LaGuardia?
Mr. COLMER. Norris-LaGuardia labor relations.
Mr. CELLER. What year is that, 1920, is it not?
Mr. COLMER. Yes, sir; that was 1928, to be exact.
Does the gentleman want to tell me he has matured since then?
Mr. CELLER. Possibly.
Mr. COLMER. That is what he told me the last time.
Mr. CELLER. Possibly.
Mr. COLMER. I wanted to see something—let me read you what you said on that occasion in a debate. I now quote from the Congressional Record when the gentleman was so eloquently arguing about jury trial.

I have read injunctions so fantastic, so arbitrary, that they were practically but one step from a threat of jail to a striker if he coughed, spat, or chewed.

There are some folks who are going to get into trouble here about chewing.
Mr. CELLER. About what?
Mr. COLMER. About chewing when they go into these restaurants, so there is a parallel here.

Some injunctions read very much like orders of an army of occupation bent upon vicious revenge. Many injunctions are not used to protect property from irreparable loss, but issued to disorganize unions and to terrorize and intimidate those on strike.

If I may comment briefly on that, I wonder if there is not going to be a lot of terrorizing and intimidation of people under this bill, as you anticipated there would be under the Norris-LaGuardia Act?
Mr. CELLER. Has there been, thus far?
Mr. COLMER. Maybe the gentleman would rather give me his answer on the whole thing, because I have not finished quoting this eloquent gentleman.
He was eloquent then as now.

I am old enough to remember, and many of you here are old enough to remember the tragedy of the *Danbury Hatters* case, involving the so-called ex parte injunction. We would bring back the days of the Danbury Hatters. In those days the judges, without hearing, issued injunctions based upon affidavits of stooges and stool pigeons and agents provocateur.

I imagine it is certainly possible there are going to be some affidavits made by agents, stooges, and stool pigeons under this case. That is, under this legislation if it becomes the law, or this bill.
Then I quote again from the gentleman:

The abuses in the granting of these injunctions so aroused the Nation that we in 1932 passed the Norris-LaGuardia Act which outlawed the granting of ex parte injunctions against labor * * *.
This bill would reinstate those ex parte injunctions against labor and would turn the clock back and return us to the robber baron days and the days of the industrial buccaneers.

I am sure that impresses my friend, Mr. Madden.
Mr. MADDEN. I remember those days in Gary in 1919 when they had chicken wire fences and they put the steelworkers in those wire fences out on the corner but those days have passed. They are gone.
Mr. COLMER. Now we may come back to barbed wire fences when this thing goes into effect.

Mr. CELLER. I will not withdraw a single word from that statement I made at that time. This is just as good today as when these words were first uttered.

Mr. COLMER. I think they are excellent but I also think that they should apply to this minority, or majority group, rather, as they would to that minority group.

Mr. CELLER. I have to depart there from your view, sir.

Mr. COLMER. I know the gentleman does because the gentleman has changed his opinion again about these things.

When I interrogated him before, and this is of record, too, in the Congressional Record on the floor of the House, the gentleman said he had matured since that time and that the situation had changed. I also recall, if I have quoted the gentleman, and I will quote myself, when I said to the gentleman on that occasion that principles do not change. They are as fixed as the stars.

I am wondering why the gentleman would want to give a minority group; to wit, labor, the right of a trial by jury and then to deny it to the majority of the citizens who might run afoul of the pending proposal?

Mr. CELLER. Congress has spoken. Congress did that in the 1957 act and since 1957 there have been no horrendous situations of the type that you conjured up.

Mr. COLMER. No; you were doing the conjuring back there when you were talking about——

Mr. CELLER. I do not find experience under the 1957 act indicates anything like what you are conjuring up now.

Mr. COLMER. Well, I am not going to use the word "resent" but I do not like the gentleman to attribute to me some conjuring when he is the man who is doing the conjuring back there.

Mr. Chairman, I finished where I started. I marvel at the so-called modern liberals who would turn the clock back and would take away the liberties the people of this country have enjoyed, the majority of the people of this country have enjoyed under the greatest system of government ever conceived by the mind of man.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Smith?

Mr. SMITH of California. Mr. Celler, I have just a few questions and I want to try to get a few points straight for the record.

What did you say was the estimated cost? I did not hear that.

Mr. CELLER. About $20 million.

Mr. SMITH of California. That is over what period of time?

Mr. CELLER. I think they have estimated it for a period of 5 years, but that is on a yearly basis. You have it right here, if you wish it.

Mr. SMITH of California. $20 million a year?

Mr. CELLER. $20 million a year; yes, sir.

Mr. SMITH of California. We have some pretty good broad laws in the State of California and I am not certain whether this bill will do us any good or harm, but are you certain in your mind there is nothing in this bill that will preempt any existing California laws, or our present housing laws, our present FEPC Commission, and so forth?

Mr. CELLER. No, sir.

Mr. SMITH of California. There is no preemption as in the *Nelson* case?

Mr. CELLER. No, sir. The language in almost every section says in effect there is no preemption.

Mr. SMITH. I would like to go back to this question of fraternities we talked about a little bit this morning. I have in my possession a copy of the letter from Adam M. Duncan, chairman of the Utah advisory committee which, from our comments this morning, I know your committee is fully aware of. This is written to the president of Pi Beta Phi Sorority in Salt Lake City, Utah. You probably have that letter yourself requesting their cooperation which enclosed a detailed questionnaire of what they asked this fraternity to answer. That particular letter is dated October 11, 1963, from the U.S. Commission of Civil Rights, Washington 25, D.C. This is assuming they are attempting to operate under existing civil rights legislation because this bill is still pending.

So that I can get the record straight on this, let me ask you a few specific questions.

In your opinion, does the present law or the civil rights bill now pending, the bill here in the Congress, give the Commission or its advisory committees the right to request this information?

Mr. CELLER. It does not.

Mr. SMITH of California. If the questionnaire is not answered, does the Commission have the right to subpena officers of the fraternities and the documents requested?

Mr. CELLER. I should not think they would have that right.

Mr. SMITH of California. Does the Commission have the right to cite for contempt, if subpenaed, parties who refuse to testify or produce the documents?

Mr. CELLER. No; that wolud be what Justice Frankfurter called the fruit of a poisoned tree. It could not be done.

It should not be done. As we indicated, we are checking on that with the Commission itself so there will be no repetition of anything like that.

Mr. SMITH of California. Was it your opinion or do you believe it was the intention of Congress that existing law or the proposed civil rights legislation which we are talkng about here, be interpreted so that the answer to any one of these foregoing questions would be yes?

Mr. CELLER. Yes, sir; that is right. It would be yes. They have no such right.

Mr. SMITH of California. In my opinion, it seems to me that this Commission in doing this may well be violating the fundamental rights of the first amendment.

You stated that you are looking into this, your committee is?

Mr. CELLER. Yes, sir.

Mr. SMITH of California. If you find out that they should not have the right to do this under existing law, under your bill, would you try to amend it with specific language to keep them out of this field?

Mr. CELLER. Yes, sir, I certainly would.

Mr. SMITH of California. I think this is going pretty far. That questionnaire is a pretty rough questionnaire for a sorority or college

kids. They say, "We have to cooperate. They send all of this to us. You keep Jews out and Negroes out."

That is kind of a rough questionnaire to send around to these colleges, it seems to me. If you are going to do it to sororities and then go to fraternities, then the Knights of Columbus, the Eagles and on down the line, I do not think that is any intention of the present law or bill. Do you agree with me on that?

Mr. CELLER. Your statement is eminently sound.

Mr. SMITH of California. You made the statement the other day that in your opinion you did not think the 1957 act or the 1960 act did what they thought they were doing at that time, so far as voting rights were concerned?

You thought this proposed legislation will.

Can you explain to me briefly why this will do what was stated on the floor of the other body, the other law would do, which apparently it has not done?

Mr. CELLER. The other law had quite a number of loopholes which enabled various astute lawyers to start proceedings and motions and cross motions. For example, the 1960 act speaks of a pattern of practice of discrimination which, when found by the court, would enable them to appoint what we call Federal referees which could register those who had been denied the right to register, or could permit those who voted, who had been registered and qualified, and who had been denied the right to vote.

The question of the pattern of practices has not yet been established in any of the courts definitely. It has not gone even up to the Supreme Court yet because it got all snarled in all manner and kinds of legal entanglements.

For that reason we wanted to have a more direct approach. This title I would give us the more direct approach. That is one of the reasons why we felt that the 1960 act was not sufficient to enable those now disenfranchised to have the right to vote or even to qualify to vote, because the literacy tests had been used according to the evidence adduced before the committee in various ways to discriminate. Therefore, we have this provision in there concerning in title I the preclusion of anyone using the literacy test for the purpose of discrimination. We also have a provision in there which is not in the previous bills to the effect—excuse me just a moment.

I will give you the exact verbiage of it.

In determining whether any individual is qualified under State law or laws to vote in any Federal election, to apply any standards, practices, or procedures different from the standards, practices, or procedures applied under such law or laws to other individuals within that same county, parish, or similar political subdivisions which have been found by State officials to be qualified to vote * * *.

There has been great difficulty in that regard where there were different standards in different political entities and it was impossible to get after that, so we nailed that down so that if there are these different standards, then they can be uprooted. That is part of the discriminatory practices that are mentioned in part 1 concerning voting rights.

In those ways we feel we can make more progress to get those who are now disenfranchised and properly given the right to qualify and the right to vote.

Mr. SMITH of California. For 8 years I was on the judiciary committee of the State legislature and I was chairman for a period of time. I found out that in attempting to legislate on morals, or the thinking of people or their attitudes and things of that kind, we often had extreme difficulty in doing that.

I wonder, with your long experience as an attorney and chairman of the Judiciary Committee, whether or not you agree with me that it is pretty difficult to legislate that?

Mr. CELLER. Very difficult to cover everything. You just cannot cover every nook and cranny. Reliance must be had in the ultimate analysis on individuals, their civic pride. You have to appeal to their morality. The people must do that which they feel is righteous. They must follow the admonitions of the prophets to "love thy neighbor as thyself" and the voice of Leviticus said, "Proclaim liberty throughout the land to all the inhabitants thereof."

It just did not say proclaim liberty throughout the land. They were wise enough to know there would be discrimination. They said "to all inhabitants." Those admonitions are fine but a great deal of reliance must be placed upon them and legislation can help although it cannot do everything.

Mr. SMITH of California. I do not know how familiar you are with California or the 20th Congressional District, my district, but I do not think there is any place that is not open to any race, color, or creed; that is, hotel, restaurant, or any place else in the 20th Congressional District. If there is, I do not know where it is.

I wonder if you feel that this type of legislation would cause us any trouble to get one group that is now perfectly happy and get them to go to school another place? Do you think we are going to have some problems presented where they are going to resent one another now and this will cause dissension?

Mr. CELLER. I think 30 odd States have acts which preclude discrimination in public accommodations, privately owned. There is nothing new about it. All we do is to extend it so as to give complete coverage throughout the Nation. In those States that already have it, they will not feel the effect of this at all because they have already done that which is fair and decent and honorable to those who, because of the pigmentation of skin, happen to be darker than I am or you are.

Mr. SMITH of California. I wondered whether or not, with all of these additional records and everything else, that are going to have to be kept, and the inspector to go in, if this creates ideas in somebody's mind who is perfectly happy and who has a nice home, but he will want some more rights, want to go here or want to go there, and whether this is going to cause disssension back and forth.

Mr. CELLER. In title II on "Public Accommodations," there is no question of keeping any records.

Mr. SMITH of California. You do not think it will possibly cause any difference of opinion?

Mr. CELLER. The only records that shall be kept is FEPC.

Mr. SMITH. I just mention some of these things.

Mr. CELLER. I beg your pardon?

Mr. SMITH of California. There are some restrictions or requirements in here which might give white or colored groups argu-

ments back and forth and might cause unhappiness that does not now exist.

Mr. CELLER. We are very careful here, I will say to the gentleman from California. We did not invoke any sanctions of anybody who is guilty of violations of title II concerning accommodations. It simply provides for going into court and then the court can issue an injunction. In other words, if there is any question, he has his day in court and he can disprove and disavow any discrimination. It is hoped that they would not have to do that. I do not think that is too burdensome.

Mr. SMITH of California. As I mentioned the other day——

Mr. CELLER. I think your own California act provides for that.

Mr. SMITH of California. As I mentioned the other day, our high schools have all been broken down by geographical territory to try to keep a proportionate number of students in there so that they do not have one overrun with too many students and the other without enough. In recent months, with the suggestion of this act that colored people want to go to X school, rather than a school which is closer to their home, we are in a position now of having to move people by bus with every fourth student from another school clear over to another one to make it work. We never had that problem before; for many, many years. This is causing some resentment.

Mr. CELLER. It has. We had a recent decision in my own bailiwick in New York on that score. The court there held that school authorities had no right to consider racial or ethnical factors in drawing school lines. That was the decision.

Mr. SMITH of California. They were not there on account of race? It just happened more people of the particular race lived in a particular area around the school because of their homes there.

I have one other thought on this now. I have got this second, third, or fourth hand but rumors around the Hall say that this bill will pass the House and then go over to the Senate and there will be a definite modification in the public accommodations section or it will be stricken.

The Civil Rights Commission will be weakened and the administration will squawk real loud but they will then accept the bill and be perfectly happy.

Have you heard any such rumors like that?

Mr. CELLER. There have been all sorts of rumors, not exactly in that form. I have discounted those rumors. I want to keep this bill intact. I will fight for this bill.

Mr. SMITH of California. There is no suggested arrangement when this bill is put out that that was going to take place, so if we are going to vote on this bill later, and find it taken out, the public accommodations section stricken, the Commission weakened, we will find ourselves voting for this and be left out in the street?

Mr. CELLER. No prearrangements of that sort whatsoever. I have no knowledge of that whatsoever.

Mr. SMITH of California. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Delaney, any questions?

Mr. DELANEY. Yes, Mr. Chairman. There are a few questions I would like to have cleared up.

What is in the decision in New York State by Justice Baker and Justice Bookstein? They held that the board of education, as I understand it, had no right to make these rules?

Mr. CELLER. Yes, sir. They could not deliberately change the school zone lines for the sake of integration.

In other words, what they all get after what is known as an imbalance or de facto segregation.

Mr. DELANEY. The reasoning behind that is that it is a private, rather than a public group?

Mr. CELLER. What was that?

Mr. DELANEY. What is the reasoning behind that, if you know?

Mr. CELLER. Of course, if you gerrymander lines on the lines of race, then you are violating the principle of this act.

Mr. DELANEY. How can we, under this section of the Constitution? Let us take the 13th, 14th, and 15th amendments. How can we write a desegregation law? By what authority under the Constitution can you write a law that involves desegregation? That is an affirmative issue.

Mr. CELLER. Under the 15th amendment——

Mr. DELANEY. How under the 15th?

Mr. CELLER. The 14th amendment, equal protection.

Mr. DELANEY. The 14th amendment deals with the rights of the individual. As a matter of fact, there has been a lot of loose language around here all morning. We do not legislate here for any particular group. It is discrimination against the citizens. I am very much at a loss now to find how you arrived at the statement you made here that a man could vote for the President of the United States, the Vice President of the United States, Senators and Congressmen, and could not vote for local officers.

Mr. CELLER. Should not vote? I did not quite get that.

Mr. DELANEY. I understood you to say here yesterday or last week when we started these hearings that under this bill a man could vote for the President, Vice President, and Senators.

Mr. CELLER. Electors.

Mr. DELANEY. And Congressmen, but he would not be able to vote for the justice of the peace, a dogcatcher, or any other officer?

Mr. CELLER. No; I said that title I in this bill is an admonition in a laying down of rules concerning so-called Federal elections.

It may affect State elections as well.

Mr. DELANEY. That is what I wanted to know. We are talking about citizens. The 14th amendment gives us the right to deal with citizens and all citizens should be treated equally. There is no mention of Negroes, a minority, or anyone else. There has been a lot of language here about this but we are interested in the rights of citizens. You cannot discriminate against citizens?

Mr. CELLER. That is correct.

Mr. DELANEY. That is what we are trying to enforce. Here we have segregation; by what authority under either the interpretation of the courts or the amendments to the Constitution, can you write a law that spells out desegregation?

Mr. CELLER. Well, we do not attempt to, by any of these provisions, deliberately desegregate.

Mr. DELANEY. Let us take the very titles you have here, "Desegregation in Public Education."

In my opinion that should be stricken out.

Mr. CELLER. What is that?

Mr. DELANEY. On page 50, title 4. Just looking at it or title 3, the previous one, "Desegregation of Public Education," or "Desegregation of Public Facilities," that is a misnomer, is it not?

Mr. CELLER. I do not see how that is a misnomer. In title 4, "Desegregation of Public Education," there is a definition. Desegregation means the assignment of students to public schools, within such schools, without regard to their race, color, religion, or national origins.

Mr. DELANEY. Should that not be discrimination or nondiscrimination?

Mr. CELLER. No, no. That is what is meant by desegregation and we are trying to prevent segregation by desegregation.

In other words, if you are going to desegregate, do away with segregation, it means that you must assign the students to public schools, and within such schools, without regard to their race, color, religion, or national origin.

Mr. DELANEY. Is this a new word coined for that purpose?

Mr. CELLER. A new word?

Mr. DELANEY. A word coined for that purpose?

Mr. CELLER. That is just for the purpose of "Title 4: Desegregation."

Mr. DELANEY. You use the same language in both titles, title 3 and title 4?

Mr. CELLER. Title 3.

Mr. DELANEY. Well, it is the same thing.

Mr. CELLER. Title 3 is the "Desegregation of Public Facilities." That is, swimming pools, public parks, playgrounds, and so forth. There cannot be any discrimination in those public facilities which are operated by the State without impunity. That is prevented here.

Mr. DELANEY. Mr. Celler, none of my questions have been answered.

I ask you this question first: How do you arrive at such a law? How do you justify the statement that a man can vote under this bill for the President of the United States, Senators, and Congressmen? This is your own statement in direct testimony. How is it then that he cannot vote for State officers? Either he is a qualified voter or he is not a qualified voter. Maybe if he is a qualified voter, sufficiently qualified to vote for Federal officers, he certainly is qualified.

Mr. CELLER. In this particular title 1, we do not say anything about State elections. We simply say in the case of literacy tests and in the case of applying certain standards, they must be equal and they are applicable to Federal elections. Now, it may be there is an overlapping between the State and Federal elections. That is, held the same day. There may be one ballot. The effect will be that what happens concerning the Federal side will also happen on the State side. There is nothing to prevent a State here, we could not prevent a State, if it wishes, to have a separate election on a separate day with a separate ballot. There is nothing to prevent that here.

Mr. DELANEY. It seems to me that this is legislating discrimination, the very thing it is aimed not to do.

Mr. CELLER. I do not see how that is discrimination.

Mr. DELANEY. You have a double standard for certain people. If a man is a qualified voter——

Mr. CELLER. No. The States may have the double standard and if they do they are in trouble. We do not here offer a double standard.

Mr. DELANEY. Let us look at the 14th amendment and understand it and see what it says.

Mr. CELLER. Equal protection under the law. That is all that it says.

Mr. DELANEY. The 14th amendment deals with the rights of the individuals, is that right; 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 law?

Mr. CELLER. That is the keystone.

Mr. DELANEY. If I can vote for the President of the United States, the Vice President of the United States, Senators, and Members of Congress, why cannot I vote for everybody else who runs for office in that State?

Mr. CELLER. In the case of State elections, that is up to the State to fix——

Mr. DELANEY. No; it is not.

Mr. CELLER. If the State, on the other hand, in fixing its rules and regulations, denies equal protection of the laws to the citizens, then it runs afoul of the 14th amendment.

Mr. DELANEY. Under section 5 of the 14th amendment, the Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Now, it guarantees them and it gives you the right to enforce them.

Mr. CELLER. That is right.

Mr. DELANEY. If I am entitled to vote for the President of the United States, Senators, and also Members of Congress, why then can I not enjoy all voting privileges?

Mr. CELLER. I might say the original bill, so-called subcommittee bill, in title 1 was applicable to Federal elections and State elections. To make it more palatable, State elections were dropped and the literacy test and the application of the equal standards were made applicable to Federal elections. Nonetheless, Mr. Chairman—why do you shake your head?

Mr. DELANEY. There is a double standard here.

Either I am entitled to vote, and qualified, or I am not.

Mr. CELLER. Not by this act; perhaps double standards by State authorities.

Mr. DELANEY. The act merely clarifies the amendment to the Constitution. The Constitution gives the right to the individual, to the citizen.

Mr. CELLER. For example, if the State sets forth a double standard and says—the individual can plead and bring the State into court under the 14th amendment.

Mr. DELANEY. Under the 14th amendment, the Congress shall have the power to enforce by appropriate legislation the provisions of this article.

Mr. CELLER. We would have the right to make this applicable to State and Federal elections, if we wish.

To make it more palatable, we eliminated State elections.

Mr. DELANEY. We are legislating discrimination now by having a double standard.

Mr. CELLER. No; it is the State that applies that double standard.

Mr. DELANEY. No, it is not the State; it is right here.

The State has nothing to do with this legislation that came out of your committee. What we are attempting to do here is to legislate a double standard.

Mr. CELLER. No, sir.

Mr. DELANEY. Yes, sir. We are. You show it to me then.

I am reading from the Constitution.

Mr. CELLER. We do not say that the State——

Mr. DELANEY. We do not recognize only citizens here. Citizens shall have equal rights and then we have the provisions of section 5 of the 14th amendment that give us the right to enforce them.

What we are doing is legislating discrimination ourselves here. If he has a right to vote for the President of the United States, Senators, and Members of Congress, he has the right to vote for every other officer.

There is no double standard?

Mr. CELLER. You are talking about qualifications set forth by the States?

Mr. DELANEY. I am not talking about qualifications but I am talking about the Constitution and the right of the citizens. We are dealing not with Negroes or minorities or anyone else.

Mr. CELLER. What would you want?

Mr. DELANEY. We are dealing with citizens of the United States.

Mr. CELLER. What would you want? How would you want to phrase it? How would you phrase it?

Mr. DELANEY. You are asking me on the spur of the moment. I think you should enforce this. This is just one phase of this and if we are going to take that, that is one thing; but this is not answered, or not to my satisfaction.

This is creating a double standard. It is creating discrimination in the bill itself. You are doing this by making a double standard for a voter as to whether he can vote in national elections and not in local elections. I should think anyone would be ashamed to come up with that legislation.

Now let us go on to certain other points.

Mr. CELLER. I would say a last word on that. If you feel there should be changes, then include State elections in this. I would be perfectly agreeable to accept that if you want it in. You would have no double standard then. I do not think it is necessary but if you want to put it in, it is all right. I will accept it.

Mr. DELANEY. I am just thinking here that we are legislating and we have to legislate for all people on an equal basis. I cannot see, under any circumstances, where we can give one group greater rights than another, nor can we deny any group or any individual the rights he is entitled to. That means full rights.

If a man can vote certainly for top officers, he can vote for other officers. We should have legislation that would carry that out.

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Mr. CELLER. In 1957 and 1960, bills were made applicable to both Federal and State elections.

Mr. DELANEY. I recall in the 1957 and 1960 acts, I looked at the bill and I was not satisfied with many of the provisions. I said that to you because it came in in a hurry, much like this, and I asked whether the 1957 act will really carry out civil rights. You assured me it would.

Then in 1960, we came back with another bill and I asked you the very same question and you assured me it would.

Now we are back in 1964 with another bill and I suppose this bill does not completely carry out that?

Mr. CELLER. There is only one thing you should do under those circumstances, vote against this bill.

Mr. DELANEY. Do not tell me how I should vote. It is up to you to come in here with a bill that does not have discrimination in it. This bill is filled with it. Let us look at the title for schools if you want to look at something here.

I am not quiting here now but I do not want to take too much time and prolong this. There are so many things that I could go on for an hour or 2 hours.

I am now on title 4, schools, or a definition of a public school.

Public school means any elementary or secondary educational institution and a public college means any institution of higher learning or any technical or vocational school above the secondary school level operated by a State, subdivision of the State, or governmental agency within a State or operated wholly or predominantly from or through the use of Government funds or property or funds or property derived from a Government source.

That would make every private institution in the country a public school under this definition.

Harvard University in 1961, by their own standards, received 25 percent of their entire operating costs from the Federal Government.

Howard University, since the Civil War, has received grants from the Federal Government.

Then there is a university in New York City which received substantial grants over a long period of time.

The CHAIRMAN. What page is that?

Take every other college in the country and it is a public school under this definition.

Mr. CELLER. It must be wholly or predominantly—public school means any elementary or secondary educational institution, and public college means any institution of higher education or any technical or vocational school above the secondary level operated by a State, subdivision of a State, or governmental agency within the State, or operated wholly or predominantly from or through the use of governmental funds or property. Harvard and those places you mention are not operated wholly or predominantly.

Mr. DELANEY. From or through the use of Government funds. Do not leave out line 18. Operated wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from a governmental source. If I had surplus there and they have a right under the surplus rules, according to this——

Mr. CELLER. Those colleges you mentioned are not operated wholly or predominantly from or through the use of——

Mr. DELANY. You would say that 25 percent of the entire income of Harvard University would not be covered?

Mr. CELLER. No, that is not predominantly.

Mr. DELANEY. I disagree.

Mr. CELLER. It says wholly or predominantly.

Mr. DELANEY. Read the following section which says:

*** * * operated wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from a governmental source.**

Mr. CELLER. Must be wholly or predominantly.

Mr. ELLIOTT. Or funds or property derived from a governmental source.

Mr. CELLER. Wholly or predominantly from—

wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from a governmental source.

That relates to that.

Mr. DELANEY. I disagree there entirely. I think this language neds a great deal of clarification. I think predominantly or the other sections of it—it would seem to me in writing a law of this kind and guaranteeing the rights of the individual, as we do here under the 14th amendment—as a matter of fact, these three Civil War amendments, the 13th, the 14th, and the 15th, deal with voting rights. I believe they were all passed some time in 1860-something.

Mr. CELLER. It is the 15th amendment that speaks of voting rights.

Mr. DELANEY. That only deals with color or creed, I believe.

Mr. CELLER. It says that no State shall deny a man his right to vote on the basis of race, color, or previous condition of servitude. The 13th amendment speaks that there shall no longer be slavery in this country.

Mr. DELANEY. I will read it right here. The 13th amendment is just that neither slavery nor involuntary servitude, except as punishment for a crime for which the person shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction. That is the involuntary servitude.

Then we go down, and the real one is the 14th amendment. The 14th amendment is the one where we get all our rights. We have no reference whatsoever in the 14th amendment to race, color, or previous conditions of servitude.

Mr. CELLER. That has been interpreted that if there is not equal protection of the law, if a man is denied rights because of his color——

Mr. DELANEY. It undertakes to protect rights of all American citizens against discrimination by any of the individual States. That is the primary purpose. If you go on to the 15th amendment, the right of citizens shall not be denied or abridged because of race or color or previous condition of servitude. That more or less clarifies.

We base civil rights for all citizens on the 14th amendment principally, because that undertakes to protect the rights of the individual. We are interested in not the rights of any group, whether minority groups or anything else, but the citizens. If they are citizens, they are entitled to all the rights, not part of them, absolutely all of them. There can be no discrimination. They are entitled to vote for every candidate on that ticket or they are not entitled to vote at all.

I should think these things should all be clarified before we take this bill. I think a few hours sitting together would clarify a great many of them.

Mr. CELLER. I will be glad to go over it.

Mr. DELANEY. I have read some of the minority reports here, and I think some of the minority reports—one by Mr. King, one by this gentleman here, Mr. Meader, I think they have some excellent points and they are not members of my party, but they hit the nail on the head in two or three of the items.

As I remember from hurriedly reading through these reports, Mr. Meader had some good points and so did Carleton King, I think it was Carleton King of New York, and two or three others whose names slip my mind at this time.

Mr. CELLER. I will be glad to consider all these statements that you made, and if there are any changes required——

Mr. DELANEY. I want this for my own satisfaction. Is there anything here that would affect the rights of labor in any manner?

Mr. CELLER. Yes; the FEPC would affect rights of labor if unions discriminate.

Mr. DELANEY. Has labor testified on this?

Mr. CELLER. Labor approves this bill in its entirety and particularly the FEPC. Mr. Meany testified and Mr. Reuther testified.

Mr. DELANEY. Is there anything in this bill that would affect the school lunch program?

Mr. CELLER. No, sir.

Mr. DELANEY. In no manner? How about title 6?

Mr. CELLER. In title 6, in the parceling out of lunches, if there is discrimination and they give a lunch to a white child and not to a Negro, that is discrimination.

Mr. DELANEY. Of course, it is discrimination.

Mr. CELLER. The act would apply.

Mr. DELANEY. Is not discrimination the basis of this entire piece of legislation?

Mr. CELLER. That is right.

Mr. DELANEY. Discrimination and not desegregation except desegregation is something you use to clarify discrimination?

Mr. CELLER. That is correct.

Mr. DELANEY. It would seem to me to clarify the whole thing, that "discrimination" would be, just in my humble opinion, a better word because it would leave no element of doubt in the mind of anyone. But that is just the opinion of one person.

We have "discrimination"; this is the rights of all citizens. We recognize the parental rights of parents to send their children to a school of their choosing. There are many States that have discriminatory statutes over a long period of time. It does not touch on that.

Mr. CELLER. It does not touch parochial schools.

Mr. DELANEY. I am not talking about parochial schools.

Mr. CELLER. To what schools do you refer?

Mr. DELANEY. I am talking about the protection of the parents under two sections of the law and under two decisions of the U.S. Supreme Court. That part is left out.

Mr. CELLER. We do not touch that at all.

Mr. DELANEY. You have just as much a duty to enforce that as you have any of these other rights, because that is the rights of a citizen under the 14th amendment.

Mr. CELLER. We do not mention that.

Mr. DELANEY. I say you do not mention that. That is neglected. Are we going to take that up? In about 45 of the States we have discriminatory legislation from a State standpoint on parental freedom, the freedom of parents to send their children to school. That is a civil right, recognized by two decisions of the U.S. Supreme Court, including the 14th amendment, and still nothing is mentioned.

Mr. CELLER. In other words, whatever those laws are, they are left intact and unmolested.

Mr. DELANEY. They are discriminatory. Under this statute the same, it is applicable in the same manner in section 5 of the 14th amendment as the voting rights or any other rights, because it deals with the rights of a citizen. I do not find anything in here to protect the rights of parents.

Mr. CELLER. We do not touch that. If you feel that should be touched, an amendment could be offered and acted upon.

Mr. DELANEY. Of course, to go into this thing would take weeks and months, because what I am trying to do is possibly point out some of the defects here. There is no use in passing legislation if we are going to bring action, as happened in some of the last bills, and then after a long period of testing in court, find out they are unconstitutional.

Tell me another thing. Does this bill change any existing law?

Mr. CELLER. We supplement the 1957 and 1960 acts.

Mr. DELANEY. What about the Ramseyer rule? Page 33.

Mr. CELLER. We have the Ramseyer rule on page 33.

Mr. DELANEY. It conforms with the Ramseyer rule?

Mr. CELLER. Yes, sir, it conforms.

Mr. DELANEY. You have everything there?

Mr. CELLER. It is set forth there.

Mr. DELANEY. In the Ramseyer rule?

Mr. CELLER. Yes; page 33 and following.

Mr. DELANEY. As far as the courts go, when they appeal to the court, that does not mean trial by jury; does it?

Mr. CELLER. No. It is purely a civil relief.

Mr. DELANEY. Civil relief, and that would consist of a judge or three judges?

Mr. CELLER. The appeal to the district court for a violation, if there is a contempt citation and the judge invokes a penalty of more than 45 days and/or more than $300, then the defendant or the one guilty of contempt could ask for a trial de novo in the district court before a jury.

Mr. DELANEY. That is in this law, too?

Mr. CELLER. Yes, sir; it is in the 1957 act.

Mr. DELANEY. This carries over under the provisions of existing law?

Mr. CELLER. Yes, sir.

Mr. DELANEY. All right.

The CHAIRMAN. Mr. Avery.

Mr. COLMER. Mr. Avery, would you yield to me for one question?

Mr. AVERY. With pleasure and honor would I yield to my friend from Mississippi.

Mr. COLMER. I would like to get the record straight, if I may, about a colloquy between the distinguished chairman and myself earlier about the qualification for electors and following the line of Mr. Delaney's questioning.

As I understood the gentleman this morning in response to my question, he just wiped it all off by saying that my contentions about the constitutional provisions for electors, voters, were wiped out by the 14th amendment on the theory, I assume, that it was a later amendment to the Constitution and, therefore, became a part of it. Is that correct?

Mr. CELLER. A later amendment?

Mr. COLMER. That the 14th amendment nullified those prescriptions there that the Members of Congress, both House and Senate, and the electors for presidential electors should be the same, qualifications should be the same as those for the most numerous branch of the State legislature.

Mr. CELLER. The qualifications are ordinarily fixed by the State. Under article I, section 2, that is. Literacy test, as I indicated or tried to differentiate, was a qualifiaction. The poll tax was not a qualification. It was on the question of poll tax that we were dilating on at that time.

I felt a poll tax was not a qualification. Therefore, there was some question whether or not we should have the poll tax amendment taking the constitutional route or the legislative route.

Mr. COLMER. We disagreed, of course, on that. I took the obvious position that the poll tax was just as much as any other, literacy test or anything else, it was a qualification. The gentleman disagreed.

The gentleman then summed it all up, as I recall his testimony, by saying that the 14th amendment came later and, therefore——

Mr. CELLER. I did not mention anything later. We were talking about the 15th amendment, and that provides that no State can discriminate on the question of voting on the grounds of race or religion, and the Congress shall have the power to make appropriate legislation to carry out that intention. That is a broad, sweeping power, and in all this it must be considered and must be weighed.

Mr. COLMER. All right. We will take the 15th amendment. How does the gentleman then account for the fact that under the 17th amendment, when Senators were to be elected by popular vote as against changes before——

Mr. CELLER. The 17th amendment is exactly in that respect like article I.

Mr. COLMER. Exactly.

Mr. CELLER. You cannot consider those in a vacuum, you have to consider them in connection with the 14th amendment and the 15th amendment.

Mr. COLMER. I am not talking about a vacuum. I am talking about the 17th amendment, which was later than the 14th and the 15th, and the same qualifications were brought forward.

Mr. CELLER. I would not say any later enactment carries any kind of repeal. They are all upon a parity, every article of the Constitution.

Mr. COLMER. Then the 14th and the 15th did not have any effect upon the earlier——

Mr. CELLER. I did not say "would not have any effect," but it did not repeal it.

Mr. COLMER. The gentleman is too elusive for me. I quit. That is all. Thank you, Mr. Avery.

Mr. AVERY. I might say to the gentleman from Mississippi that I had a question in conformity to or apropos at least to his line of questioning. As a nonlawyer, I am not in a position to debate the constitutionality of or the philosophical reasoning behind all these things. I would like to again reduce this down to specifics on voter qualifications.

The gentleman from New York may recall we had a brief colloquy about this the other day. Under the language of the bill, I think we were agreed that as far as voting for the President and the Vice President, Senate, Members of Congress is concerned, this was crystal clear in the bill, that any person generally qualified could not be prevented by State law from voting for these particular offices. This is in one context.

I think we were also agreed that for local and State elections held on a separate day at a separate time, that this bill would not apply and the State in turn would set the elector qualifications.

Mr. CELLER. That is right.

Mr. AVERY. We got into a kind of gray area here talking about the election being held on the same day. The gentleman from New York, I believe, if my memory serves me properly, said that if they were on the same ballot—I am not quite sure what that means. Does the gentleman mean one piece of paper?

Mr. CELLER. On a voting machine or on the same ballot. You could not apply a double standard. The effect of that would be——

Mr. AVERY. I agree with the gentleman. I think there is some misunderstanding or at least some confusion if we are voting on the same day and at the same place and at the same time under the same election board.

Mr. CELLER. That is right. To get away from that, I think it was Virginia which recently passed a statute concerning the poll tax, that in order to get the poll tax they provided that certain elections for State offices should be on a day different from the elections for Federal office.

Mr. AVERY. I think Virginia has had their State elections on a different year even than the national.

The CHAIRMAN. Yes, we anticipated all this.

Mr. AVERY. As usual, Virginia is way ahead of the rest of us. They made their intention pretty clear. What I want to come back to is this. I think it is extremely important that when this bill goes to the floor, which I presume it ultimately will, that the committee should clear up this matter of elections, State and Federal elections, on the same day, at the same place, under the jurisdiction of the same election board, just merely because they are on separate ballots, whether or not that would preclude the application of this bill.

As a nonlawyer, the gentleman from New York has not made this very persuasive to me. I have my feelings about this. This is no issue in my State.

Going to title 2, the gentleman from New York said in relation to hotels that any facility that was housed within the same building, maintained primarily, I believe he said, for the convenience of guests of the hotel, would be covered by this bill. This becomes of concern to me because I think the only thing this bill has that Kansas does not have would be liquor stores. Liquor stores are not desegregated under Kansas law.

Now, if there is a liquor store in a hotel——

Mr. CELLER. Bars and grills are not covered, you say. You mean package stores?

Mr. AVERY. Package stores. In Kansas we have no bars and grills. I merely cite Kansas for illustration.

Mr. CELLER. Retail establishments are not included.

Mr. AVERY. That is not what the gentleman said the other day. He said if they were housed in the hotel facility——

Mr. CELLER. For example, if there was anything in the hotel where they catered to the patrons of the hotel, like a barbershop, manicurist, beauty parlor, et cetera, if they cater to the patrons of the hotel, they would be included. I do not think a package store would come under that, would it?

Mr. AVERY. Specifically let me ask my question. If they are in the same building as the hotel, they are tenants of the same management, but they have no lobby access.

Mr. CELLER. It would not be covered.

Mr. AVERY. They would not be covered?

Mr. CELLER. Would not be covered.

Mr. AVERY. This clears up the record. I do not know of any particular concern except that the record should show it.

Under the same title, on page 45, bona fide private clubs are among those that are exempted from the application of this bill. What is a bona fide private club? What does "bona fide" mean?

Mr. CELLER. The Metropolitan Club in this town would be a bona fide private club. I take it a golf club would be a private club.

Mr. AVERY. Do really the words "bona fide"—as a nonlawyer I thought lawyers kind of shied away from that.

Mr. CELLER. These bunnies, whatever they call them, they allege they are private, but it is open, more or less, to the public.

Mr. AVERY. I would have to yield to one of my colleagues who has membership in that.

The CHAIRMAN. Is it not defined as a club exempted under the law from taxation, or something?

Mr. CELLER. No; nothing like that.

Mr. SISK. How about the Gaslight Club?

Mr. CELLER. Does it cater to the public?

Mr. SISK. It has members.

Mr. AVERY. I would like to be in on this colloquy if these questions are in reply to mine. I would like to hear the response.

Mr. CELLER. Are you speaking about the Gaslight Club?

Mr. AVERY. I did not mention the Gaslight Club.

Mr. CELLER. What club are you mentioning?

Mr. AVERY. I am mentioning the words "bona fide."

Mr. CELLER. I said that a private club that does not cater to the public, that you could not go in there off the street and get a meal or

use the facilities of the club, and they have a roster of members, there are initiation fees, membership dues; that is a bona fide club.

Mr. BROWN. Would the gentleman yield?

Mr. AVERY. Yes.

Mr. BROWN. Would that apply to the Quorum Club?

Mr. AVERY. Since we have kind of framed this question, I want to direct a specific question. There is a leading chain of motels throughout the Middle West that usually have a private club facility which for $1 extra for their nightly guests they will be permitted access to this private club. This goes back to the statement I made a while ago because Kansas does not have open bars. This may have something to do with that arrangement, but I am not sure.

Would a facility like that, maintained by a motel, being available to their guests for a dollar extra premium, I understand, would such a club as that be covered by this bill?

Mr. CELLER. I think it would be covered by the bill, not by the exception. That is not a private club.

Mr. AVERY. This is my question.

Mr. CELLER. This is not a private club because anybody could go in, pay the dollar——

Mr. AVERY. The chairman is making the direct statement that it would be covered by the bill?

Mr. CELLER. Yes, sir.

Mr. DELANEY. 45, section (e):

> 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 (b).

Mr. AVERY. You are agreeing with the chairman?

Mr. DELANEY. I am not agreeing with anyone.

Mr. AVERY. My only concern is that this record be made clear so that subsequently all persons involved, be they patrons or be they members of the judiciary, will know precisely what the eminent chairman of the House committee had in mind when he devised these terms.

Just one final question, if I may impose on the indulgence of the gentlemen at each end of the table. I am not sure that I was reassured the other day from the line of questioning of the gentleman from Virginia and the gentleman from New York on the effect of Federal agency programs as to what precisely was the formula that applied for being eligible or determined to be noneligible.

Let us take the school impact program, for instance. Are we talking about the beneficiary or the recipient?

Mr. CELLER. Are you talking about title 4?

Mr. AVERY. Title 6. I think it makes a difference if we are talking about the beneficiary or the recipient of such Federal aid.

Mr. ELLIOTT. What is the gentleman's distinction?

Mr. AVERY. Beneficiary or recipient. There is quite a bit of difference. If we are talking about the recipient, it would seem to me we are talking about the school board, or whatever supervisory jurisdiction might exist. The beneficiary is not the board. The beneficiary would be the students or the taxpayers possibly, or somebody else.

Supposing in its impacted area we have a school that is not segregated but they have a school lunch program. A question arises as

to whether or not they have fully considered the qualifications of an applicant to work on the school lunch program, and the person who is not accepted alleges they are discriminating against him.

Mr. CELLER. There is a discrimination in the distribution of the school lunch?

Mr. AVERY. No; a dishwasher—put it down to something we all understand. Suppose somebody applies for a position as a dishwasher for a school lunch program.

Mr. CELLER. It has nothing to do with title 6. That would come under FEPC.

Take another case of a farmer under an acreage allotment.

Mr. AVERY. We threshed that out pretty well the other day, which is why I wanted to keep this in a different context. The gentleman is stating clearly for the record that the application of this title would apply only insofar as these students are concerned?

Mr. CELLER. Only apply with reference to the program or activity. That is, the activity or program would be the school lunches.

Mr. AVERY. We are not subsidizing school lunches under the Federal impact program, we are subsidizing the school. I would like a direct statement for the record that we are considering only under this title the policy of the board as far as integration of the students per se.

Mr. CELLER. That is all. We would do nothing to interfere with the carrying out of the program or the activity. For example, if they discriminated as to a dishwasher, that has nothing to do with the activity or the program, despite the fact that the recipient of the aid under the program or the activity does discriminate in employment.

Mr. AVERY. Let me restate my question. I wish you would agree or disagree and not restate my premise. This title applies only to the policy of the management of the school as far as students are concerned?

Mr. CELLER. That is correct.

Mr. AVERY. It has no relation to other employees of the facility?

Mr. CELLER. None whatsoever.

Mr. AVERY. I thank the gentleman.

Mr. CELLER. It might come under the fair employment practices.

Mr. AVERY. I limited my question to this title of the bill so it would eliminate these fringe considerations.

Mr. CELLER. That is right.

The CHAIRMAN. Let us take the other side of this coin now. That discussion was relative to an integrated school, that is what you asked?

Mr. AVERY. Precisely.

The CHAIRMAN. Suppose it is a segregated school. Would benefits under the free lunch program be cut off?

Mr. CELLER. Yes.

The CHAIRMAN. Somebody said yes; a couple of people said no.

Mr. CELLER. I say yes; it would be cut off.

The CHAIRMAN. I think we ought to know where we are going on this bill.

Mr. CELLER. I say it would be cut off.

The CHAIRMAN. That is something that has never been done so far.

Mr. CELLER. I do not know.

The CHAIRMAN. It has never been attempted to be done before.

Mr. CELLER. I would say this——

The CHAIRMAN. Segregated schools would not, under this provision be entitled to benefit from the school lunch program?

Mr. CELLER. It would not be entitled——

The CHAIRMAN. Yes or no?

Mr. CELLER. The answer is that they would not be entitled, no, no.

The CHAIRMAN. Cut out?

Mr. CELLER. I think efforts would be made to do everything to see to it—we would make efforts to see that there would be no discrimination so that innocent people would not suffer.

The CHAIRMAN. If this law passes as it is written, segregated schools in the country would be deprived of the benefits under the school lunch program?

Mr. CELLER. Yes, sir.

Mr. AVERY. Let us take that back to the farmer.

The CHAIRMAN. We have got it straight.

Mr. AVERY. Yet us take the farmer again, for instance.

I think this is a very proper question to follow.

Supposing, for the sake of argument, we have this case:

It is inconceivable that a farmer would be segregated because he is a single, owner-operator and so segregation would be impossible, but supposing——

Mr. ELLIOTT. Does the gentleman mean integration? Does he mean segregation or integration?

Mr. AVERY. He would not be segregated because he is a single owner. We assume that to be true.

Mr. ELLIOTT. Would it be the same either way?

Mr. AVERY. I would think so.

I wanted to add another thing to this.

What did the gentleman reply to the gentleman from Virginia the other day to the question if you used migratory help and he has segregated housing facilities for that migratory labor?

Mr. CELLER. Would he be cut off from an acreage allotment?

Mr. AVERY. Diversion payments or any other Federal subsidy.

Mr. CELLER. He would not.

Mr. AVERY. He would be the recipient and the beneficiary in this case?

Mr. CELLER. Yes; but he is not practicing——

Mr. AVERY. He is the recipient?

Mr. CELLER. The agency is the recipient. The agency gets the funds from the Federal Government.

The CHAIRMAN. The beneficiary. The agency is not the beneficiary, but just the means of distribution.

Mr. AVERY. The farmer is the beneficiary and the recipient in this case. I think this committee needs to know and the record ought to be unmistakably clear——

Mr. CELLER. What is your question now? What does the farmer get?

Mr. AVERY. If a farmer uses migratory labor or other labor—and I use the term "migratory" to illustrate my point—and maintains segregated facilities for feeding and housing that migratory labor, would he thereby disqualify himself for any payment from the Department of Agriculture?

Mr. CELLER. I do not think he would disqualify.

Mr. AVERY. Would?

Mr. CELLER. He would not.

The CHAIRMAN. Why not?

Mr. CELLER. He would not because what he does is not embraced within the program or activity to any recipient.

Mr. AVERY. Frankly, I do not care whether he is or is not, but I think we ought to know.

Mr. CELLER. He is not.

Mr. AVERY. If it is the gentleman's opinion and the committee's opinion and conclusion, the bill should specifically so state because I think it is very ambiguous under the present language.

Make it so either way, but so it is clear.

Mr. CELLER. If he practiced discrimination——

The CHAIRMAN. The law says beneficiary. The beneficiary would suffer.

Mr. AVERY. The farmer is more specifically in perspective than the case of the school district?

Mr. CELLER. Ordinarily it is the agency that is carrying out the program that is the recipient.

Let us take the acreage program I mentioned before.

Mr. AVERY. All right.

Mr. CELLER. The farmer can get certain funds from withholding land from farming.

Mr. AVERY. Diversion payment, they call it.

Mr. CELLER. I beg your pardon?

Mr. AVERY. Diversion payment, they call it.

Mr. CELLER. Diversion payments. That is the program where if the farmer, in turn, discriminates with his farmland, or with his farmhands, and refuses to employ Negroes and so forth, he is not affected by receiving these diversion payments. These payments are under the acreage program. He can receive it because it is not his discrimination as far as he is concerned. This has nothing to do with the program or activity.

Mr. AVERY. With the program, except amendments to that effect on the floor?

Mr. CELLER. I will be glad to accept any clarifying amendments, certainly.

Mr. AVERY. Either way?

Mr. CELLER. I will be glad to confer with the gentleman later on and if it needs clarity, I would be the last man to avoid clarity.

Mr. AVERY. My final question is this: If this bill should come back from the other body with FEPC stricken, and public accommodations stricken, how would the gentleman counsel us to vote on the bill?

Mr. CELLER. I would have to take it with my committee.

Mr. AVERY. This was a personal opinion I was asking for.

Mr. CELLER. I would want to keep it in the bill but I would have to bow down to the wishes of my own committee on a matter of that sort. I would not act on it. It is too important for me to act on it alone.

Mr. AVERY. We rely on the gentleman for guidance on all of these matters.

Mr. CELLER. I do not think, as the chairman, I should be compelled to do other than confer with my committee members on a matter as important as that.

Mr. AVERY. It would be good public relations. I do not know that you should be compelled to.

Mr. CELLER. I should morally.

Mr. AVERY. You made quite a contribution toward carrying on——

Mr. CELLER. I would not want to take any action of that kind without conferring with my colleagues on a matter as important as that.

The CHAIRMAN. Mr. Celler, I hoped to get through with you this afternoon.

Do you have any questions, Mr. Bolling?

Mr. BOLLING. No questions.

The CHAIRMAN. Mr. Elliott?

Mr. ELLIOTT. Yes, I have some questions.

The CHAIRMAN. We cannot finish this afternoon.

Mr. YOUNG. I have no questions, Mr. Chairman.

The CHAIRMAN: Do you have any questions?

Mr. SISK. Yes, I wanted to question Mr. Celler on title 7.

The CHAIRMAN. I do not think that will take too long. You said it was not convenient for you tomorrow?

Mr. CELLER. I will naturally wait until each gentleman is ready. I will be glad to wait.

Mr. MADDEN. How long?

The CHAIRMAN. Not this evening, because I will not.

Mr. CELLER. We might be able to finish shortly.

The CHAIRMAN. Could we get you back say the next day and then go on with Mr. McCullough tomorrow?

Mr. CELLER. Could I finish tonight? It probably will not take long.

The CHAIRMAN. I am compelled to go because I have got to go over slippery roads and attend another meeting at 7:30. I would like to get a little something to eat before then.

Mr. CELLER. I have a bill coming on the floor tomorrow and that is the trouble.

The CHAIRMAN. Get Mr. McCulloch tomorrow and then we will come to you at a later time.

Mr. BROWN. His bill comes up at noon. Can you be here in the morning?

Mr. CELLER. No. I have a meeting. I have to go before the Administration Committee tomorrow.

The CHAIRMAN. Could we get you back here at some convenient time?

Mr. CELLER. It is my understanding I have to be questioned by just two members, Mr. Elliott and Mr. Sisk.

Mr. SMITH. Mrs. St. George is not here this afternoon and I do not know if she has any questions.

The CHAIRMAN. Gentlemen, we will meet tomorrow morning at 10:30 when Mr. McCulloch will be on the stand.

(Thereupon, the hearing was adjourned at 5:10 p.m.)

CIVIL RIGHTS

WEDNESDAY, JANUARY 15, 1964

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RULES,
Washington, D.C.

The committee met at 10:30 a.m., in room H–313, the U.S. Capitol Building, Hon. Howard W. Smith (chairman) presiding.

The CHAIRMAN. The committee will be in order.

We shall resume the hearings on H.R. 7152, the civil rights bill.

Mr. McCulloch, we shall be glad to hear from you.

STATEMENT OF HON. WILLIAM M. McCULLOCH, REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. MCCULLOCH. Mr. Chairman and members of the committee, I am pleased to have the opportunity to come before the committee this morning.

I have first a prepared statement which I should like to have your permission to read, and then I shall try to answer any questions that any member might have.

The CHAIRMAN. You may proceed as you like.

Mr. MCCULLOCH. Mr. Chairman, the bill now before the Rules Committee may be correctly and generally described as comprehensive in scope but moderate in application. There are no primary criminal sanctions provided in the legislation. A sincere effort has been made to eliminate from this bill all provisions which improperly invade personal liberties and the rights of States and localities. Similarly, efforts have been made to surround each title with judicial safeguards and administrative limitations in order that fundamental rights and liberties be protected. Undoubtedly, other amendments or limitations could be made from the vantage point of hindsight. Perhaps such amendments or limitations will be in order in the House or in the other body. But, the bill before you is basically a good bill and a bill that faces a pressing need for enactment.

There is considerable agitation for civil rights legislation from certain quarters on the ground that unless legislation is enacted there will be rioting in the streets, heightened racial unrest, and the further shedding of blood. This kind of activity, in my mind, is improper behavior and could do much to retard the enactment of effective civil rights legislation.

After the tragic death of President Kennedy, one would assume that certain uncontrolled groups would recognize the futility of riotous behavior.

No people can gain liberty and equality through storm troop or anarchistic methods. Legislation under threat is basically not legislation at all. In the long run, behavior of this type will lead to a total undermining of society where equality and civil rights will mean nothing.

I am sure all the members of this committee read within the last day or two of planned marches on the State capital in Albany, N.Y.

Behavior of this type also creates the false sense of hope that once legislation is enacted all burdens of life will dissolve. No statutory enactment can accomplish that.

Intelligent work and vigilance by members of all races will be required for many years before inequality completely disappears. To create hope of immediate and complete success can only promote conflict and brooding despair.

Not force or fear, then, but belief in the inherent equality of man induces me to support this legislation.

I believe in the right of each individual to have guaranteed his constitutional rights and to shoulder the burdens of citizenship. But, I also believe in the obligation society owes to each citizen to afford him equality of opportunity.

I believe in the right and the responsibility of State and local authority to be primarily responsible for the conduct of all but limited areas of governmental activities which it cannot do alone. But, I also believe in the obligations of State and local governments to ever work for the common good.

I believe in the effective separation of powers and in a workable Federal system whereby State authority is not needlessly usurped by a centralized government. But, I also believe that an obligation rests with the National Government to see that the citizens of every State are treated equally without regard to their race or color or religion or national origin.

Where, then, individuals or governmental authorities fail to shoulder their obligations, and only stress their rights, it is the duty of the Congress, under constitutional authority, to help correct that wrong. To do otherwise would be to forego our responsibility as national legislators and as human beings who honor the principles of liberty and justice.

No one would suggest that the Negro receives equality of treatment and equality of opportunity in many fields of activity today. Well-informed persons everywhere admit that in all sections of the country—North, South, East, and West—the Negro continues to face some barriers of racial intolerance and discrimination. Hundreds of thousands of citizens are denied the basic right to vote, the very conerstone of representative government.

Thousands of school districts remain segregated. Decent hotel and eating accommodations frequently lie hundreds of miles apart for the Negro traveler. Parks, playgrounds, and golf courses continue to be off limits to Negroes whose tax moneys go to support them. Surplus agricultural supplies, State employment agencies, and vocational training programs continue to be operated in a discriminatory manner. These, and many more facts, point the way toward the need for additional legislation.

I have prepared a short analysis of H.R. 7152 which I have distributed to the members of this committee. I need not, then, dwell on the contents of the bill in detail, but I do wish to stress that what we seek to accomplish through enactment of this bill is a legal and moral climate of fairness and first-class citizenship for all Americans.

In voting, the foundations of our Republic are enhanced by a free elective franchise. In public accommodations, the economy of our country and the enjoyment of its people are bolstered. In equal protection of our laws, the principle of justice is secured. In education, the superiority of our citizens and of our Nation is assured.

I need not remind the members of this committee what those far-seeing early statesmen said in the Ordinance of 1787 concerning education.

In employment and Federal assistance, the opportunity and well-being of each individual is advanced and the taproot of the country's economy is strengthened. In every one of these categories, we will be doing ourselves, as well as our Nation, a lasting service by enacting H.R. 7152.

I recognize that arguments have been raised concerning the constitutionality of certain titles of this bill. Whether we all concur or not in the evolution of the law as it has developed at each step, I believe the Constitution, as presently interpreted by the courts, supports each title in the bill before you. Congress has already acted in the field of voting. The Supreme Court has already stricken down segregation in public education and publicly operated facilities. The enactment and court interpretations of the Sherman, Taft-Hartley, Food, Drug, and Cosmetic, and Fair Labor Standards Acts, among others, have provided the legal support for the public accommodations and equal job opportunity titles under the interstate commerce clause of the Constitution. And the Federal Government, through Congress, readily has the authority pursuant to the 14th amendment to withhold Federal financial assistance where such assistance is extended or withheld in a discriminatory manner.

The fact, moreover, that some 32 States, and I think that number is significant, have enacted public accommodations laws (frequently broader in scope, with penalties built in, than in title 2 of the bill), and 25 States, half of them, if you please, have enacted fair employment legislation, and many States have enacted other sweeping civil rights provisions, clearly demonstrates that Congress will not be invading privacy, overturning the sanctity of private property, destroying personal liberties, or in other ways acting in an illegal manner.

I could name some of the States that have far stronger civil rights legislation, many States represented by the distinguished members of this committee, than that which is before you for consideration.

Certain provisions in the bill, and I am sorry to say they have had wide attention throughout the country by many able people, but they are not in the bill before you, were reported by the subcommittee of the Judiciary Committee, and that was the legislation which was so broad and so sweeping and so harsh that the Attorney General had to come before our committee, and in executive session say in effect "You just can't do that."

I think that some of those provisions were clearly unconstitutional. They were fought by members of the committee every step of the way, and I am pleased that the Attorney General of the United States came

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before the Judiciary Committee in executive session and pointed out the error of our ways.

The permission of persons to vote, for example, on the mere word of the Attorney General was probably an illegal provision of that nature. That is not in the bill before you. So, too, were the provisions concerning the elimination of racial imbalance which has disturbed so many people almost everywhere, and the control over private institutions such as banks and mortgage companies merely because they were insured by the Federal Government.

I cannot stress too strongly, ladies and gentlemen of this committee, that the information that has been so widely disseminated concerning that particular action which was considered before the Judiciary Committee is not in the bill before you in any shape or form.

Other provisions were similarly of an objectionable nature, and they, I am happy to say, were eliminated.

The bill which was favorably reported to the House, and which this committee is considering, is, as I have said, reasonably moderate and in my opinion constitutional. Admittedly changes have been made which were not fully debated by the full Committee on the Judiciary. However, the committee did spend months, measured as we measure time, taking testimony and amending language on the principal titles, either as they now stand or in a closely related fashion.

Therefore, Mr. Chairman and members of the committee, I urge this committee to grant a rule on H.R. 7152 in order that we may proceed to legislate in an orderly fashion and that we may proceed to consider and finally determine the wishes of the Congress in one of the most pressing domestic problems before the Congress of the United States, and which will not leave us, if I may use the slang expression, by sweeping it under the rug.

Mr. Chairman, that concludes my formal statement.

The CHAIRMAN. We were interested somewhat in what is in the bill. I expected you in the statement to stick to the contents of the bill.

Mr. MCCULLOCH. I was here throughout the testimony of the chairman of the committee on Thursday and I have a résumé of the testimony of yesterday. His description initially, together with the amplification thereof, and modifications where needed, was substantially in accordance with each title and provision in this legislation, and for that reason I think it would be largely repetitious for me to go over it.

I repeat: I shall be glad to be questioned on any matters that remain not specific and definite in the minds of any member of the committee.

The CHAIRMAN. There are a great many matters that remain not specific and definite in the minds of many members of the committee. I hope you can enlighten us.

I shall proceed to ask you a few questions about it.

Mr. MCCULLOCH. I should be delighted.

The CHAIRMAN. In the first place: How did this bill get out of the committee? There has been a good deal of discussion about that. You were present when that took place.

Before I ask you that, the parliamentary situation here is that we really have before us a bill, 7152, which was denominated as the President's bill, and the one which I believe he sent in the message already prepared to the Congress. Is that correct?

Mr. McCULLOCH. In the form that is now before you?

The CHAIRMAN. No.

Mr. McCULLOCH. No; you do not have the President's bill.

The CHAIRMAN. When we get to the floor of the House, if unfortunately we do, when we get there we will begin consideration of the bill which was originally introduced; H.R. 7152, will we not?

Mr. McCULLOCH. I think that would be the proper way to proceed.

The CHAIRMAN. Then at the appropriate time somebody will offer, I assume, this bill which we have been talking about, this substitute bill which is the final substitute which your committee recommends. That is what we are talking about, the substitute bill which will be offered as an amendment.

Mr. McCULLOCH. That is right, sir.

The CHAIRMAN. Of course, there has been a great deal of newspaper and other publicity about it and we have been urged to pass the President's bill. As a matter of fact, this, what you call a moderate bill and a compromise bill, has three titles in it that never were in the President's bill. Is that correct?

Mr. McCULLOCH. Certainly at least two.

The CHAIRMAN. Three.

Mr. McCULLOCH. But, Mr. Chairman, I should like to say that the late great President Kennedy in separate messages advocated the enactment of at least two of those titles, certainly the fair employment opportunities titles, and I think it is safe to say that he did not include it in his original omnibus bill because of the possibility that it might retard the progress on the other titles.

The CHAIRMAN. What happened to make him change his mind? Could it have been the fact related by the chairman of the Committee on Education and Labor, Mr. Powell, his statement that he went down to the White House the night before and rewrote the bill?

Mr. McCULLOCH. Mr. Chairman, I do not know anything about that. I would not attempt to speak for the late President unless I had been present when observations and statements were made.

I might say, however that the "Fair Employment Opportunities" title had the support of a majority of the Judiciary Committee of the House of Representatives and was reported out by a majority vote.

The CHAIRMAN. As the rest of the bill was.

I will come back to the other question. There has been a good deal of talk about how this bill was drafted, who drafted it, and so on. Did you take part in the drafting of the bill?

Mr. McCULLOCH. Mr. Chairman, I was in attendance in the Judiciary Committee subcommittee which considered this legislation and every title that is in this bill for many, many hours, probably as many as over a period of 15 days, and some of this legislation has language which I proposed; some of it has language which I opposed, but a majority of the committee at one stage of the proceedings or the other, down to the time the bill was reported to the House, supported the legislation which was brought to a vote.

The CHAIRMAN. We have been trying for several days to get an answer as to who wrote the bill. It came up here very suddenly, you know, one morning, and put through the committee the same day without any discussion. Were you the author of this?

Mr. McCULLOCH. I was one of the authors. Mr. Chairman, I began to be one of the authors of this legislation as long as 365 days ago. Some several members of the Judiciary Committee joined with me in my office in preparing broad and comprehensive and effective civil rights legislation which culminated in the introduction of the first bills on civil rights in the 1st session of the 88th Congress, on, as I recall it, the 31st day of January.

Some 37 or 38 Members—I am advised it was 40. I never like to exaggerate. I am advised that 40 Members joined with me in introducing that legislation.

That legislation had a voting title and it had an educational title and it had also a fair employment practices title, civil rights extension title.

I have no hesitancy in telling this committee that I am one of the prime movers in insisting that the Civil Rights Commission be given an indeterminate life, a permanent life, if you please, because it is my firm opinion that civil rights, the rights of citizens in this country, are not going to be completely effectuated by any legislation that is passed this year, and it will serve a useful purpose to have an able, unprejudiced Civil Rights Commission looking into conditions where basic rights of citizens are being violated or are alleged to be violated.

The CHAIRMAN. And the President's bill originally provided for the expiration of that Commission in 1967. Now, then, you overrode the President and you were the author of the provision making it permanent?

Mr. McCULLOCH. I didn't override the President. I suggested that the Commission have a permanent life. There were enough votes in the committee to follow the suggestion that the title now provides for.

The CHAIRMAN. Of course, the committee never got a chance to consider it.

Mr. McCULLOCH. Mr. Chairman, yes, the committee did have that authority, if I may respectfully say so.

In the first place, the 11 members of the subcommittee which spent so many days on this legislation considered that proposal at great length, and furthermore, since now the chairman has authorized discussion of what happened in executive session, that title was discussed when the Attorney General was before the committee.

The CHAIRMAN. This bill was never referred to the subcommittee or discussed by the subcommittee. I am talking about the specific bill now. This language differs from others. There are many things in this that were not in the other.

Mr. McCULLOCH. The title on the permanency of the Civil Rights Commission was not changed and that is what I was speaking about at that particular point.

If you want to go into another field, the subcommittee also discussed the very words that are in this bill on the equal job opportunity title because, as the chairman so well knows, that bill came to us from the Committee on Education and Labor, and the subcommittee considered it at length; George Meader, of Michigan, offered an amendment which would make effective this title of the law only after a suit was filed in the Federal court and a decision had thereon.

That was discussed in subcommittee and that was discussed when the Attorney General was before the committee in executive session.

The CHAIRMAN. And that FEPC, Fair Employment Practices, never was put into this bill until after Mr. Powell had reported it out of the Committee on Education and Labor and had failed to get a rule on the bill. Is that right?

Mr. MCCULLOCH. This proposal was considered long before——

The CHAIRMAN. I am not asking when it was considered. It was not put in the bill until——

Mr. MCCULLOCH. I understand that he did not get a rule and I understand that it was in accordance with majority leadership that that bill came to our committee.

I want to say, Mr. Chairman, that that title was not suggested by the member from Ohio who now is testifying, although I want to say to you, Mr. Chairman, we have strong legislation in that field in the great State of Ohio now and it has caused no great disruption that I know of at all.

The CHAIRMAN. Well, I still have not found out if you wrote this bill.

Mr. MCCULLOCH. Mr. Chairman, I assisted in writing this bill, staff people on the Judiciary participated in redrafting this bill, duly constituted and appointed and confirmed people in the Department of Justice helped write the bill, the same general people who often help in writing difficult technical bills which are considered by the Judiciary Committee. We get ability wherever we can find it, honorable ability wherever we can find it.

The CHAIRMAN. I am not complaining about who wrote it. I just want to know who did write it. I have not yet been able to find out.

Let me ask you a question—did I interrupt you? Do you want to say something?

Mr. MCCULLOCH. No; I just wanted to repeat that there was no single individual who sat down and took pen in hand, or keys of a typewriter, and wrote it. I helped write it in material part; and, by the way, I wish to say to all members o fthis committee, that every minority member of the Judiciary Committee was conferred with and was requested to offer suggestions, and many members of the majority were similarly consulted.

The CHAIRMAN. That is entirely different from the story I have heard about it.

I am told that on the day you reported this bill out from the full committee it was sent up to the Capitol and either sent to the homes of the Members or placed on their desks during the night just a few hours before it was taken up, and it came from the Department of Justice in a Department of Justice envelope. Is that true or not?

Mr. MCCULLOCH. I don't know about those details, but I repeat, Mr. Chairman, this legislation was drafted by the participation of several people. It had its original consideration by all minority members of the Judiciary Committee on Wednesday or Thursday or Friday before it came out of the Judiciary Committee, words, phrases, and paragraphs were written and rewritten throughout that weekend.

I was conferring on this bill, Mr. Chairman, not with any one from the executive department but the Members of Congress all day Sunday afternoon and into the night on Sunday night, and with staffmen on the Judiciary Committee about this final draft which you talk about getting into Justice Department envelopes.

Maybe the draft did get into Justice Department envelopes, but I assure the members of the committee that the provisions in the bill which are before you are in substance the provisions of this legislation which had the approval of a majority of the committee.

The CHAIRMAN. You mean you and the minority members of the committee wrote this bill?

Mr. MCCULLOCH. Not necessarily. I also said, Mr. Chairman, that there had been conferences with the majority, including the chairman and others who can speak for themselves.

The CHAIRMAN. Others who can speak for themselves have been telling me they never had an opportunity to see the bill until the morning it was passed out of the committee.

Mr. MCCULLOCH. I suppose that could be true.

I presume there are some members of the committee who didn't see the bill, and I want to say this, Mr. Chairman:

I suggested that this final redraft of the bill be put in the hands of every member of the Judiciary Committee the night before the meeting was scheduled and on which day the bill was reported out.

The CHAIRMAN. You did that because members had not seen the draft of the bill; did you not?

Mr. MCCULLOCH. I did it so members would be completely informed, as I do on all matters on which I work and have some responsibility.

The CHAIRMAN. I am sure you give it more time than 2 or 3 hours.

Mr. MCCULLOCH. I did not set the time, Mr. Chairman. That was set by the majority in the hearing on the bill in question. I am sure you know why the hearing on the bill in question and why the motion was made to report it out.

The CHAIRMAN. No. I have been trying to find out for about a week or two.

Mr. MCCULLOCH. I think it would serve a good purpose if the majority were asked that question.

The CHAIRMAN. If the majority would do what?

Mr. MCCULLOCH. If the majority were asked the question of where the urgent request for action without any other delay be had. It did not come from me. It did not come from the minority leadership, Mr. Chairman.

The CHAIRMAN. I wanted to know what happened. I have not been able to find out yet. I don't reckon I will, so I shall pass on from that; but when you got into that committee it was a fact that nobody would be able to cross a "t", or dot an "i", or talk about the bill.

Mr. MCCULLOCH. I think the record shows there were no amendments offered, that the time authorized for members was allocated by the chairman in accordance with the vote of the committee. I think the action in the committee was in accordance with majority rule, Mr. Chairman.

The CHAIRMAN. You do?

Mr. MCCULLOCH. I do. There was no one who challenged the action by the chairman, and that is a right in every legislative process here.

The CHAIRMAN. I am told that members attempted to discuss the bill and were so strenuous in their attempts that one was pounding on the desk with an ash receiver trying to get the attention of the Chair, and the Chair announced you would be heard and the chairman would be heard but no other member of the committee would be permitted to open his mouth. Is that true?

Mr. McCULLOCH. Mr. Chairman, the previous question was moved and was voted on and was ordered, all in accordance with what I understand and what I did understand then was the correct parliamentary practice.

The CHAIRMAN. Do you know the previous question was not offered until after the chairman had made that announcement that no member would be permitted to be heard?

Mr. McCULLOCH. I do not know the time schedule but that would have been a very good reason why the previous question should have been voted down, then, if people really wanted to talk and discuss the bill.

I repeat the previous question was moved and was voted upon and it was ordered.

I had 1 minute on the bill. I did not need any more.

The CHAIRMAN. How did you get to be favored with all of that time of 1 minute?

Mr. McCULLOCH. Because of my receding red hair.

The CHAIRMAN. I would like to state that is about as good a reason as I have heard.

Mr. McCULLOCH. I think so, Mr. Chairman, because I had spent so much time on this legislation since a year ago today, and the whole committee did, certainly a major part of the committee, that I felt it would be a waste of time for me to say anything further.

By the way, as I recall, one other man had a minute. If I recall correctly my very able colleague, Peter Rodino, of New Jersey, also had a minute.

The CHAIRMAN. I was told that only you and the chairman were so favored, but I don't know.

Mr. McCULLOCH. My memory is a little hazy because things moved rather rapidly after the previous meeting, Mr. Chairman, where a vacuum had developed. It was decided there would not be a vacuum at this meeting.

The CHAIRMAN. You are satisfied with what happened there in that meeting?

Mr. McCULLOCH. It is the will of the majority of the committee, Mr. Chairman.

The CHAIRMAN. You know, we do have some rules around here.

Mr. McCULLOCH. Yes, Mr. Chairman——

The CHAIRMAN. One of them that comes to mind says you cannot pass a bill out until you read it paragraph by paragraph and give every member an opportunity to be heard.

Mr. McCULLOCH. The bill was read paragraph by paragraph and I was here when the chairman of the committee unequivocally said that he had checked and had the approval every step of the way of the Parliamentarian of the House.

In answer to a question which the chairman asked just a moment ago, if I approved everything that was done in the committee—not necessarily so. I have not approved everything which has been done on the floor of the House.

Back many years ago, when I was a young, young man and Speaker of the Ohio House of Representatives, if there were matters developed in which there was friction, I would say, "Any member who wishes to do so may appeal from the decision of the Chair."

The CHAIRMAN. But that didn't do them any good if the Chair happens to have a majority with him.

Mr. MCCULLOCH. If the Chair has——

The CHAIRMAN. I am talking about the rules which give every member the right to be heard and offer amendments to the bill. That was denied the members in the final meeting at which you reported this bill.

Mr. MCCULLOCH. It has been my memory, Mr. Chairman, that when the Speaker of the House or the Chairman of the Committee of the Whole House on the State of the Union makes a ruling, that ruling is usually supported by the majority and such ruling is seldom, if ever, successfuly attacked. If it were I am afraid our legislative process would break down.

The CHAIRMAN. Let us talk about the bill itself. I would like to take it title by title.

The first title is the one on voting rights. We passed a provision on voting rights in 1960, and under that provision of the law which you said would cure everything, I believe you supported that bill?

Mr. MCCULLOCH. I did, sir.

The CHAIRMAN. You had a majority of the House and you had your way on that bill, and got it through the way you wanted it and the way you said would cure all this voting trouble. In that bill, which is now the law of the land, you went so far as to authorize the Federal judges to appoint voting referees who would hear an applicant who wanted to register, appear ex parte, and not permit the State or the registrar to be heard, and then that could be reported to the court and the court would order that the man be permitted to vote.

That was pretty tough medicine, was it not?

Mr. MCCULLOCH. Let me comment on your statement, Mr. Chairman. In the first place, I was a supporter of the voting referee title in the Civil Rights Act of 1960. I was very pleased when this committee, led by one minority member and one majority member, helped make that title in order. While I was optimistic about what it might do, I seldom try to say that anything will cure all things. I did not think that the voting referee title in 1960 would be the salvation or the solution of all these questions, just as I have said today that this civil rights legislation, far broader in scope than that in either 1960 or 1957, will not solve all problems.

I was hopeful that it would be the beginning which would guarantee to every qualified American the right of the elective franchise. It has helped some. There are more qualified people voting in the South now, in part at least by reason of that legislation, than ever before. We made one mistake in our estimate, Mr. Chairman, I am sorry to say that although we had been warned by that great English novelist, Dickens, the law does have delays. We have pending now cases started by William Rogers, former Attorney General, and by Robert Kennedy, the present Attorney General, that have been pending as much as 3 years, notwithstanding that within the last 2 or 3 years we created 89 new Federal judgeships. So, the law's delay has made in part ineffective that which we tried to do in 1957 and 1960.

I have found, both at the State level and at the national level, it is very difficult to have the judiciary move at a more rapid pace than they wish to move.

So, this title was trying to provide a speedier decision on fundamental rights of the people of this country when they are qualified to exercise them. I am proud that I had a part in writing this title, Mr. Chairman.

The CHAIRMAN. Do you think this provision you have now will do away with the law's delay? You know we have had that with us since civilization started.

Mr. MCCULLOCH. No, Mr. Chairman, I think it will be with us in the foreseeable future, but anything we can do to shorten the gap between a month and 3 or 4 or 5 years in this field is important, because a favorable decision in a voting case after the election has passed is academic, except as a precedent.

The CHAIRMAN. Will it not always be?

Mr. MCCULLOCH. I certainly think it will, but every time we make a full step forward, even though we slip back a quarter of a step——

The CHAIRMAN. There is nothing magic about this provision.

Mr. MCCULLOCH. There is nothing magic about it.

The CHAIRMAN. It will not do it overnight.

Mr. MCCULLOCH. Mr. Chairman, I have not seen any magic, either in the legislative branch of the Government or the executive or the judiciary in my time as a watchman on the tower.

The CHAIRMAN. There are only two differences, as I see it, between this bill and the one in 1960. One of them is that you fix a sixth-grade education as the prima facie qualification for literacy.

Mr. MCCULLOCH. That is one of the provisions, sir.

The CHAIRMAN. That provision was born in two national conventions, I believe, in smoke-filled rooms when the Democrats put in their platform the same provision.

Mr. MCCULLOCH. I was not there, but I am so advised that was in substance true.

The CHAIRMAN. You keep up with what is going on and you are a pretty good reader, so you read the platform, as I did.

Mr. MCCULLOCH. I am so advised, Mr. Chairman.

The CHAIRMAN. Subsequently, the Republican Party, as they sometimes do, met and said, "Me, too," did they not?

Mr. MCCULLOCH. I am advised that they also adopted the proposal, Mr. Chairman.

The CHAIRMAN. You were advised. You were there, were you not?

Mr. MCCULLOCH. No, sir.

The CHAIRMAN. You did not go to the convention?

Mr. MCCULLOCH. I did not go to the convention.

The CHAIRMAN. Why?

Mr. MCCULLOCH. Or at least I was not a delegate and I did not appear before the resolutions committee. That I can say.

The CHAIRMAN. So you had nothing to do with that.

Mr. MCCULLOCH. I had nothing to do with that platform. However, Mr. Chairman, I should like to say that I do not think that that is an unreasonable provision. In the great State of Ohio, where we have had such good government for so long, we have no mental qualifications by law in the matter of qualifying a person to vote. We are very proud of our election processes and the type of people we get, excepting, of course, the witness.

The CHAIRMAN. Of course, we have a similar situation in Virginia. We do not have any problem in Virginia.

Mr. MCCULLOCH. That is good. They ought to follow our precedent, Mr. Chairman.

The CHAIRMAN. They have been voting as long as I have. I just wondered where they got the magic sixth grade as qualifying anybody to vote.

Mr. MCCULLOCH. I think it was an arbitrary figure, probably recommended, I am advised, by the Census Bureau. I do not think any such qualification——

The CHAIRMAN. The Census Bureau did not advise the Democratic Committee or the Republican Committee, either, did it?

Mr. MCCULLOCH. I would have supported legislation with a much lesser qualification, Mr. Chairman, but I wanted to leave in the hands of every State different qualifications, if they decided to make them.

The CHAIRMAN. Do you happen to believe that an illiterate electorate is OK?

Mr. MCCULLOCH. No. I think it would be much better if the citizens of this country could be better educated, and that is the reason, Scot that I am, I am willing to commit so much of the tax money for schools and the improvement of education in this country.

I repeat, I refer the chairman and the members of the committee to that statement in the ordinance of 1787, to which I subscribe.

The CHAIRMAN. Then the other difference is what I choose to term the court-packing provision in the voting section. Mr. Celler did not admit it was a court-packing provision, but it is a very unusual provision that, under this provision in the voting title, the Attorney General on his volition, without anybody else having anything to say about it, should be able to go to a judge and say, "I want a three-judge court."

Mr. MCCULLOCH. Of course, Mr. Chairman——

The CHAIRMAN. Let me finish.

Mr. MCCULLOCH. I am sorry.

The CHAIRMAN. And when he does that, they must select one circuit court of appeals judge, who may come from any number of States in that circuit, and one other district judge, who can come from any other part of the district.

What did you start to say on that?

Mr. MCCULLOCH. Mr. Chairman, I guess every member of this committee knows this is not without precedent. As was said, as I recall, by the chairman, in all constitutional questions, three-judge courts are set up, and in certain Interstate Commerce Commission cases three-judge courts are authorized. In some antitrust cases that is true also.

But over and above that, precedent had to be established, if there ever is precedent, by one case or by one piece of legislation. We had this unhappy experience of either crowded dockets, being most charitable, or intentional foot dragging, and we sought to remedy that by saying, "If a person is aggrieved by reason of being disallowed to vote, we have got to get his case before a court and get it before a court promptly and get the question determined before the election has passed."

I wish to say to the members of this committee, this three-judge court must be made up, first, with one district judge where the case

is brought, and two other judges from the circuit, at least one of whom must be from the court of appeals. All three judges moreover must have been confirmed by the Senate after nomination by the President.

This is a proposal which I think is much better than we had before, that is, under the 1960 act. It is immeasurably better, in my opinion, than the provision in the bill that the President sent up here, because in the bill that the President sent up here, there might be an immediate voting on the action or finding of one judge after a recommendation by a temporary referee. Votes would be counted with no chance of their being impounded and with a chance that there may have been questionable elections, or, for instance, like occurred in the days before Clarence Brown became secretary of state in Cleveland, Ohio, and more recently perhaps in other States.

The CHAIRMAN. Mr. McCulloch, of course this involves what some of us think is a very vital constitutional provision, which is that the voters in Federal elections shall possess the same qualifications as the members of the legislatures of the States for which they are voting. What is your theory as to how you get around that?

Mr. MCCULLOCH. We do not change the basic qualifications to qualify a person to elect the elective franchise. We lay down in this law certain guidelines which prohibit States from using their laws on qualification to discriminate against people by reason of race, religion, or national origin. This is a presumption only, Mr. Chairman. We are not trying to tell Virginia or Ohio what qualifications they must prescribe by State legislation to entitle a person to have the right to register and vote.

The CHAIRMAN. One qualification, a very important qualification, is the literacy test.

Mr. MCCULLOCH. Mr. Chairman, it is only a presumption——

The CHAIRMAN. Whether it is a presumption or not, you change the Constitution which provides the qualifications. Certainly, literacy is a qualification, is it not?

Mr. MCCULLOCH. We do not change the State law. We just say when you are applying your tests in the several States, including Ohio, you do not apply them in a discriminatory manner. We say in this one field where practices have been so severely condemned and illegal practices, I am advised, have been documented, there shall be a presumption that this type of person meets your qualifications; meets your qualifications, not ours.

The CHAIRMAN. But you change the qualifications, that they have been through the sixth grade.

Mr. MCCULLOCH. Mr. Chairman, I respectfully cannot concur in that statement. We had no intention in writing the qualifications, and if we did I would be glad to have the specific language pointed out to us that does it. I will be the first to join with the committee to change it.

The CHAIRMAN. You say any person is presumed to meet the qualifications if he has been through the sixth grade.

Mr. MCCULLOCH. Presumption, Mr. Chairman.

The CHAIRMAN. Maybe that is all right, but what right has the Congress to say it when the Constitution says the State shall say it?

Mr. MCCULLOCH. That is the guideline set up to indicate that a person with that kind of schooling should meet a reasonable literacy

test. I repeat, it is only persumptive, and if you feel aggrieved, if Virginia feels aggrieved or the chairman of the board of elections——

The CHAIRMAN. We do not have to feel aggrieved. We rest on the Constitution.

Mr. MCCULLOCH. My answer, then, remains the same, that we have prescribed no qualifications in the field of State's authority and rights in this bill.

The CHAIRMAN. You do not think, then, that literacy is a qualification?

Mr. MCCULLOCH. I said we have prescribed no qualifications in this bill. I think literacy as applied by States can be a qualification, yes, sir.

The CHAIRMAN. I cannot follow that. I do not believe you and I are going to agree about voting qualifications, and I will leave it right where it is.

Mr. MCCULLOCH. I have disagreed with abler persons than myself in the past, and I have retraced my course and said loudly and publicly that I was wrong. I remain to be convinced, Mr. Chairman; and when I am, I will be the first, after I am recognized by the Chair, to say it on the floor of the House.

The CHAIRMAN. Let us go to title II and get along.

Mr. MCCULLOCH. Yes.

Mr. MADDEN. Would you yield, Mr. Chairman.

Will this bill, if it is enacted into law, improve the literacy of the Nation generally from the educational angle?

Mr. MCCULLOCH. Certainly that is one of the intentions of the title on education, Mr. Madden.

Mr. MADDEN. Which means that literacy in the various States will be raised.

Mr. MCCULLOCH. That is our hope, and it is the hope of many people all over the United States that our standard of education be raised, not only in the South but in the North.

Finally, I think education is one of the main things that will solve this problem. I think when every person has a good education, job opportunities will multiply unbelievably.

Mr. MADDEN. I am glad to hear that, because I have a report from General Hershey after World War II that among 10 States in this country, in the top State of the 10, 33 percent, 33 out of 100 draftees, were rejected because they did not have sufficient education, literacy, to be privates in the Army—33 out of 100. In a number of States, the figure was 32. I think there were 10 States. I have the statistics here from the Department.

In one State 33.6 percent of the draftees were returned and rejected because they did not have sufficient education to be privates in the Army. In another State, 39.5 percent almost half the draftees, were sent home. In another State 26.3 percent were sent home.

Clarence, your State is away up there, and I am going to extend a medal to Ohio. Ohio is 2.4 percent, which is very high.

Mr. BROWN. That has been demonstrated this morning by the witness.

Mr. MADDEN. Indiana is right along with you, Mr. Brown. But the champion State as far as education is concerned is Oregon, with only 1.4 percent rejected.

When we have 10 States in this Nation that have as high as 46 percent, almost half, sent home because they could not be 3d class seamen in the Navy or 3d class privates, I think it is time something should be done to educate them.

If this bill is to contribute a great deal to educate the youth of this country, I think that angle is very important, because for every one of these draftees that were sent home, somebody from Indiana or somebody from Ohio or New York had to take their place.

Mr. ELLIOTT. Will the gentleman yield. What is the basis of the rejection figures that you read? Was it physical disqualification?

Mr. MADDEN. Educational deficiency.

Mr. ELLIOTT. That was the reason for sending them home?

Mr. MADDEN. That was the reason for their disqualification.

I think, if for no other reason, this bill would contribute greatly to the defense of our country in future trouble that we might have.

Mr. SMITH of California. If the gentleman will yield, I think if you will check into this with a large number of people, the draft board will take college educated people every time they can and let the high school graduates go.

Mr. MADDEN. This came from General Hershey's office, the figures for educational deficiencies. You cannot defeat the record because they come from the General's office.

Mr. SMITH of California. They take college graduates in preference to the 18-year-old high school graduate. I can prove it to you by hundreds of cases in my district.

The CHAIRMAN. This is the first time I heard this was an educational bill.

Mr. MADDEN. We were talking about qualifications, and I thought I would give you some statistics from the Selective Service. A lot of boys from my district are serving for some of these returnees here. In the next war I would like everybody to contribute to the defense of the country.

The CHAIRMAN. Have you finished on that?

Mr. MADDEN. I am through.

The CHAIRMAN. I will not pursue education any further. I did not know that was one of the benefits of this bill.

Mr. MCCULLOCH. Mr. Chairman, might I say this. One of the important titles of this bill is title IV, on education. We hope to implement decisions of the Federal judiciary that are now challenged, so more people will be exposed to education and receive a better education than in the past. I am hopeful that this bill will make some contribution to that end.

Mr. MADDEN. I have some statistics on voting, but I shall not present them at this time, almost as astounding as the figures on educational deficiency.

The CHAIRMAN. Nobody is stopping you if you want to present them.

Mr. MADDEN. We want to go down and hear the President of Italy.

(Off the record.)

The CHAIRMAN. Are we ready to proceed?

I want to talk a little about title II, the public accommodations provision, which makes it mandatory upon everybody in business, with certain limitations, to wait on everybody, whether he wants to or not.

That is a pretty drastic invasion of the rights to privacy of American individuals, is it not?

Mr. McCULLOCH. Mr. Chairman, the bill that the subcommittee approved——

The CHAIRMAN. We are talking about the bill that is presented.

Mr. McCULLOCH. Yes. If the Chairman will please be further tolerant with me, the bill that was originally approved was of the kind that the chairman has just described to me. All businesses or practically all businesses would have been affected by the law.

The bill which is before the committee now has materially tailored that original proposal, and the businesses which are now affected are not all the businesses; they are a minor number or proportion of the businesses. It covers hotels, motels, cafeterias, filling stations, where needed public accommodations are available and are needed for the traveling public, and in a few other limited fields.

It is not nearly so drastic as my good friends, two former presidents of the American Bar Association, have suggested. They discuss not this bill but the bill of the subcommittee which was rejected.

I would like to say this, if I may. I say it humbly. I would like everyone interested in civil rights legislation to compare carefully the provisions of the bill that is before this committee with that bill which the Attorney General saw fit to come before the committee and to oppose. I think much of the opposition would dissolve and melt away if that study were made, because this bill is not the drastic bill that my good friends have written so clearly about.

The CHAIRMAN. Does this cover retail businesses?

Mr. McCULLOCH. It does not cover retail businesses generally. It would only cover such businesses as a dining room or a cafeteria or a motel or a hotel or a filling station.

I will take a store here in Washington, one that is well known by name. We will call it store X. They have a very full line of merchandise. They sell everything from shoes to ships and sealing wax. They also have a very nice dining room. If a person of X religion or national origin or of such a race goes in and tries on a $500 party dress, if this becomes the law, under Federal law the store will have to provide lunch for the lovely lady who goes in to try on and buy the $500 party dress. That is a simple explanation.

Or, if an individual on the way down to your bailiwick, Judge, stops at a filling station, the facilities at that filling station should be available to him. He should be privileged to use the facilities that are held out in connection with that business which is engaged in interstate commerce, without segregation.

The CHAIRMAN. Of course, you go on further here to define what is in interstate commerce, and you say anybody is in interstate commerce who handles a substantial amount of business, of goods, that have ever moved in commerce.

Mr. McCULLOCH. But this bill will not cover those places of business unless they are of the general nature of which I have described. They will not cover a blacksmith's shop, for instance, or a retail store which does not cater to the public in any field except where they are selling the necessities of life, food, and so on.

The CHAIRMAN. Let us take an example. Many of the large hotels in the cities devote their first floor to commercial businesses in rented

space. You have a provision in here which brings everybody under that clause who is physically within a building that is under it. The hotel undoubtedly is, under this bill, is it not?

Mr. McCULLOCH. It certainly is; yes, sir.

The CHAIRMAN. So, if a barbershop rents space on the first floor, the barbershop is under it, is it not?

Mr. McCULLOCH. It is if the hotel holds itself out as serving the patrons of the hotel.

The CHAIRMAN. I am just talking about the fellow who rents the barbershop on the first floor of a hotel.

Mr. McCULLOCH. It would be my opinion that the barbershop would be covered if it held itself out to serving the patrons of the hotel.

The CHAIRMAN. The hotel says, "Come here and register and get a room."

Mr. McCULLOCH. If it is holding itself out with all these services, the barbershop would be covered.

By the way, I might say we just had a case decided by the Court of Appeals in the State of Ohio from a town or city in my colleague's district, Mr. Brown, holding that the Ohio law requiring that public accommodations be available to people without discrimination was in favor of the complainant. That has been within the last month.

The CHAIRMAN. Was in favor of what?

Mr. McCULLOCH. Was in favor of the complainant or the person who felt aggrieved who could not get the services in the barbershop.

The CHAIRMAN. What services was he looking for? It was a barbershop, was it?

Mr. McCULLOCH. That is right. This was a separate shop. I give you that only to show the type of legislation that we have in any place from 20 to 30 States of the Union and in Ohio for three-quarters of a century.

The CHAIRMAN. So you say the law in Ohio covers barbershops?

Mr. McCULLOCH. That is right, whether connected with a hotel or not.

The CHAIRMAN. Would you favor that?

Mr. McCULLOCH. I served in the Legislature of Ohio for some 10 or 11 years, and never offered a bill to repeal it, and that law has caused no great trouble in Ohio, to my knowledge. This is the first litigated case in this particular field that I know of. If I were there now, I would not offer a bill to repeal the law.

The CHAIRMAN. So, you favor that?

Mr. McCULLOCH. Generally I am in favor of the public accommodations legislation of the State of Ohio.

The CHAIRMAN. Do you not think that is a right personal kind of a service that you are trying to compel a man to perform to somebody he does not want to perform it for?

Mr. McCULLOCH. Courts, both trial and appellate, have held to the contrary, Mr. Chairman.

Mr. BROWN. The trial court held he did not have to furnish the service. The court of appeals overruled the trial court. These were State cases.

Mr. McCULLOCH. That is right, by unanimous decision.

Mr. BROWN. The Supreme Court has not passed on the matter yet, if we are well informed on that case.

(Off the record.)

The CHAIRMAN. I have been told you do some funny things in Ohio, anyhow, and this is one of them.

Mr. MCCULLOCH. Probably we do some funny things.

Mr. BROWN. That part of Ohio is part of the Virginia military grant, and that is how most of our trouble comes. It stems from away back.

The CHAIRMAN. It has changed a lot.

Mr. MCCULLOCH. At the risk of self-praise, the good we do far outweighs the bad.

Mr. MADDEN. I am glad to see the chairman joining you.

The CHAIRMAN. I come back to my question now. Is that not a pretty stringent invasion of a person's right of association and his civil rights, to tell him he must perform a service of that intimate nature for somebody which he does not want to perform?

Mr. MCCULLOCH. Of course, Mr. Chairman, this is a question that is not all on one side or all on the other. I will have to be prompted on this because I do not remember the name. The bard of old said, "New occasions teach new duties. Time makes ancient good uncouth."

Our economy and the pattern of this country have so changed in the last 50 years that we now look with favor upon things that were looked upon with disfavor a year ago or 50 years ago.

This is a field, in my opinion, where the best interests of the country will be served if we recognize this problem and if we seek to solve it.

The CHAIRMAN. I am thinking about certain natural freedoms that we have enjoyed over the years, and I am trying to get your opinion whether you think we ought to abolish all that and regiment everybody.

Mr. MCCULLOCH. I do not think we ought, in the exercise of our personal feelings, discriminate against people by reason of race, religion, or national origin.

In addition, Mr. Chairman, through 500 years, if not 1,000 years, of Anglo-Saxon jurisprudence, business people who held out public accommodations to the public, particularly food and lodging, under that great system of law, have been forced to serve the public without discrimination if they were honorable, well-behaved, proper people to be served. There is a clear line of decision, unbroken, under the common law for, as I have said, at least 500 or 1,000 years.

The CHAIRMAN. Nothing like this has even been proposed.

Mr. MCCULLOCH. Very much the same, in my opinion, Mr. Chairman.

The CHAIRMAN. Give us an example of it.

Mr. MCCULLOCH. The earliest cases that I read about in Blackstone provided that the innkeeper in Britain must serve every customer who could pay and who was in proper attire and was generally a proper person. That is the law now. It was the law before we passed statutory law in Ohio.

Certainly, under the old common law, it is the law of every State in the Union that has not abrogated the common law by statute.

The CHAIRMAN. I did not want to take up too much time on this, but you said that a barbershop in a hotel would be under the law.

Mr. MCCULLOCH. Generally speaking, if it held out——

The CHAIRMAN. The barbershop just across the street——

Mr. McCULLOCH. And, of course, to serve the patrons of the hotel. Excuse the interruption.

The CHAIRMAN. A barbershop would not have to be held out. They would go look for a barbershop and there would be one in the hotel, and they would go right in there. But the fellow across the street, who runs a barbershop in another building, would not be under the law.

Mr. McCULLOCH. We tried not to cover him by reason of the fact that he was engaging in a single enterprise and was not taking on all these attributes of serving the traveling pubilc and all their needs.

The CHAIRMAN. The barbershop in the hotel I am talking about is not taking on any attributes. He probably would not know what an attribute was. He is saying, "I am running a barbershop. Come in and get a haircut," whether he belongs to the hotel or does not.

You are discriminating between the barbershop in the hotel and the one across the street from the hotel, are you not?

Mr. McCULLOCH. Factually, that is possible. But, Mr. Chairman, there is much discrimination in this country, both by law and by custom.

The CHAIRMAN. The same thing that applies to a barbershop, applies to a much more intimate public service, that is, the beauty shop. The beauty shop in the hotel is covered. The beauty shop across the street is not covered.

Mr. McCULLOCH. That is true, Mr. Chairman, subject to the qualifications I have mentioned.

The CHAIRMAN. I am wondering, as I go through this bill, if you have not written in more discrimination than you have taken out.

Mr. McCULLOCH. There are some exceptions in the law. We went to what we thought was every reasonable end to write legislation that was reasonably acceptable and would take us a substantial stride down this road which an overwhelming majority thought ought to be plies to a much more

The CHAIRMAN. You provide in here that no discrimination shall be allowed if it is supported by State action. You remember that. That is on page 45.

Mr. McCULLOCH. State law, that is right.

The CHAIRMAN. Then you go on down at the bottom of the page to define what discrimination is, as supported by State action. You say it is supported by State action if it "is carried on under color of any law, statute, ordinance, regulation, custom, or usage."

Where did you get that custom or usage business in the State law?

Mr. McCULLOCH. I think that phrase is one of recognized meaning in the law. As my good friend, George Meader, says about some words that are well recognized in law, it is either a word or a phrase of art.

But the basic reason for this title of the bill was to implement the prohibition in the 14th amendment to the Constitution which prohibits any State from discriminating against any individual by reason of these three things. Discrimination by a State may be done by any one of several things, including custom, if custom be effectuated by the force of law.

The CHAIRMAN. That is not what you are saying in this bill. You just say custom or usage.

Mr. McCULLOCH. Usage, when authorized and enforced by the State.

By the way, Mr. Chairman, I do not know whether the case has gone to the Supreme Court of the United States, but down in Jacksonville, Fla., where I once practiced law for a while, there was a case involving a golf course that would have completely implemented this provision of the law. If it has not gone to the Supreme Court, and if it does go, I feel reasonably sure what the Supreme Court is going to do about it.

The CHAIRMAN. I would be reasonably sure they would decide against the citizen, anyway.

You know, this is the first place I have ever seen custom or usage treated as a State law. Let me illustrate. Down South we have some differences from you folks in Ohio, who were divorced from us many centuries ago. I suppose you are glad of it. There are areas where there are certain customs that have prevailed over the centuries, and nobody up to now has undertaken to say if it is the custom in this neighborhood not to do so-and-so, we do not do it. Nobody has ever undertaken to say that was State law. Just where do you get that?

Mr. McCULLOCH. Mr. Chairman, I do not know just what you mean when you say no one has undertaken to say that this is a State law. I am sure, good lawyer that the chairman is, he knows that certainly in civil cases, many of the decisions turn upon proving a custom or usage. That dates back through our system of Anglo-Saxon jurisprudence through many years.

The CHAIRMAN. Not State law. Mr. McCulloch, do you know of any provision of law that has ever said a custom or usage in a neighborhood is supported by State law if there isn't any law on the subject?

Mr. McCULLOCH. I would refer the chairman to Federal law, first of all—the act of 1871, which is now 42 U.S.C. 1983.

I repeat, Mr. Chairman, custom is the basis of decision in many, if not all, of the States that had basically the common law in the early days of this country, in cases where the decision of the court, unappealed from or unreversed, becomes the law of the case and the law of the land in that case.

I am sure that is a correct statement of the effect of custom.

The CHAIRMAN. Has there ever been any place in the law, any decision where the Supreme Court has said that a thing is supported by State law because it happens to be a custom or usage in the neighborhood? I would like you to refer to that.

Mr. McCULLOCH. That is the effect of several decisions of the Supreme Court, including the New Orleans case which was discussed at very great length by the chairman of the Judiciary Committee here last Thursday.

The CHAIRMAN. That is what is known as the *Lombardi* case.

Mr. McCULLOCH. That is one of them.

The CHAIRMAN. But in that case, there was intervention by the police and it did become not custom or usage but law when the police came in and arrested people. That was the basis upon which that case was decided. I looked it up afterward.

Mr. McCULLOCH. But it was on the pronouncement of the mayor that that was the custom and usage in the city of New Orleans.

I think that is a salient factor in the decision in that case.

The CHAIRMAN. You will find in the case that what I have said is correct.

Mr. MCCULLOCH. I again refer the chairman and the committee to the Civil Rights Act of 1871.

The CHAIRMAN. I asked the chairman this question the other day. When do you want to stop?

(Off the record.)

The CHAIRMAN. We shall resume at 2 o'clock.

(Whereupon, at 12:15 p.m., the committee adjourned until 2 p.m., of the same day.)

The CHAIRMAN. The committee will be in order.

Mr. McCulloch, I did want to ask you one question about the voting title. These provisions you have on voting, I take it, are based, as Mr. Celler indicated yesterday, on the 14th and 15th amendments; is that right?

Mr. MCCULLOCH. Yes; I think that is firm ground. That was part of the ground upon which it was based, yes.

The CHAIRMAN. The original Constitution, of course, provided that the voters in a national election should be of the same qualifications as voters in the lower branch of the legislature of the State in which the election took place.

Mr. MCCULLOCH. That is right.

The CHAIRMAN. You think that was modified by the 14th amendment?

Mr. MCCULLOCH. Fundamentally, no; and if all of the people who were permitted to vote for the most numerous branch of the State legislature and all of the qualifications and tests were applied without discrimination, then I think that would remain a basic law of the land.

The CHAIRMAN. It is written in the law that such and such is the qualification.

Mr. MCCULLOCH. If that qualification——

The CHAIRMAN. You have written in here that completing the sixth grade shall be the qualification.

Mr. MCCULLOCH. I don't believe that is the effect of the legislation and it is not a qualification, it is not intended to be a qualification. That is superior to the State law setting forth the qualifications of voters. We do not say in this law that a person must have a sixth grade education. We say it very carefully in a different way, that a person who has completed six grades of a certain kind of school shall be presumed to be literate.

The CHAIRMAN. Presumptively that qualifies him to be an elector.

Mr. MCCULLOCH. It is a rebuttable presumption, as I have indicated before.

The CHAIRMAN. Of course that is the qualification.

Do you recall that the 17th amendment which provided for the election of U.S. Senators went back to the original language of the Constitution; namely, that the qualifications of electors in a senatorial election should be the same as in the voting for the State legislature. You have a different situation now with respect to the election of Senators than you have for the election of other people.

What are you going to do about that? That is the latest constitutional expression on the subject, is it not?

Mr. McCULLOCH. We have no different provision for the election of the U.S. Senator than has been provided heretofore by the basic fundamental law of the land, the Constitution of the United States.

I repeat, Mr. Chairman, it is my studied judgment that this legislation does not provide the qualifications which have been the prerogative of the State in the past. That is my firm statement on this subject.

The CHAIRMAN. Do you then come around to the point that the 14th amendment and the 15th amendment have nothing to do with it?

Mr. McCULLOCH. The 14th and 15th amendments, of course, guarantee to every citizen the rights of citizenship without discrimination by reason of race or color. The moment there is an abuse of the rights guaranteed by the 14th or 15th amendments then there is a violation of the fundamental law of the land, and if it is persistent not only does the Congress have the duty but it has the responsibility in my opinion to implement the declarations of the 14th and 15th amendments.

The CHAIRMAN. The sixth grade is a qualification for election?

Mr. McCULLOCH. I do not admit we have fixed that as a qualification, and I have said it many times.

The CHAIRMAN. If you did not think it a qualification why did you put it in there?

Mr. McCULLOCH. A person who has finished 6 years of the kind of school therein described is presumed to be literate, which presumption is rebuttable by the State if the State feels so.

I did not seize the time to reply to the statement that the proceedings were ex parte. They were not ex parte under the 1906 act and would not be ex parte here.

The CHAIRMAN. I don't know. You see, I cannot understand the gobbledygook you all have in here because it says it shall be ex parte.

Mr. McCULLOCH. I stand on my statement that neither under the 1957 act or the 1960 act, nor under this act, is the matter ex parte if the State or political subdivision thereof clothed with responsibility desires to be heard. I repeat that I stand on that statement.

The CHAIRMAN. I don't care whether you stand on it or lie down on it. It says it shall be heard ex parte. It uses the expression "ex parte," does it not?

Mr. McCULLOCH. Read the whole section, Mr. Chairman, and the decision may be challenged; and again, without getting into any controversy, I of course stand to be corrected, but I am reasonably sure of the accuracy of my statement.

The CHAIRMAN. That is in the 1960 act, I believe. I do not think it is in this act, is it?

Mr. McCULLOCH. I particularly stressed the 1960 act, Mr. Chairman, and any State, or any board of elections, or whatever the political subdivision clothed with responsibility in the field, has a right to be heard if it requests it, or challenges the ruling——

The CHAIRMAN. You have the 1960 act before you, have you not? I have it somewhere but I haven't my hands on it. You raised a question which had not been raised before and I would like you to refer to the act and tell me where it is not ex parte.

You have it there, have you not?

Mr. McCULLOCH. I don't have it immediately at my fingertips. I will get it for you and read the language upon which I based my judgment.

The CHAIRMAN. I have it now; I have found it.

Here is the way it reads in the act of 1960:

In the proceeding before a voting referee, the applicant shall be heard ex parte at such times and places as the court shall direct, his statement under oath shall be prima facie evidence as to his age, residence, and prior efforts to register or otherwise qualify to vote.

Mr. MCCULLOCH. All right; my answer to that, Mr. Chairman, is that in a succeeding paragraph it states, following this proceeding which you have described, which initially, and that is important, which initially is ex parte, I now read from section 1971, and this is upon the receipt of the report which comes from the hearing before the referee which is ex parte and which is the initial proceeding, Mr. Chairman.

Upon receipt of such report the court shall cause the Attorney General to transmit a copy thereof to the State attorney general and to each party to such proceeding together with an order to show cause within 10 days, or such shorter time as the court may fix, why an order of the court should not be entered in accordance with such report.

Mr. Chairman, that takes your proceeding out of the proceeding known as ex parte. It gives the State or the attorney general of the State an opportunity to come in and show cause why the order should not stand, and therefore it is not ex parte to conclusion.

That is a preliminary matter you speak of.

The CHAIRMAN. When you go to this referee who really decides the question it is ex parte and the State is not entitled to be heard.

Mr. MCCULLOCH. The referee makes a recommendation subject to concurrence by the court which is not ex parte, Mr. Chairman.

The CHAIRMAN. Yes; but all the hearings before the referee, who listens to the evidence and decides the thing initially, are taken ex parte.

Mr. MCCULLOCH. Before the referee, yes, sir. I repeat my statement—however, the proceeding is not an ex parte proceeding. The referee does not make the final decision. The referee makes the report and recommendation which must be confirmed by the court and which may be challenged in an adversary proceeding which I was always taught was not ex parte.

The CHAIRMAN. Let us get to something else.

Mr. MCCULLOCH. Mr. Chairman and members of the committee, of course we feel it is our duty in the Judiciary Committee to have as many proceedings as are possible in accordance with our system that frees courts and juries from the great demands made on them, and this is one of them, in which the rights of the people in the sovereign States are saved by offering testimony in an adversary proceeding in a Federal court.

The CHAIRMAN. I wasn't going to ask any more questions about it, but since you made that statement I will add this one question:

Do you know of any other proceeding of like nature that is held before a master, a commissioner, or a voting referee, or anything of that kind, where any preliminary proceeding is heard where both sides do not have an opportunity to present their case?

Mr. MCCULLOCH. I presume that in all temporary injunctions, for instance, upon the simple allegation that irreparable injury might

occur there would be ex parte hearings immediately. That is a fundamental concept——

The CHAIRMAN. That is preliminary injunction.

Mr. MCCULLOCH. It can be heard whether it is in open court or not. It can be heard before the referee in bankruptcy, or other referees in courts of equity, and that long has been the law of the land and it is the law of Britain now and has been ever since there were courts of equity.

If there would be justification for an allegation that there would be irreparable injury by reason of delay, if there were to be delay beyond an election when a man voted——

The CHAIRMAN. You are talking about an equity suit for injunction.

Mr. MCCULLOCH. I am talking about the precedent for this kind of hearing, Mr. Chairman.

The CHAIRMAN. Mr. Culloch, on title 6, what is your construction of the provision which is that every agency of the Government distributing funds is directed to make such regulations as are necessary to deny funds to any recipient who violates this provision of the bill?

Mr. MCCULLOCH. Do you ask me if that is my construction?

The CHAIRMAN. Yes.

Mr. MCCULLOCH. That is substantially my construction, Mr. Chairman. After the distributing agency of the Federal Government has used its good offices to convince the distributee—not the ultimate beneficiary—after they have tried to persuade him of the errors of his ways and to cease his sinning——

The CHAIRMAN. What do you call a "distributee"? This bill does not refer to the distributees but to the recipients.

Mr. MCCULLOCH. It is the same thing. For instance, in the State of Ohio they use one of the programs which is so familiar to so many people, if not all people, the Federal contributions to aid for needy aged.

The recipient of that allocation in the first instance in the State of Ohio, and in other States, departments of State governments, whatever they are called, have those provisions. The ultimate provisions are the needy aged who get from $50 to $65 or whatever number of dollars is the top per month.

There is no disposition on the part of the drafters of this bill to penalize the thousands or hundreds of thousands or millions of people who are the recipients of aid for the aged.

The pressure is to be brought upon the State agency which is proceeding in a discriminatory fashion and have the pinch put on it. I repeat, it is so it will see the error of its way before it became so unbearable that the beneficiaries were hurt.

I give the committee this story:

Many years ago, and I apologize for reciting personal experiences, when aid to needy aged was first authorized by Federal legislation, there were some rather peculiar and unreasonable and unliked regulations made by the then Social Security Administrator. We had a Democratic Governor in the State of Ohio—and, of course, the President was of the same party—and the Democratic Governor—who, by the way, Judge Smith, was your colleague at one time, decided he wouldn't follow the rules and regulations set up by the Social Security Administrator, Mr. Altmeyer, and penalized the grantee, or whatever

you want to call it, some $2 million because he didn't follow the regulations.

As hard pressed as Ohio was in those dark days of the thirties we squeezed out the money and paid the beneficiaries, and in due course the Democratic Governor saw the errors of his ways, or the Social Security Administrator eased his regulations, and the beneficiaries soon proceeded to receive the funds to which they were entitled.

Within the last 2 or 3 years, in a matter which had its beginning in the Eisenhower administration, so you will know this is not a partisan statement, there were regulations and rules issued which we thought in Ohio were rather peculiar and served no useful purpose in view of our long administration of unemployment laws.

The edict came to us that unless we complied with the Federal regulation they would withhold $17 million.

I am pleased to report to this committee that we were able to convince the Federal agency that they had better not withhold those funds, and some people present in this room were parties to that final decision in favor of the State of Ohio.

I give you that long story to show we are not trying to reach and penalize innocent beneficiaries of the funds which are to be granted.

Furthermore, Mr. Chairman, again I apologize for the part I played in this, we insisted——

The CHAIRMAN. I thought you were for it. You say you apologize?

Mr. MCCULLOCH. You misunderstood me, sir. I am apologizing for referring to myself so often.

We wrote into this law judicial review for any abuses that might come about, or whenever the political subdivisions of the State felt aggrieved.

Mr. AVERY. Would the gentleman yield at that point?

The CHAIRMAN. If we have covered the State of Ohio I would like to get back to this bill.

Mr. MCCULLOCH. I would be very glad to. I am always happy, though, to give you the benefit of the pleasant experiences we have had in Ohio.

Mr. AVERY. Mr. Chairman, I asked you to yield only because the Chair recalls I directed some rather specific questions to the gentleman from New York on this very matter yesterday.

The CHAIRMAN. I am trying to get this straight and find out what it means.

Mr. AVERY. The gentleman from New York yesterday, in reply to a question, said he would accept an amendment to this particular title to make explicit just what the committee had in mind, whether we are talking about the beneficiary, the recipient, or the administrative agency.

Assuming we could agree or the lawyers should agree—I should not be casting my views on this, I presume—but if the lawyers can agree to some clarifying amendment to this section, would the gentleman from Ohio join the gentleman from New York in accepting this?

Mr. MCCULLOCH. I would join any Member of the House in clarifying the language of this or any other legislation that is before the House that helps to better and more clearly effectuate the purpose of the legislation.

Mr. AVERY. One question more.

Mr. McCULLOCH. I will answer the question simply—yes.

Mr. AVERY. If I may proceed for a second longer. We took the case of an impacted school area receiving Federal aid. Even though the school was integrated, or was not segregated, but there had been a charge that an applicant for a job for a kitchen position had been discriminated against, if I have stated the circumstances so the gentleman understands them—if this charge were supported would it be the view of the gentleman from Ohio that impacted aid could be denied that particular school?

Mr. McCULLOCH. That is not my opinion and that is not my desire of an accomplishment under this proposed legislation.

Mr. AVERY. So in this particular case it is neither the recipient nor the beneficiary that is being discriminated against?

Mr. McCULLOCH. In the case you mention, certainly that is exactly right and that is a very good question.

Mr. AVERY. Thank you, Mr. Chairman.

The CHAIRMAN. Didn't I understand you to say that if the law were violated with respect to the application of somebody for employment in the kitchen that then the aid would be cut off?

Mr. McCULLOCH. No.

The CHAIRMAN. It would not be cut off?

Mr. AVERY. It would not be cut off.

Mr. McCULLOCH. That was not the intention of those who discussed this over and over again.

If the language is not clear that is one of the fields in which I would be ready, willing, and anxious to have clearer language than we have selected.

The CHAIRMAN. That is my objective here in having these questions asked of you gentlemen who wrote this bill. If there is going to be any clarification of this bill we will have to do it.

I know the facts of life here just as you do. Unless you gentlemen will clarify your own bill it will not be clarified on the floor of the House. You are aware of that.

Mr. McCULLOCH. I agree with that.

The CHAIRMAN. If you will pardon me for saying so, I think your committee has the very serious duty to correct things such as we have been bringing up now.

For instance, this recipient we speak of—that is very vague. I think a recipient means a fellow who gets something, who receives something.

Take this school program, for instance, and I will ask you this specific question—take the school lunch program. What about a school that is not integrated?

Mr. McCULLOCH. There is no desire to penalize——

The CHAIRMAN. I am not talking about desire.

Mr. McCULLOCH. There is no intention to penalize the children who would participate in a public lunch program.

The CHAIRMAN. Do you think this bill is clear on that subject?

Mr. McCULLOCH. Perhaps not as clear as I would like to have it. I have been forced to vote on much legislation since I have been here where the language was not clear, and if anyone can give us better language we shall be happy to have it.

The CHAIRMAN. Don't you feel, then, as I do, that there is a duty on the part of your committee to review this measure and make it clear?

Mr. McCULLOCH. I certainly do. I think there is a duty on every committee that has charge of a bill, if unclear language is called to their attention to select better language if possible.

The CHAIRMAN. Let us take another situation. You say it is not your intention to deprive the schoolchildren of a school down in my district where it is not integrated. You do not intend to deprive them of this lunch program?

Mr. McCULLOCH. That is right.

The CHAIRMAN. Now we have the other educational program for impacted areas which is pretty widespread throughout, where we give Federal aid and Federal money to school districts for that purpose, to help them educate the Federal employees, and so forth.

Surely a school that is not integrated would be cut off from these funds.

Mr. McCULLOCH. The violation is materially different and the violation in one case is directly visited upon the people by reason of a segregated school which is contrary to the law as enunciated by the Supreme Court, whereas on the other hand there is no violation of that kind of a law with respect to the school lunch program.

The CHAIRMAN. Does your answer mean that they would be deprived of their share in that fund or that they would not be deprived?

Mr. McCULLOCH. In the case of the impacted school area there is every likelihood that if the condition were not remedied there would be denial of funds because there would be aid, support, and abetment of the segregation program in the school district complaint.

The CHAIRMAN. So that would go right down to the ultimate recipient, the pupil in the school who would be denied those facilities.

Mr. McCULLOCH. That has the ultimate effect and that is one of the reasons why it is first visited upon the political subdivision, and it is hoped they will see the error of their ways and if they do not, of course, then this law becomes effective.

The CHAIRMAN. Let us take the situation of the farmers, for instance, and we could go all day with these different categories of people receiving ultimately, and who are the recipients of, these Government programs.

Suppose a farmer discriminates in his employment?

Mr. McCULLOCH. I think under the FEPC title of this bill if he employed 25 or more men, and he hired under discriminatory hiring practices, he would be deprived of benefits under the legislation.

The CHAIRMAN. If he is not under the FEPC—and that was not the question I asked you, you know——

Mr. McCULLOCH. It would be my opinion he would not be denied funds under this legislation.

The CHAIRMAN. It states recipient. He is a recipient and he receives his check right out of Uncle Sam's Treasury.

Mr. McCULLOCH. I repeat it is my impression he would not be denied the allocations which the law otherwise provided, and that was not——

The CHAIRMAN. Do you think we can afford to pass a law affecting all the millions of farmers in this area when a question like that arises and you have to decide it on your impression about it?

Again, don't you think we should be specific?

Mr. McCULLOCH. We should be as certain as we can and that we shall be when we bring the bill in for final debate and vote in the House.

As I understand it, you, too, are trying to point out the error of our ways, if any.

The CHAIRMAN. I didn't want to talk about the error of your ways. It might be a pretty large field, you know.

Mr. McCULLOCH. There is a difference of opinion on that, too, Mr. Chairman.

The CHAIRMAN. I am sure there is.

Mr. SMITH of California. May I ask a question on this section? We are talking about title 6, are we not?

Mr. McCULLOCH. To cut off Federal assistance?

Mr. SMITH of California. Yes.

Mr. McCULLOCH. Yes.

Mr. SMITH of California. In California one of our biggest businesses is the savings and loan business, which runs into the billions of dollars with money all over the United States.

Mr. McCULLOCH. Yes.

Mr. SMITH of California. We have had some problem in the last year or two in hiring colored people. They have asked savings and loans to hire them, and the banks for that matter. They are perfectly willing to hire them if they are competent to do the mortgage or appraisal business, whatever it is.

Under the FDIC each account is insured for $10,000.

In this particular language you have, on page 62 of your bill, "Grant, Contract, or Loan."

When we apply for a State savings and loan charter and to the FDIC for the insurance, we end up, if it is approved, with a contract where we agree to set aside so much money for surplus and to go right down the line in a contract we sign.

Then the FDIC approves the accounts and insures them up to $10,000 and you get a plaque, put it on your counter, and so on.

We have investors in the savings and loans rather than depositors. Each is insured up to $10,000.

Suppose there is some discrimination? I know section 7 is the employment discrimination section rather than this one, but if there is some discrimination, suppose they come along and follow under section 6 and they would go ahead and set aside the FDIC $10,000 insurance for an account. We would have a drain of several billions of dollars in 24 hours which would bankrupt every savings and loan insurance corporation in California.

Is that intended in here or not, and how can you set language in that will be certain it is not included?

This is a rather innocuous section, do you not agree? This has given the committee considerable trouble.

Mr. McCULLOCH. It has, and it was discussed at great length.

Mr. SMITH of California. The original bill did cover banks and savings and loan associations which was stricken out; is that correct?

Mr. McCULLOCH. That is right. I hasten to add that this provision and this language had very great study by the subcommittee and it was not the intention of the subcommittee to cover any such activity anywhere.

As a matter of fact, I do not have my finger on it right now, we had a specific exemption and insurance and guarantee were cut out.

Mr. SMITH of California. It was in the original bill; that is right.

Mr. MCCULLOCH. That is the reason for it. There would be no reluctance on my part whatsoever to strike anything from the legislation which would leave the slightest implication that we sought to cover those things.

Mr. SMITH of California. What I suggest could have happened under section 6?

Mr. MCCULLOCH. It is my opinion it cannot.

Mr. SMITH of California. Suppose the savings and loan deny a loan to a colored person? What would happen there?

Mr. MCCULLOCH. It would not happen in my opinion. I for one, and I speak for myself, would——

Mr. SMITH of California. What would the Judiciary Committee do? Suppose they came along and made that decision? It is your opinion that way and it is the opinion of the chairman, Mr. Celler, but what can you do as a Judiciary Committee if they interpret the language of your bill that way, whoever has to enforce it?

Mr. MCCULLOCH. Of course, if the responsible authorities interpret legislation contrary to its language and contrary to its intent there is only one thing that can be done, and that is to find language by way of amendment to make it impossible.

I repeat, that was not the intention here, Mr. Smith.

We are willing to accept language if it can be found which makes it clear or we are willing to write the legislative history to that end.

Mr. SMITH of California. As our distinguished chairman said, Mr. McCulloch, we in the Rules Committee cannot write this. You spent many months working on this. My only thought is this. There is language in the foreign aid bill, I think, prohibiting—I may not be entirely correct—the sale of goods, shipping goods to Communist or Iron Curtain countries. I think the rule is strategic materials, but I believe later on the Attorney General said that is not constitutional, and the President need not comply with that. So, the transactions have gone on.

It seems to me if there is any possibility of the FDIC canceling insurance on that account for banks or savings and loans, the Judiciary Committee should put language in there saying that cannot happen so we do not have that possibility, because it could possibly bankrupt California if that happened, rather than just go on and say, "That is not our intention and we do not think it will happen." Why not put the language in and say that?

Mr. MCCULLOCH. I certainly agree with what the gentleman has said. If the language would give any such authority——

Mr. SMITH of California. Do you want us to write the language?

Mr. MCCULLOCH. That was not our intention and, as I said to your colleague, Mr. Avery, if language is needed to clarify that, I am sure it will be easy to get a committee amendment to that end.

Mr. SMITH of California. This is an extremely important question in California, Mr. Chairman. The committee is responsible to put language in to stop this, to say that is not the intent of this bill.

The CHAIRMAN. Does the same thing apply to banks?

Mr. SMITH of California. Banks and savings and loans.

Mr. COLMER. Then it applies to institutions all over the country, not only California.

Mr. SMITH of California. I apologize on that. I just happen to be more interested in California, but it applies to the whole of the United States.

Mr. COLMER. I accept the gentleman's apology.

Mr. ELLIOTT. Will the gentleman yield for a question?

Would his basic question be changed any if the money which the savings and loan association loaned came to the savings and loan association through a loan from the Federal Home Loan Bank Board or the Federal home loan bank?

Mr. SMITH of California. I do not think it makes any difference, because those all come at a discount. If you go to the Federal Home Loan Bank Board, we take our paper in and give it in and get so much back for the amount of paper we put in, on which we can loan more. I do not think that would make any difference. If the insurance is canceled, you would refer to it maybe as a depositor, but in savings and loans they are investors, and if that is suddenly canceled, that would be real bad.

Mr. ELLIOTT. The savings and loan association——

Mr. SMITH of California. Banks, too.

Mr. ELLIOTT. Never lend money directly from the Home Loan Bank Board.

Mr. SMITH of California. We get a certain amount of money; yes. If we get in trouble we take $400,000 or $500,000 worth of paper and get a couple of hundred thousand dollars credit to cover some loans you might have in that particular 5 or 10 days to cover it. That is true, but I think the principle is the same. I do not think that would make any difference.

Mr. Patman will be more than pleased to discuss this because he has his own ideas on lending money from the Federal Reserve System.

Mr. MCCULLOCH. Mr. Chairman, I have no hesitancy in answering this question. There are funds available from the Federal home loan bank to individuals, savings and loan associations, and likewise I say, so far as I am concerned, there was no intention to make that loan or grant affected by this legislation.

Mr. BROWN. The President announced he had a new housing program in the making now to broaden those loans. He announced that partially in his address or message on the state of the Union, and also in statements from Texas, from the ranch White House. That involves very much the lending capacity of the Federal Government to homeowners or home purchasers.

The CHAIRMAN. Mr. McCulloch, I apologize for having taken so much time. I could ask you a great many other questions, but I want the other members of the committee to have a chance.

I think in the discussion we have been having now, as I think you feel, too, there are a great many areas in which it is very uncertain what the effect of this bill will be. I would hope your committee would get together and discuss that, because this affects a lot of people, you know. We have talked about farmers, about banks, about building associations, school children, lunches, and so forth, but we have not scratched the surface of the myriad of businesses and individuals that this bill will touch.

Mr. Brown, have you some questions?

Mr. BROWN. First of all, Mr. Chairman, I believe you agree with me that we should congratulate Mr. McCulloch for his statement. He certainly has demonstrated here that which we have often claimed, that he is an excellent lawyer and a very good pleader at the bar. He has presented his views very ably and very well.

I have known Mr. McCulloch for a lifetime, and I feel sure if he feels any sections of this bill should be rewritten to clarify them, he will do what he can to bring that about, just as he has said here today to the committee.

I should like to ask you, Mr. McCulloch, what kind of rule do you think ought to be granted on a bill of this type? How many hours?

Mr. MCCULLOCH. Mr. Brown, of course I think this bill should come to the House under an open rule. I think there should be at least 15, if not 20, hours of general debate. In 1960 there were 15 hours of general debate, and several people were a bit miffed at me because there was not time for them to participate.

I repeat, I think we should have at least 15 and possibly 20 hours of general debate.

Mr. BROWN. I think on the 1957 bill it was 16 hours. The Parliamentarian promised some of us today to check the exact wording of the length of time, the wording of those rules. If I remember correctly, it was someplace between 15 and 20 hours of general debate, and then there was around, what, 4 days under the 5-minute rule.

Mr. MCCULLOCH. Yes; there was at least that much.

Mr. BROWN. That is not provided by the rule, of course.

Mr. MCCULLOCH. I understand.

Mr. BROWN. It would mean, then, that the bill would be before the House for perhaps almost 2 weeks.

Mr. MCCULLOCH. Or longer.

Mr. BROWN. Would you prefer hours or days?

Mr. MCCULLOCH. I would prefer hours, Mr. Chairman. It would be my opinion that there would be many more amendments offered to this legislation than there was to the legislation before the House in either 1957 or 1960.

Mr. BROWN. It is a much broader bill.

Mr. MCCULLOCH. That is right. I have said many times that this is one of the most technical, difficult, controversial bills, if not the most difficult and controversial bill that has come before the Judiciary Committee.

Mr. BROWN. The discussion between you and the chairman of this committee demonstrated it is technical and controversial and there is great question about some of the language of the bill.

Mr. MCCULLOCH. That is right.

Mr. BROWN. Do you feel your committee will consider offering committee amendments to correct some of the language that has been discussed here, concerning the real meaning of the language?

Mr. MCCULLOCH. Mr. Chairman, I am sure that will be the case. I would not like to see any national banks or any building and loan associations in America penalized by some of the very penetrating questions of Mr. Smith and some of the others.

Mr. BROWN. Or the hungry children, as Judge Smith said.

Mr. McCULLOCH. Yes, the hungry children. Although I am not authorized to speak for the committee, I am sure we would be ready, willing, and anxious to have perfecting amendments.

Mr. BROWN. I presume it is your feeling that the sponsors and promoters of this legislation would not want a law enacted which would violate the rights of some of these individuals who have been discussed here today, like children, school children, and persons who borrow money on their homes, to buy or build homes, and persons of that sort. I presume there would be no difficulty in getting the consent of those who may be the sponsors of this legislation.

Mr. McCULLOCH. I am sure that is the case, Mr. Brown.

Mr. BROWN. Now may I ask a couple of other questions. Has the Attorney General discussed this bill with you or with others? I have a copy of his testimony on the original subcommittee bill, but I wonder if he has been consulted or if he has given any testimony, either directly or indirectly, either publicly or privately, to members of your committee on the pending legislation. Has he passed on any of these questions which have been brought up here?

Mr. McCULLOCH. Yes; he has discussed, either directly or indirectly, one or more times, all of these general questions that I have heard discussed in this committee both today and other days, because the questions in various forms came up each time the committee was discussing and debating and offering amendments to the several bills before the committee.

Mr. BROWN. Did he express the same concern over some of these problems that the gentlemen at this end of the table raised in connection with this legislation when he discussed the original bill? Did he also analyze these particular sections which have been read and reread here and questions have been asked about by members of the committee?

Mr. McCULLOCH. Either directly or indirectly or by his duly authorized representative, the Deputy Attorney General or the Assistant Attorney General.

Mr. BROWN. Do not make it too thin, because that may not mean too much. I have seen a lot of political appointees in my time, some of whom are lawyers and some are not.

Mr. McCULLOCH. He personally participated in discussing the proposals which have been questioned here in some form or another on one or more occasions. As a matter of fact, some of the committee members raised the very questions that have been raised by Judge Smith, Mr. Colmer, and the rest of you who have been interested. We tried to select the best language we could that would reach the objections that have been brought before us.

Mr. BROWN. Has he suggested any changes in the printed version of this bill?

Mr. McCULLOCH. He has suggested no——

Mr. BROWN. To any of the sections that have been discussed?

Mr. McCULLOCH. Not to this particular bill. But his suggestions were considered and they are reflected in part in some of the provisions which are in this bill.

Mr. BROWN. Do you think these provisions in this bill which we have discussed here in the committee through questions, meet all the objections that the Attorney General made to the original bill?

Mr. McCULLOCH. No. There were other questions raised in discussions with the Attorney General. Of course, there were discussions with the Attorney General when there was no bill before us, by the chairman of the committee and by other people.

Mr. BROWN. I understand that. I am not asking these questions to embarrass my friend from Ohio but, instead, to bring out whether or not when the Attorney General learns of the questioning which has gone on h re and the discussion which has arisen over the real meaning and purpose of some of this language, he may not say to the committee or be willing to work with the committee to do that which you said you were willing to do if you were convinced it was needed, write clarifying language that will make this a better bill instead of a poorer bill.

Mr. McCULLOCH. I am sure he would be helpful whenever requested to advise us. When he was before us in executive session, there was practically no time limitation by any members.

Mr. BROWN. That was on another bill.

Mr. McCULLOCH. That was on this bill, if you please, sir.

Mr. BROWN. His testimony?

Mr. McCULLOCH. Yes; in executive session.

Mr. BROWN. That was not printed, though.

Mr. McCULLOCH. Yes.

Mr. BROWN. Is that in the same testimony I have?

Mr. McCULLOCH. Yes.

Mr. BROWN. I did not get that part.

Mr. McCULLOCH. Or at least these provisions that we have been talking about today, title——

Mr. BROWN. I understand he discussed some of that, yes, but that, as I understand, was on the original subcommittee bill.

Mr. McCULLOCH. But most of these provisions, Mr. Brown, were in the subcommittee bill, and the language in several of those sections was improved and discussed and rewritten and came into this bill by reason of those discussions with the Attorney General.

Mr. BROWN. Let me ask you the $64 question, Mr. McCulloch. If the testimony and discussion given here is transcribed, as it probably will be, within the next few hours or days, and you have an opportunity to look it over very carefully, would you give consideration to calling the attention of the Attorney General to some of these points that have been discussed on both sides, and see if he has any ideas as to any clarifying language that might be worthwhile?

Mr. McCULLOCH. I certainly would be agreeable to doing that. That has been done in the past under the Eisenhower administration.

Mr. BROWN. That happens on a great deal of legislation which comes before this committee. We are not too smart as individuals on this committee, but we have found considerable in the way of error in some of the legislation which has been brought before the committee from legislative committees. As a result, many changes have been made at times by the committees themselves, either on the floor or by taking the bill back and amending it and coming up for another rule.

I would like to ask you one other question, if I may, which gives me just a little concern. I am very much interested in what you said about Ohio. Your report, of course, was entirely accurate and

correct and true, that Ohio does have and has had for a long while, as we both know, some very strong, and almost stringent in some cases, civil rights laws on its statute books.

Mr. McCULLOCH. That is correct.

Mr. BROWN. We have not had very much trouble out there in our State. About the only trouble I know of has happened in my own district, but I still think some of that was caused by people from outside of Ohio and from outside the district, who came there to engage in picketing, to attend school, or to do something else.

I do note you provide under "Public Accommodations," title II, on page 2 of your statement, in (b), the third line down from the top:

> The Attorney General or the party aggrieved is authorized to institute a civil action.

I do not have before me the Ohio statute. Does the Ohio statute comparable to this public accommodations section provide for any prosecuting attorney to bring suit for the people out there? Only the aggrieved person can go into court and file the charge? Isn't that right?

Mr. McCULLOCH. We have a two-pronged statute in Ohio. One is a civil action for damage; one is a criminal prosecution by the county or the political subdivision in which the offense is committed.

Mr. BROWN. But we do not authorize the prosecuting attorney or the attorney general of Ohio to file a civil action in behalf of an aggrieved person.

Mr. McCULLOCH. We do not.

Mr. BROWN. But this does.

Mr. McCULLOCH. This does.

Mr. BROWN. This goes further. This gives the Attorney General the right to go in and to file suit for an aggrieved person. While I can understand the reason for it, it also might prove to be a pretty dangerous thing if you get the wrong kind of Deputy or Assistant Attorney General or U.S. district attorney or what have you. Do you not think the aggrieved person should first be required at least to file some kind of request with some court before somebody else, some outsider, whether it be the Attorney General of the United States or who it may be, comes in and says, "We will file the suit. We will do this whether you like it or not."

Mr. McCULLOCH. Mr. Chairman, this provision was written into the law primarily by reason of the fact that there are some aggrieved people who are so poverty stricken that they cannot——

Mr. BROWN. You got a bill on the floor today to take care of that.

Mr. McCULLOCH. No, it would not, Mr. Brown, as you know, good lawyer that you are. I enjoy your smile, too. For that reason, this authority was granted to the Attorney General.

I think it should be significant to all who can hear that we have put a careful safeguard in this legislation, because if that ambitious U.S. district attorney or his assistants bring suit for aggrieved persons and are not successful in the trial of their case, the U.S. Government becomes responsible for the attorneys' fee incurred by the defendant and must pay the costs. I am sure that the Appropriations Committee——

Mr. BROWN. It does not help the other person very much to slap down the district attorney. I have known some assistant district attorneys who lost all their cases, but they still held their jobs.

Mr. MCCULLOCH. In due course, the people ought to work their will, and I am sure the gentleman from Ohio would not long vote for an appropriation bill that contained appropriations for such purposes where the Department of Justice was losing any substantial number of its cases.

Mr. BROWN. I have voted for several appropriation bills where the Department of Justice or other departments did not do everything that I would like them to do and did some things that I wished they had not done. But appropriation bills are always drawn in such a way that it has a lot of things in it that you have to vote for in order to get you to vote for things you do not like. I know that and you know that, from long experience as speaker of the Ohio Legislature as well as here.

I can understand and comprehend more easily why the Attorney General may want to proceed in a case where some agency of the government, whether local government or not, is the defendant, such as in a school case which affects the whole school district or a whole State or a whole local or State operation, or perhaps even an election board or election officials. I can understand where that might be needed because of the fact that the average individual, aggrieved person, cannot afford to take on that sort of opponent in a case.

But I am just wondering whether we are not going a little far when we say they can represent any aggrieved person, whether that aggrieved person asks for it or not, on a matter of public accommodations.

In other words, John J. Jones comes in and did not get public accommodations, and perhaps the proprietor will apologize and explain that there was a misunderstanding, this, that, and the other thing, and there is no feeling between the so-called aggrieved person and the proprietor, but somebody comes along and says we will file charges anyhow, without the aggrieved person asking for it, without his desiring it.

It seems to me that leaves the proprietor of whatever the establishment may be a little out in right field where he is more or less defenseless. It is pretty hard to fight the management, you know.

Mr. MCCULLOCH. Yes, it is; and that is one of the reasons, I repeat, why we provided, in a most unusual approach, that the Federal Government should be liable for the attorney fees of the defendant and for the court costs if the U.S. attorney did not maintain his cause of action.

Furthermore, this legislation provides that the Attorney General shall, prior to instituting such an action, refer to and provide a State or local agency an opportunity to settle the complaint where State or local law prohibits discrimination in public accommodations.

Down in Blanchester, Ohio——

Mr. BROWN. We do not have any trouble down there. We are law-abiding citizens.

Mr. MCCULLOCH. In Piqua, Ohio, this would be referred to the local people for adjustment, and only as a final and last resort, when people continued to be discriminated against contrary to the law and the Con-

stitution, would the Attorney General or the district attorney be authorized to bring suit.

Mr. BROWN. I said a moment ago the gentleman from Ohio, Mr. McCulloch, the witness, is a very excellent pleader at the bar, and I am just wondering when he gets this bill through if he will mind coming over to Yellow Springs and sort of settling that situation. It would be very helpful.

Mr. MCCULLOCH. I will be glad to visit down in the gentleman's district at any time.

The CHAIRMAN. You have spoken of the public accommodations section and the power of the Attorney General. It is not confined to that title of the bill. It runs all through here, giving the Attorney General power on his own volition to bring suit in the name of the U.S. Government, and at the expense of the U.S. Government, in behalf of the aggrieved, does it not?

Mr. MCCULLOCH. Yes, and that is not without precedent, Mr. Chairman. We authorized the Department of Justice to bring suits against private individuals where other private individuals have been prejudiced or hurt by violation of the Sherman Antitrust Act, the Robinson-Patman Act, and like Federal legislation.

Furthermore, after those suits are brought and if the Attorney General be successful in his case, then the person who has been aggrieved may file suit and use the testimony in the Federal case for triple damages.

Mr. COLMER. Mr. Chairman, I think now we can approach one or two brief questions that I have to ask, since it has all been settled now between the gentlemen from Ohio, both outstanding legislators, that Ohio is a model State. We are all agreed on that now. Except Yellow Springs. We do not have that clarified yet.

If I understand correctly what we are hearing about Yellow Springs—and I have never been there so I do not know—that was the barber case, was it not?

Mr. BROWN. I think that is one of them. We have other troubles too.

Mr. COLMER. May I proceed?

Mr. BROWN. You may. For a while.

Mr. COLMER. That would be a change, too.

If I understand the Yellow Springs case correctly, that was where a gentleman of a different pigmentation of the skin went into a barbershop, where the barber was of a different pigmentation, and the barber for some reason did not want to grant the services of his establishment to this particular pigmentation man. Some question was raised about it, and they went to court about it.

I was very much interested in that, because I raised that question here the other day, and not facetiously, because that is something that bothers the tonsorial artists of this whole country, in Ohio, Mississippi, New York, and everywhere else, because they are not trained for that purpose. I asked your counterpart here in the advocacy of this monstrosity, the word which has been used—I would not use it here—I asked him if he did not think that in all of this governmental assistance we are giving around here to people who are out of employment, depressed areas, and so forth, if so many of these barbers were going to be put out of business because they were not trained to do this par-

ticular job, if the Federal Government should not step in and add another provision for retraining people who are dispossessed and let them be trained so they can perform these duties.

Would the distinguished gentleman from Ohio think that was a reasonable suggestion?

Mr. McCULLOCH. Admitting the first segment of the question, and in view of the political and economic philosophy that appears to be rampant here now, it perhaps would be logical. But I have learned——

Mr. COLMER. I wish you would stop there, for a change, and not weaken that answer. So we can look forward to that.

I was interested in another phase of that particular matter, and that was that my distinguished and lovable friend from Ohio over here, Mr. Brown, said that you had no trouble in Ohio about these things until outsiders moved in. I would just like to say that old Mississippi has something in common with Ohio in that. We have not had any trouble with any of these things until these outsiders, these agents and others of certain organizations known as the NAACP, the brotherhood of this, equal rights, and all of these different people, moved in down there and started this agitation.

Now, specifically, when was your Ohio exemplary act on this question enacted?

Mr. McCULLOCH. As I recall, in the neighborhood of three-quarters of a century ago.

Mr. COLMER. Yes, that is exactly what I thought, and that is what prompted my question. It was passed shortly after the War Between the States, in the hysteria that then existed, and the thing passed off until these outsiders moved in. You were not bothered with that. People of different pigmentation went to different barbershops where they were qualified to perform these duties, and there was no trouble until these agitators came in and started it.

But now I want to go into another phase of this matter——

Mr. McCULLOCH. Before you proceed, may I make one comment?

Mr. COLMER. I couldn't stop the gentleman if I wanted to.

Mr. McCULLOCH. Maybe perhaps the gentleman thinks at certain times he should be stopped.

Mr. COLMER. I am sure a lot of people agree with that.

Mr. McCULLOCH. I answered very frankly when I said the original legislation had been passed perhaps three-quarters of a century ago, and it has been amended from time to time and strengthened, and as recently as 10 years ago it was amended. I thought the record ought to show that.

Mr. COLMER. While we are on that subject and before we go into the other thing I wanted to interrogate the gentleman about, in all of the hysteria and the unfortunate lack of brotherly love that followed that fratricidal strife of the sixties, there was never a bill as far reaching and as comprehensive as this which you here propose to be enacted by the Congress, was there?

Mr. McCULLOCH. There have been some people who have made that estimate of this legislation. It is perhaps correct. You know, it is possible that, had there been a realistic appraisal of this problem 75 years ago when Ohio passed its law, we would not be in this very un-

pleasant position in which we now find ourselves and which has caused so much tumult and so much shouting and so unpleasant a picture in so many places in the world. That is the feeling of some of us. That is my feeling, Mr. Chairman.

Mr. COLMER. What was that last? I did not get the last.

Mr. MCCULLOCH. I said that is the feeling of some of us.

Mr. COLMER. Just prior to that you said something about in the world. I am sorry, I did not get it.

Mr. MCCULLOCH. Tumult and shouting. And the picture or the image—I do not like that word. That isn't initially mine. What we have done and what we have not done has been used against us in many parts, if not all over the world.

Mr. COLMER. Mr. McCulloch, I am sorry, but defer to me for just a moment. I have been hearing about this image that we are creating abroad, how the Russians and Communists are using that against us. I have been hearing that now for the last several years. That is one of the great arguments which is advanced when we get one of these proposals up.

Somehow I got the conception, maybe an erroneous one, that the people who set up this Government came over here to get away from the governments of the Old World and to get away from the autocracies, the dictatorships, and monarchies, to establish a government where they had certain rights, could enjoy certain freedoms and liberties. I got that idea when I read the history of this country and read the Constitution. But now we have to appease everybody in the world. We have to remake this country so as to fit in with an image that would be satisfactory to other people.

They almost had me sold on that until here a few weeks ago I read in the press that they were having trouble over in Russia where we are trying to create that image, with just a handful of people of different pigmentation. What did they do? The great chief said, "If you don't like it here, go home."

I just don't buy the position that we have to upset our whole Government here in order to appease our enemies.

I want to go back now to the public accommodations. I said there had not been a bill—and, as I recall, the gentleman agreed with me—as drastic as this proposal that had been passed by the Congress. There was one pretty close to it back in the period of feeling of ill-will between brethren, when my section of the country lay prostrate, when the bayonet was used to keep the majority of the people, the white people, away from the polls but to insure that other people did vote. This Congress in that hysteria proceeded to pass a bill that provided in substance—I am sure the gentleman is familiar with it and I am sure he has an answer to it, but I think we are entitled to know about it—that all hotels, innkeepers, et cetera, were required to serve people of all races, previous condition of servitude, et cetera.

That was passed in 1875, but the Supreme Court of the United States as then constituted, 8 years later, in 1883, said that this statute was unconstitutional. To the best of my knowledge and research, that case has never been overruled.

I just want to call the gentleman's attention to that. Here is the statute:

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, applicable alike to citizens of every race and color regardless of any previous condition of servitude.

That was in 1875. Eight years later, here is what the Supreme Court said, in part. I could not read it all. Mr. Justice Bradley, making the decision, said:

It is State action of a particular character that is prohibited. 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. It not only does this, but, in order that the national will, thus declared, may not be a mere brutum fulmen, the last section of the amendment invests Congress with power to enforce it by appropriate legislation. To enforce what? To enforce the prohibition. To adopt appropriate legislation for correcting the effects of such prohibited State laws and State acts, and thus to render them effectually null, void, and innocuous. This is the legislative power conferred upon Congress, and this is the whole of it. It does not invest Congress with power to legislate upon subjects which are within the domain of State legislation; but to provide modes of relief against State legislation, or State action, of the kind referred to. It does not authorize Congress to create a code of municipal law for the regulation of private rights; but to provide modes of redress against the operation of State laws, and the action of State officers, executive or judicial, when these are subversive of the fundamental rights specified in the amendment.

I know the learned gentleman has an answer, and I am very anxious to have it.

Mr. McCULLOCH. Of course, my learned colleague from the South has read from the majority decision in that case which was granted in the late seventies, and it hewed——

Mr. COLMER. 1883.

Mr. McCULLOCH. 1883, just before I was 39. In any event, the Court in its majority opinion held that the Congress could not effectively legislate except in fields where the State had done the acts prohibited by the amendments in question.

Mr. COLMER. Right.

Mr. McCULLOCH. However, like some of the decisions that I now read, sometimes I subscribe to the dissenting opinions more than I do to the majority opinions.

By the way, I hasten to add, since the distinguished gentleman apparently is waiting for what I am going to say, I think that the dissenting opinion by Justice Harlan could be read with some considerable acceptance by a good many people, and I am of the opinion when and if this matter goes to the Supreme Court of the United States today, the decision which has been quoted from at length by the gentleman from Mississippi will go the way of the *Plessy* case. Furthermore, we are basing this legislation not only on the 14th amendment, but we are basing it on the interstate commerce section of the Constitution, which has been so expanded by legislation, most of it enacted before I came to Congress.

So, I repeat what I said earlier: I am of the opinion that this legislation is well grounded constitutionally. I might say there was some difference of opinion down through the hearings on this legislation,

but some people of very great ability have changed their opinion, even in that time, on the constitutionality of this legislation.

Mr. COLMER. To say I am amazed at the learned gentleman's answer to my question is certainly putting it mildly.

Let me ask the gentleman, does he subscribe to the statement we hear so often that the decisions of the Supreme Court are the law of the land?

Mr. MCCULLOCH. The decisions of the Supreme Court of the United States, in my opinion, are the law of the land on the facts of the cases as determined by the Court.

Mr. COLMER. Yes. Then here was an innkeeper who refused to serve a man, and the agent of the law of the land said that they could not do it and the act was unconstitutional. Bear in mind, there was an interstate commerce clause at that time. If that is the gentleman's answer to my question, I pass.

Mr. MCCULLOCH. I have this further answer to the question, supplementing what I have said: Of course, in that time few, if any, inns were licensed by the State, and few inns were engaged in the disposal of a substantial part of their goods that flowed in interstate commerce—two concepts that have been exploited time after time in the reasoning of the Supreme Court, not only as now constituted but before, more than 30 years ago.

Mr. COLMER. I have nothing more to ask the distinguished and learned gentleman from Ohio.

Mr. MCCULLOCH. I am reminded again that the Supreme Court did not rule on the interstate commerce proposal or argument in the civil rights cases in question.

The CHAIRMAN. Nevertheless, that decision is still, as you say, the law of the land, because it was declared unconstitutional.

Mr. COLMER. But there was a dissenting opinion, Mr. Chairman.

Mr. MCCULLOCH. Mr. Chairman, I suggest its reading to anyone who has the time.

The CHAIRMAN. You are proposing something here that, under the law as it exists today, is unconstitutional.

Mr. MCCULLOCH. No, I do not agree with that statement, Mr. Chairman.

The CHAIRMAN. I didn't think you would.

Mrs. ST. GEORGE. Mr. Chairman, there is one question I would like to ask the gentleman from Ohio. I suppose I should have asked Mr. Celler, but I did not get the opportunity yesterday.

I am sure you can answer it. Is it a fact that the law as now constituted in your State of Ohio and in my State of New York is, if anything, stronger than the law as it will be if this legislation passes?

Mr. MCCULLOCH. The law of the State of New York and the law of the State of Ohio is much stronger in the affected fields than is this legislation.

Mrs. ST. GEORGE. Another question: There are 32 States, as I understand it, that already have civil rights legislation. Are those States also in most cases stronger in their civil rights legislation than they would be under this law?

Mr. MCCULLOCH. Without having read every State statute, I would say most if not all of the 32 States have legislation in this field that is stronger than that which we propose. Referring to your State in

particular, the answer is "Yes." Referring to Ohio, the answer is "Yes." Referring to Illinois, the answer is "Yes." Referring to California, the answer is "Yes." I could give you more, but that is sufficient.

Mrs. ST. GEORGE. Going on from there, in other words, there are 18 States that do not have such legislation, is that correct?

Mr. MCCULLOCH. That is correct.

Mrs. ST. GEORGE. So, this is really being written for those 18 States, to all intents and purposes, because we already have this, so this will not make any very great difference to us, except it supersedes the law of the State. Is it going to do that?

Mr. MCCULLOCH. It is not intended to supersede the laws of the States, except when it is in conflict and grants or insures lesser rights than are provided for in this legislation.

Mrs. ST. GEORGE. Otherwise, as in my State of New York, we will continue to function under the law as it is now written in the State of New York, and in your State the same thing?

Mr. MCCULLOCH. That is true.

Mrs. ST. GEORGE. Therefore, this legislation will practically not apply to us, is that correct?

Mr. MCCULLOCH. That is right, and we have tried in several of the titles of this legislation specifically to say that the Department of Justice, the Attorney General, before undertaking any action whatsoever shall seek to persuade the State authorities to proceed under their own legislation, their own laws.

Mrs. ST. GEORGE. So, when we come right down to brass tacks, this is legislation written for 18 States which do not have civil rights legislation at the present time.

Mr. MCCULLOCH. I think that is an accurate statement, yes.

The CHAIRMAN. Have you any further questions, Mr. Madden?

Mr. MADDEN. I just want to ask one question here. It might be a little farfetched.

We are here now for the third day. You state we should have 17 hours' debate if this rule is passed.

Mr. MCCULLOCH. Yes.

Mr. MADDEN. I understand it costs a lot of money every day for the Congressional Record. We have been here 3 days. Maybe we have had 12 or 14 hours of questions and answers here. Would it be possible, to save a little money—I am an economizer for the taxpayers, in spite of what some of my friends might imply—by having these hearings printed and submit them to all the Members to read, and then cut down that 17 hours so we could save the taxpayers some money down on the floor? Despite the repetition, I think maybe some of these questions and answers might be of value to the other Members. What would you think of that, from the standpoint of economy?

Mr. MCCULLOCH. I am glad to have recruits and accomplices in that field. If it will serve a useful public purpose and it is the will of this committee, certainly I would be the last to object.

Mr. MADDEN. I am glad to have you join me. On the 5-minute rule we probably will have 5 or 6 days after the 17 hours, so the other 420 Members can do some of the things through amendments that might be necessary, which your committee suggested could be offered.

That might clarify many things so we could save maybe a couple of days on the floor under the 5-minute rule. I think that is something we ought to think about, in order to do a little economizing and also to give the Members of the Congress an opportunity to do a little work in their offices and in other ways.

Judging from some of the questions that have been asked here this afternoon, I would infer everything that will happen if this bill is enacted will wind up in court. I have had a lot of practical experience in civil rights, and I have seen a lot of changes in 25 years on civil rights. Despite the trouble that you talked about over in Ohio, we have never had any particular trouble over civil rights in Indiana. In fact, the progress that has been made in the last 25 years is just phenomenal.

Believe it or not, I am the first public official, elected county treasurer and took office on January 1, 1938, to employ a Negro. Up until that day, there had never been a Negro person employed as a clerk or stenographer in a county office in the whole State. I got telephone calls and letters denouncing me, saying I would never be reelected because I appointed a Negro girl in the county treasurer's office. I was elected treasurer of the county, and I got as high as 200 letters and telephone calls on top of that, protesting that girl's appointment.

In a few days it died down. Within a year, across the hall the Republican mayor, for the second time in the history of Indiana, appointed a Negro girl across the hall. So, I take credit for that appointment, because had I not broken the ice the year before, that appointment would never have been made.

Time marches on, and each year over the county and over the State today there are hundreds of Negro employees, clerks and stenographers, throughout the whole State of Indiana, and never a word is said about it.

A lot of the areas look with holy horror on a bill of this kind, but all these different complications and litigations are never going to arise, because people are getting educated fast as far as civil rights are concerned.

As I say, it was only 25 years ago this January when all that hubbub was made about appointing a Negro girl in the clerk's office in Indiana, and today there are hundreds and there is not even a startling thought about it. Elected offiicals and councilmen are elected from the Negro race in Indiana. That has all happened in Indiana in 25 years.

Legislation of this kind will be the greatest aid possible in order to work out problems of this kind, and there is no doubt in my mind that in a few years we will laugh at some of the things that are being said right in this room today.

That is all I have to say.

The CHAIRMAN. That is a good question.

Mr. MADDEN. I think it is something to think about. I am the father of civil rights in Indiana. I take pride in making that statement.

Mr. SMITH of California. You and I have been friends for a long time, Mr. McCulloch. I have nothing but respect for you and for your ability. If I ask personal questions or intimate questions, I hope you will not think I am doing it facetiously in any way.

There are a few thing about your statement and some of your testimony that I would like to get cleared up.

Getting back to the time of the original bill, do you recall approximately how long it was before the committee actually voted on the bill, that you had in your possession this particular bill which we are considering today?

Mr. McCULLOCH. You mean this very bill?

Mr. SMITH of California. This very bill as it was.

Mr. McCULLOCH. How long it was in my possession?

Mr. SMITH of California. Judiciary used to meet at 10:30. Do you meet at 10 now?

Mr. McCULLOCH. Probably 10:30 that day.

Mr. SMITH of California. Prior to that 10:30 of that day, when did you actually see the bill that was considered that day in Judiciary?

Mr. McCULLOCH. I saw it the afternoon before.

Mr. SMITH of California. The afternoon before. When did the other members see it on the minority side, if you know?

Mr. McCULLOCH. The staff has prompted me. I repeat, I in substantial part wrote that bill or helped write the bill. That had been going on since the Wednesday or Thursday before, mulling over the words, the phrases, the sentences, and the paragraphs, following a very important policy meeting of all the minority members of the Judiciary Committee who were in Washington that day.

You asked me another question. I did not take that long a time to answer for the purpose of escaping answering. The bill was in my hands in the late afternoon, and I suggested that it be fanned out to every member of the Judiciary Committee in Washington and suburbs so those who did homework would have it for homework, because I knew the pressure was on, not from the minority, from the majority to report the bill out at the next meeting. If the people were home and if their residences could be found those bills were in large part delivered to the residences of the people who had their residences set forth in the records here.

I understand there were some who did not get them that night, and they were delivered to them the following morning when the bill finally was reported out of committee.

Mr. SMITH of California. I am very aware of how hard you worked on this subject and I commend the gentleman for it. I am just trying to determine whether or not you as a minority leader on the Judiciary Committee feel that every member of the minority had a chance to read and study this bill, I repeat, this bill, in their hands prior to the time they were called on to vote in the committee?

Mr. McCULLOCH. I repeat the answer to that, Mr. Smith, would be whether or not they were at home and whether or not they found the bill when it was being delivered, and whether or not they spent the required number of hours of homework that night and the following morning before the committee went into session. That is a factual recitation.

However, again I wish to repeat this: The minority participated in a conference on the Wednesday or Thursday before the Tuesday when this was done. The minority received the pleasant instructions about the way the bill was to be put together, and the subjects that were to be covered, at the earliest convenience. That work went on

from that afternoon to and including Sunday evening, throughout most of the day. This was done with staff and members of the minority until 6 or 6:30 Sunday night before the crucial day.

Mr. SMITH of California. Nobody had the bill longer than 24 hours?

Mr. MCCULLOCH. I think that is an accurate statement; yes, sir.

Mr. SMITH of California. Who delivered the bill to you? Where did you get your final bill? If that is an unfair question you do not need to answer it.

Mr. MCCULLOCH. It was delivered to my apartment—no, I had the bill, as I recall it, in my office before I went home that night.

I think there was an additional bill delivered at my apartment at 4000 Massachusetts Avenue early in the evening.

Mr. SMITH of California. In your particular statement, Mr. McCulloch, on page 2, you made the statement here that:

> Well-informed persons everywhere admit that in all sections of the country, North, South, East, and West, the Negro continues to face the barriers of racial intolerance and discrimination. Hundreds of thousands of citizens are denied the basic right to vote. Thousands of school districts remain segregated.

I can speak only for California and I can say for California that is not true.

Where do you draw that conclusion of thousands of school districts?

Mr. MCCULLOCH. Perhaps the statement is not well written. I did not mean specifically that there were thousands of people in California who were denied the right to vote.

There is in this country, and it is documented by the very lengthy document of the Civil Rights Commission, demonstrated evidence that there are hundreds of thousands of people who are denied the right to vote, and the record is clear that there are a few thousand school districts in the United States that remain segregated, and I am sure the gentleman knows this, and if he were a court he would take judicial knowledge of the fact, that there is discrimination of various types and of various pressures in every State of this Union.

Mr. SMITH of California. I am not questioning that. When you talk about a school district, and again I do not want to go back to California all the time, I have only three school districts. Glendale covers every school in the district. There are several hundred schools in the school district.

Are you talking about thousands of schools or about thousands of school districts?

Mr. MCCULLOCH. That is right, and that is evidenced by uncontroverted evidence in the Civil Rights Commission.

You have a difference system in your district. There are some 15 or 16 school districts in the little county from which I come, Mr. Smith. Smith.

Mr. SMITH of California. There are?

Mr. MCCULLOCH. Yes.

Mr. SMITH of California. In the same statement you mention "moral climate." You have been speaker of the House in Ohio, and attorney for a good many years. Would you agree with me it is difficult to legislate on morals and the thinking and attitudes of human beings?

Mr. MCCULLOCH. It is most difficult to legislate in that field. Legislation in that field is only a persuasion and a proper urging. I followed that statement by what I hope was a clear and unequivocal

statement that I hope no one would get the opinion that this legislation would solve this most troublesome domestic problem facing this country, and it won't.

Mr. SMITH of California. Section 6 still bothers me. We spent some time on it and I do not want to belabor the point but it still continues to bother me.

We have a State agency and we have what I interpret to be the recipient. Take the Hill-Burton program. The State agency will handle the funds and then there will be a hospital which will be the recipient. That is my interpretation of recipient. I don't know whether we refer to the same thing.

With the chairman's statements I am a little confused as to who the recipient is. My interpretation is that under Hill-Burton the recipient would be the particular hospital, or under the Vocational Education Act the State will go ahead and handle this. They will be the agency, but a certain school will be the recipient of the funds.

I think that applies under the Donable Surplus Property Act where we have a State agency, a hospital, or a school district where the State will work with the Government to distribute money. It goes on down the line to the Federal Airport Act. We passed that yesterday.

The same thing applies to the manpower retraining, and possibly the Highway Act.

What I am trying to figure out under this language is this:

Let us take hospitals, two hospitals in a particular city. One of them practices segregation. They have applied under Hill-Burton. The other does not.

Where are you going to get on that?

Mr. MCCULLOCH. I understand my good friend, George Meader, has raised that question.

Mr. SMITH of California. Is that right? It came up with a discussion I had in Michigan, actually.

Mr. MCCULLOCH. That was discussed at great length in committee, another of those things that was discussed and mulled over and which is not known about.

It is my tentative feeling that separate but equal provisions, whether they apply to Hill-Burton or anything else, is probably now prohibited by reason of the Supreme Court decisions of the United States.

On the hospital question, you are leading me into some deep water.

Mr. SMITH of California. We have two hospitals, just two in the city.

Mr. MCCULLOCH. Yes.

Mr. SMITH of California. One may practice segregation. The other does not. They applied for money.

If the one practices segregation, the recipient is what? Can they give the money to the hospital which does not practice segregation or is the State agency the recipient and the hospital which does not practice segregation get it?

Mr. MCCULLOCH. In my opinion the hospital which does not practice segregation would be entitled to the funds; the other hospital, because it violates the law of the land as enunciated by the Supreme Court, would be violating the law.

Mr. SMITH of California. Are you satisfied this language on page 62 will make it clear enough so every State will understand that?

Mr. McCULLOCH. If not, may I answer by confession and avoidance. If it will not I will be the first to accept language from you or from anyone else—and that is said in a friendly manner——

Mr. SMITH of California. I know.

Mr. McCULLOCH. Who can make it clearer. It is far easier to consider amendments when you have five or six people at a table on the floor of the House than to think of words that will describe what you have in mind when you are at the end of the table alone and some 10 or 11 people ready for questions.

Mr. SMITH of California. I agree.

Mr. McCULLOCH. That is my confession and avoidance.

Mr. SMITH of California. I voted for the civil rights bill. We have no trouble in my district. I want to support any civil rights bill.

Mr. McCULLOCH. You are trying to help us do a better job.

Mr. SMITH of California. I am trying to prevent problems. I think Secretary Celebrezze testified he had some 128 programs and $3½ billion and under this particular section he didn't know for certain just what he would cut off and when if certain violations came about.

Mr. McCULLOCH. Your memory is accurate and we tried to get to that. That is one of the reasons we never deviated from the judicial review at the Federal court level.

Mr. SMITH of California. I hope so. The last act did not accomplish exactly what we thought it would on voting rights. Now we are taking another step. I get the indication from this from the chairman's testimony and others that certain things have been reduced to try to make it more palatable so we would have votes to pass the act.

I feel if we are going to have civil rights we should put it down and let the House pass it and not weaken language to get it through.

I hope the very tremendous Judiciary Committee will put in language that we can enforce and make the act work and not simply come back 2 or 4 years from now and say "This didn't work and we are in these troubles and we have to change the language."

That is the main reason I ask these particular questions, Bill.

Suppose I run a motel. I have a restaurant in connection with the motel. Suppose I decide I want to hire all red-headed girls. I like red-headed waitresses and want to hire red-headed waitresses. I could not do it, could I?

Mr. McCULLOCH. I am not sure of that. If you can prove you like nobody but red-headed girls and that you have refrained from hiring other kinds of girls solely by reason of the fact they are not red-headed girls and not because of their race or religion, then in my opinion you would not be guilty of discrimination under the law.

I hope you hire every red-headed girl qualified who seeks a position with you.

Mr. SMITH of California. Suppose I run a restaurant and will hire only colored men, and I can name some restaurants who do, where the maitre d' is a colored gentleman, and the three captains are dressed immaculately and all the colored waiters are extremely able.

A white person goes in to be a waiter and they say "No, our policy is to hire only colored waiters." Is that discrimination against the white people?

Mr. McCULLOCH. In the reverse?

Mr. SMITH of California. Does this bill cover that?

Mr. McCULLOCH. I would presume it would, and it would give relief to the——

Mr. SMITH of California. I am serious on that question. Could a white person go to the Attorney General and file a complaint?

Mr. McCULLOCH. I suppose if a person sought to enforce his legal rights, if this becomes a law, and really wanted employment there, he could get it enforced. The legislation is intended to proscribe discrimination of whatever nature it may be in these fields by reason of race, religion, color, or national origin. That answers questions in two other very difficult fields, too.

Mr. SMITH of California. This question of preemption is next. On page 47, starting out on section (b), line 17.

I read that time and time again and I still do not know whether this law will cramp the State. I am wondering why you do not just place specific language in there such as H.R. 3, language we placed in other bills, so this will not preempt any State laws.

Mr. McCULLOCH. First of all, I think the answer I made to the question of Mrs. St. George is correct—it is not the intention of this legislation to preempt the field from any States.

We tried to select language to do that. I personally have no objection to writing the exemption or the protective language the exact way that you have proposed it.

I might say, and I have forgotten just what all the shades of discussion and argument were, but this matter was discussed for a long, long time in the committee.

Mr. SMITH of California. I know that. How does this language stop preemption? How do you interpret that statement?

Mr. McCULLOCH. You refer me now to which section?

Mr. SMITH of California. Starting section (b), line 17, page 47, actually it is the end of line 18, where it states "but nothing in this title shall"—and so on.

I read that as a lawyer and still do not understand what you have in mind to stop preemption.

Mr. McCULLOCH. I think the intention was to have it mean exactly what it states, and again to go back to what Mrs. St. George said, the States may proceed under their laws in every instance where the laws are equal to or stronger than the laws here. It would be only where the State's laws would not measure up to this field that the Federal law would be invoked, although it would not preempt the State law.

Mr. SMITH of California. Will this go to the district courts? The gentleman from New York, Mr. Celler, and the gentleman from Ohio are not going to be those who interpret this.

If we have a case in the district court in California where we have good laws, and the State courts say, "We are sorry, you cannot do it."

In the Federal court the judge says, "The U.S. Government has preempted this, and California law does not cover that." I want to avoid that.

Mr. McCULLOCH. You know that when you were on the Judiciary Committee we favorably reported old H.R. 3, and there are many of the members of that committee today still there, and we would report it again if we thought there was any prospect of action such as that.

Mr. SMITH of California. Why not place specific language in there that this shall not preempt any State law?

Further, Mr. McCulloch, I want your opinion on the same questions I got yesterday from Mr. Celler. Are you familiar with the Civil Rights Commission letter of October 11, 1963, to the president of the Phi Beta Phi sorority in Utah?

Mr. McCULLOCH. I am generally familiar with it. I have had communication with our former colleague, Gordon Scherer, of Ohio, and others.

Mr. SMITH of California. Do you believe that the present law, which is now on the books, or this civil rights bill which we are considering, gives this Commission or its advisory committee the right to request this information?

Mr. McCULLOCH. It is my opinion there is no such right in existing law nor is any right intended to be created herein.

Mr. SMITH of California. If the questionnaire is not answered, does the Commission have the right to subpena officers of the fraternity and the documents requested?

Mr. McCULLOCH. It would be my opinion they did not, and I join with the chairman of the Judiciary Committee's statement the first day he was on the stand that the executive director or the Chairman of the Commission should receive a letter setting forth our opinion concerning this activity.

Mr. SMITH of California. Does the Commission have the right to cite for contempt the subpenaed parties who refuse to testify or produce records?

Mr. McCULLOCH. In this field it is my opinion they would not.

Mr. SMITH of California. Was it the intention of Congress that existing or proposed civil rights legislation be interpreted so that the answer to any of the foregoing questions is "yes"?

Mr. McCULLOCH. That is not my opinion and it has not been my intention and it is not the opinion of the members of the Judiciary Committee with whom I have talked.

Mr. SMITH of California. From a practical standpoint, if the Attorney General, the counsel of the Commission, or whoever advises them, states that in their opinion this can be done, then what can we do in Congress, or what can the Judiciary Committee do?

Mr. McCULLOCH. My quick answer would be to pass legislation which would more clearly define their rights and by specific description prevent this because this takes us into the field of private clubs or organizations, which has been the opinion of most if not all of us that civil rights legislation never was supposed to penetrate.

Mr. SMITH of California. Then we are talking about another session a year from now or after the act has started. If they continue to do this we talk about time.

Back to the time thing, if you do not intend this why don't you put language in here saying it does not apply to that and they cannot send out these types of questionnaires?

Mr. McCULLOCH. My answer to that again is by way of confession and avoidance—this did not come to me until after this legislation we have before us was finally written. If it be germane and if it be the will of the Members of the House, and if we get that kind of a rule, we have an immediate remedy.

Mr. SMITH of California. I would assume you would both ask for an open rule. My question is whether the Judiciary Committee and

the staff working on this to determine whether or not it is necessary and, if so, would they present appropriate amendment?

Mr. McCULLOCH. Staff advises me that there has been underway for a few days an attempt to find out exactly what the position of the Commission is and their purported authority for their actions. That study is underway right now.

Mr. SMITH of California. One other question and this is a little personal. I have heard in the halls rumors we will pass this bill and then the Senate will either knock out the public accommodations or water it down, knock down the FEPC; the administration will scream murder, accept it, and that will be the bill in conference. Have you heard any rumors like this? Are there any such thoughts?

Mr. McCULLOCH. I have apparently heard the same rumors you have. I want to make it unmistakably clear that I am no party and would never be a party to that kind of a proposal. My head is still bloodied by that battle of 1957 in which some such things happened as this, and it was not led by the minority—Senator Keating then was the ranking minority member of the committee—nor was it led, suggested, or countenanced by the member from Ohio on the Judiciary Committee.

I have heard people in some of the leadership posts in the House who feel as strongly against this kind of thing as I do, and some day before very long those who are in the highest positions of leadership will speak out clearly in that regard and won't act contrary to the way they speak when the decision is ultimately made.

I feel very strongly on this matter, as you know.

Mr. SMITH of California. I just happen to feel that as far as California is concerned we have some pretty good law. If we are going to vote here for a civil rights bill for some of the other States I want to vote for an effective civil rights bill.

I thank the gentlemen, commend you for your straightforward and honest answers.

Mr. McCULLOCH. I would like to make a further statement about this rumor. I have too many good personal and congressional friends in the House of Representatives to ask a single one of them to walk a plank that may be damaging and dangerous for them only to see deals made on the matters upon which they are asked to walk the plank, and I shall not be a party to that, I assure you and all the members of the committee and anybody else who wants to hear it.

Mr. SMITH of California. I thank the gentleman, and I thank you, Mr. Chairman.

The CHAIRMAN. Mr. Delaney?

Mr. DELANEY. Just regarding the words of confession and avoidance, I think this contagious Yellow Springs fever from the "Beautiful Ohio" here to a lullaby of "My Indiana Home" has lulled me just a little bit, so I will pass.

The CHAIRMAN. Mr. Young?

Mr. YOUNG. I have no questions, Mr. Chairman.

The CHAIRMAN. Mr. Bolling?

Mr. BOLLING. I have no questions. I have a very brief statement I would like to make.

I would like to congratulate the gentleman from Ohio not only on the excellence of his testimony today but also on the fact that without

his effort it is, I think, absolutely sure that there would be no bill before us.

I know he demonstrated in the Judiciary Committee a vast amount of patience and tolerance and a tremendous amount of hard work, and that he played a key role in the reporting of this bill.

I think that holds very well for the bill's success.

Mr. McCULLOCH. Thank you, sir.

Mr. O'NEILL. I, too, want to congratulate you. I remember some 20 years ago, or 18 years ago, when I was in the Legislature of Massachusetts, that at that time we had very controversial hearings on the Fair Employment Practices Act which passed and was enacted into law under Governor Tobin of Massachusetts.

I recall a witness before the committee at the time being asked the question: "Do you think you can legislate morals?"

Father Sexton said, "You cannot legislate morals but I feel when I advocate legislation of this type I am on the side of the angels."

I think, Mr. McCulloch, you truly have been on the side of the angels. I have to agree with Mr. Bolling, that without you there would not have been a bill of this type before this committee.

I want to go further. We enacted the Federal Employment Practices Act in Massachusetts about 18 years ago and I am amazed at the few cases that have appeared. Of the claimants before the board it is my belief that about 1 out of 50 has a case which has been found in his favor.

What is the history of the Fair Employment Practices Act in the other States? Is it the same history, very few cases come before it, and, if so, is legislation of this kind needed, or is it because of the very act itself that it puts the businessman on guard and on watch and it is useful legislation?

Mr. McCULLOCH. Your history in Massachusetts is substantially the history of the other States upon which we have the records, and we have the records on most all of them, and the reason for the legislation is as you have indicated.

There is one other safeguard on this title in this bill which the chairman has mentioned but which bears repetition. There is no authority for immediate ordering of any action by the Commission. Again, the employer is entitled to a hearing in a Federal court and an order by a duly appointed judge of the Federal court.

Mr. O'NEILL. Then is it your opinion where we have legislation on the books that the normal course the people will try to follow is to follow that legislation and follow the law of the land and consequently, by having legislation on this type of thing, it does us a great good?

Mr. McCULLOCH. I am sure of that, yes, sir.

Mr. O'NEILL. Thank you.

The CHAIRMAN. Mr. Elliott?

Mr. ELLIOTT. Mr. Chairman, I want to ask a question or two about title III, on page 48 of the bill. Title III is the one which deals with desegregation of public facilities. I read about half of the first sentence, section 301(a).

Whenever the Attorney General receives a complaint signed by an individual to the effect that he is being deprived of or threatened with the loss of his right to the equal protection of the laws, on account of his race, color, religion, or national

origin, by being denied access to or full and complete utilization of any public facility which is owned, operated, or managed by or on behalf of any State or subdivision thereof, other than a public school or public college as defined in section 401 of title IV hereof—

and other conditions—I want to stop reading to ask this question:

What does "any public facility" on line 11 mean?

Mr. McCULLOCH. That means any facility financed in whole or in part by public funds, such as swimming pools, golf courses, and recreation places, such as playgrounds.

Mr. ELLIOTT. In my area of the country there has grown up a practice in recent years of home demonstration clubs, farm home demonstration clubs sponsoring community libraries. They usually work in this manner: The ladies of the club conduct various enterprises to raise money. Sometimes they have dinners and sometimes they have plays and that sort of thing. They get their money and then they open, usually in some member's home or in an extra room, or in some cases perhaps in an abandoned school or church or some other public or semipublic building, a little library for the use and benefit and service of the public in a rural community where the home demonstration club is located.

Many of these libraries have no connection with any public library system, either State or local—or national, for that matter—but they are designed and they do, and are used to, serve the general public of the households living in usually the small community where the home demonstration club is located.

Under the facts that I have described with respect to these little community libraries, would you say that such a library operated in the manner I have described, by a home demonstration club in that community, would be covered by the term "any public facilities" on line 11, page 48?

Mr. McCULLOCH. I will answer your question first by asking you a question, and then, if you wish me to answer categorically, I will.

If the activity which you have described is a public facility which is owned, operated, or managed by or on behalf of any State or subdivision thereof, then it would be covered by this legislation. If it is not a public facility which is owned, operated, or managed by or on behalf of any State or subdivision thereof, my answer would be "No."

It is a very difficult question, depending upon just exactly how it is operated, how it is managed, who operates it, who manages it, from whence the funds came to manage it.

Mr. ELLIOTT. I am generally familiar with the type of organization. These clubs, I think, are always organized by the farm ladies of the community involved. They receive some held in the organization of these clubs, which in this case would own and operate the library. They accept some help about organization and continuance, usually from what is called the home demonstration agent of the Federal-State, paid-for extension service of the county where they are located. Other than that, they receive, I believe, no Federal, State, or local funds, and the funds they do obtain are derived from the plays, dinners, and picnics, sometimes by the sale of books by the members in the community, and that type of means of raising money.

Mr. McCULLOCH. If I were the judge of the law and the facts in that case, my answer would be "No," if all the facts are as you have stated them.

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Mr. ELLIOTT. You would say such a library would not be——

Mr. MCCULLOCH. Would not be a public facility which is owned, operated, and managed by or on behalf of a State or political subdivision.

Mr. ELLIOTT. Now a similar question occurs to me in this context. In my State of Alabama, which I am privileged now to represent as a whole, there have been built in recent years many National Guard armories. These National Guard armories are owned, I presume, by the State of Alabama or by the State wherein they are located, but they are paid for, in many cases, wholly by Federal funds, or in some cases at least, wholly by Federal funds, and in other cases they are paid for usually by one-half Federal funds and one-half State funds. So far as I know, those are the only two methods of financing them.

These National Guard armories are used not only for the meeting of the National Guard of the community where they are located, but in recent years increasingly they have been thrown open to public meetings of all sorts. Political meetings oftentimes are held in the armories. Oftentimes celebrations by this or that organization are held in these armories. Oftentimes a singing association will use this armory as a place to meet.

Under the conditions I have described, not referring to the military but referring to what I would call private or, at most, semipublic uses, for those uses, would the National Guard armory be "any public facility" as described and set forth in line 11, page 48?

Mr. MCCULLOCH. It would be my opinion that the coverage would fall under title VI of the bill, entitled "Nondiscrimination in Federally Assisted Programs." In Ohio, the armories, of course, are all owned by the State, even though they initially, in part at least, are financed by appropriations by the Congress and allocations from the Federal Government. Probably also in title III the coverage would be under this bill, and it would prevent discrimination or there would be the sanctions if there were discriminations which are prohibited in the law. We use the amories for the same purpose in my section of Ohio.

Mr. ELLIOTT. Let us say that a singing group was using this armory and the singing group held a Sunday afternoon sing, as is customary in many sections of the country. Let us say a colored man not otherwise invited came to this singing and demanded entrance, would refusal to admit him to the singing, if held in this type of public building, an armory, be a violation of title III?

Mr. MCCULLOCH. You, of course, have asked a very difficult and important question. I know that. In a horseback answer I would say if your singing club was a private organization, organized in accordance with what we know as private clubs and was using the premises solely for the benefit of that club sing, it probably would be exempted. I am answering from the cuff a very difficult question.

Mr. ELLIOTT. Mr. McCulloch, there are many difficult questions involved in this bill and, I am sure, in its future administration. You have indicated you feel most strongly about the provisions of this bill, including the FEPC provision and including the public accommodations provision, but I would like to say to you, on the other side of this coin, that in the old slave States of the Union there are feelings also which are extremely strong, and in devising this law I personally

feel that not nearly enough compassion was exercised with respect to those feelings and those attitudes; that in the section of the country where I am privileged to live, the final result of this bill, with all these extremely harsh provisions that go so much beyond what the 1957 act and what the 1960 act did, will be to create tenser and tenser conditions with which we will have to live.

You were here and, as I recall, you helped devise the 1957 act. At that time I think you perhaps never dreamed of writing in the FEPC provisions. You helped devise the 1960 act, and I do not recall any effort at that time to put in the FEPC provisions.

Here, as I understand, you held no hearings on the FEPC phase of this whatsoever. Is that correct?

Mr. McCULLOCH. Let me answer your whole statement, which I, of course, am glad to do.

I did not propose an FEPC title in 1957. I did not propose an FEPC title in 1960. I did not originally propose an FEPC title in 1963. There are many reasons which impelled me to that decision, not the least of which was that I felt at those times that an FEPC title conceivably could be the difference between passing legislation and not passing legislation.

I think that was the feeling of a number of people about civil rights legislation and why there wasn't an FEPC title in the administration bill and in some 50 or 60 or 70 other bills.

You asked a specific question about hearings on the FEPC title. Of course, you know and all the members of this committee know that that title came from the House Committee on Education and Labor, to which was referred a title covering only this subject and which, in accordance with the Reorganization Act of 1946, properly went to the Committee on Education and Labor.

I understand they had lengthy hearings on this FEPC title, and they finally approved an FEPC title. Through the leadership of the majority, that bill, which was approved by the Committee on Education and Labor, was referred to the Judiciary Committee because the then President of the United States had desired an omnibus bill to come to the Judiciary Commitee and be there considered.

An FEPC title was considered at some length, if not considerable length, and I think at considerable length, in the subcommittee which had such lengthy hearings on this legislation. It was considered to the extent that my good friend and able colleague on the Judiciary Subcommittee offered the Griffin amendment, which insured to employers a day or a hearing in a trial court of the United States. I regret to say that Mr. Meader's amendment was not accepted in the subcommittee. That is one of the reasons that many of us strongly opposed the subcommittee bill.

I am very happy to say in part of this bill-drafting that my good friend Allen Smith asked me about, we wrote into this final bill the Griffin amendment which insured an employer his day in Federal court.

I take that long a time to give you the answer to: Was there any hearing on the FEPC title? That was the hearing. The Attorney General testified about it, as I recall, which can be determined from the material that is before you, in executive session. I guess it has been heard many times. I guess it was reported out early in the time

that I was in the House. Some of you people who have been here longer remember about that, I am sure.

Mr. ELLIOTT. You do not have to answer this question now unless you want to, to use the phrase I borrow from my colleague Allen Smith, here.

Does the gentleman feel that there is a limit as to how fast one of the large sections of our country can digest legislation in the field in which we are legislating today? Has the gentleman any appreciation of that fact?

Mr. MCCULLOCH. I hope I do have some appreciation of that fact. I say this with modesty. I have done a bit of studying of this important and troublesome problem from both north of the Mason-Dixon line and south of it. A very interesting part of my life when I was at an impressionable age, just after I had been graduated from law school, I spent in the South. I am a member of the bar of the State of Florida, and have had some pleasant experiences there. So, my entire watching, reading, and thinking about this problem has not been from the "ivory tower" in my district, where 98 percent or more of the people are native-born white and where I do not have any political problems from either side of the fence.

I have tried to be as objective as I know how, and I think that I look at this problem about as objectively as any of my colleagues in the House.

I apologize again for the self-praise.

Mr. ELLIOTT. In title III, which we are talking about here, it seems to me you have gone pretty far in encouraging the starting of lawsuits. To read on here, you say if—

the Attorney General certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the public policy of the United States favoring the orderly progress of desegregation in public facilities, the Attorney General is authorized to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

Section 301(b) takes the other side, and section 302, as I read it, in the same way makes much easier the bringing of a multitude of lawsuits to stir up or to keep stirred up this question.

Contrary to the gentleman, I live in the midst of this problem every day, and have for 50 years. We are making it easier and easier by each of these provisions to make the problem grow worse.

My record in Congress has not been one and I do not want it ever to be one of a race baiter or anything of that nature, but I do recognize facts as I see them from day to day in the area where I live. I know the troubles that we have had in Birmingham, which is just outside by home county. I know the general distraught, upset, stirred-up situation that exists all over my State today. I thoroughly believe that if those in the majority understood what I understand about it, the tendency would be to slow down a bit and to give people of good will and good intelligence time to make the adjustments that need to be made.

Our situation is different from yours, Mr. McCulloch. It is completely different. Forty percent of our people are colored. Their previous status has been referred to. The attitudes fixed over centuries just must be considered as representing an actuality, not a matter of mere theory.

That is all, Mr. Chairman.

Mr. McCULLOCH. Mr. Chairman, I would like to say this. I am sure that all who have heard me speak or have watched my actions know that I have no desire to stir up any racial controversies in this country. My interest in civil rights legislation is to give a governmental urge and help to a thing that is necessary if we are not indefinitely to have two classes of citizens in this country.

Title III, to which you refer, refers to public facilities. I have strong feelings or would have strong feelings as a taxpayer if, by reason of my red hair, my darling daughter could not go to the municipal swimming pool in my town if she wanted to.

I have great feelings, strong feelings, against any system which would prohibit my son from playing softball, basketball, or skiing in the public park which is financed by me as a Negro, being one of the successful businessmen in that town, if I were that. I think that it is my bounden duty as a citizen of the country and as a Member of Congress, with all or even more deliberate speed, to implement the day when my darling daughter, figuratively speaking, shall have the same access as anyone else to that public facility which is financed by the taxes that come from the darling daughter's family.

The sooner we can adjust ourselves to those facts of life, the better we will be getting on in this country. It will take time and it will not be done even in large part by law. It must be in the minds and hearts of people of good will everywhere in the 50 States.

Mr. ELLIOTT. Would the gentleman think it desirable to have a little cooling-off period here to let the minds and hearts of the people have a chance to settle themselves into a pattern that he might desire? If we took a little cooling off from legislation, that might develop faster than it will if we try to do it by the force and the fiat of a law such as H.R. 7152 will be, if it becomes law, with all these provisions in it.

Mr. McCULLOCH. I am of the opinion that it is necessary for the Congress of the United States to move in this session of Congress in the field of the enactment of some effective, comprehensive, yet moderate civil rights legislation. I think we have waited——

Mr. ELLIOTT. In 1960 you would not have called this moderate. That is 3 years ago. You would not have called FEPC a moderate approach 3 years ago. You would not have called this public accommodations section moderate 3 years ago.

Now, with all the wrenching around that we have been doing in these last years, how does it suddenly become such a moderate approach to a problem that is much worse now than it was in 1960 in the area of the country that I referred to?

Mr. McCULLOCH. It is in part true that I would not have called certain titles of this legislation moderate in 1957 and perhaps even in 1960, or perhaps even in January of 1963, if I had been the sole person responsible for legislation in this important field; but there have been monumental changes in conditions in this country, and our perspec

tives in many fields are different than they were in 1957 or in 1960. What is the appropriate quotation?

The older order changeth, yielding place to new. One good custom should corrupt the world.

I am sorry I cannot give it to you with accuracy, but it is a quotation to which I frequently repair because I note that I am described so often as a "conservative," if not a "reactionary."

The CHAIRMAN. The committee will meet tomorrow morning at 10:30, and Mr. Willis will be the witness.

(Whereupon, at 5 p.m., the committee recessed.)

CIVIL RIGHTS

THURSDAY, JANUARY 16, 1964

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RULES,
Washington, D.C.

The committee met at 10:30 a.m., in room H-313, the U.S. Capitol Building, Hon. Howard W. Smith (chairman) presiding.

The CHAIRMAN. We shall hear this morning the honorable Edwin E. Willis, on H.R. 7152.

STATEMENT OF HON. EDWIN E. WILLIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Mr. WILLIS. Mr. Chairman, I express my appreciation of the privilege to appear before your distinguished committee to discuss our side of this proposal. May I say at the outset that I have never before, before a committee or on the floor, read from a paper, but I think I will do so today, both to assure exactness and in the interest of time. With your permission, I would like to proceed.

I will have something to say about many parts of the bill before you, but I have been assigned the task of discussing titles I and II in particular. Other members of the Committee on the Judiciary, opposed to this legislation, will in turn undertake to discuss titles III to X in greater detail.

If that is your wish, I will be glad to answer questions as we go along, but I think it would be better to give my views first. In that way I think we could save time, because I suspect I might anticipate many of your questions in my general statement.

Before proceeding, however, I would like to say this. We live in an age of polls, labels, and slogans. In these polls, however, you and I are always the ratees and we are never given an opportunity to rate our raters. I assure you, however, that I don't mind this at all because I regard it as a small price to pay for the rewards that come with public service.

Every year we must be rated by various and sundry groups and organizations such as ADA, ACA, AFL-CIO, NAM, AMA, PTA, NEA, Farm Bureau, and so on and on. And the strange thing is that on identical bills one group might rate us as conservatives, while another might rate us as liberals, each according to their peculiar and rigid notions of the meaning of these relative terms.

I take the ratings as they come and can only draw some consolation from Robert Burns' lament:

> Oh wad some power the giftie gie us
> To see oursel's as others see us!

And the same is true with reference to legislation. Bills are almost invariably given quickie labels to either pass or defeat them. For example, foreign aid is called the Mutual Security Act. An act to quiet the longstanding title of a State is called tidelands oil. The public works bill is called a pork barrel—and so ad nauseam.

But that's not all. Sometimes one can choose between two labels. He can be for medical care for the aged or against socialized medicine. And if he has not read the bill, he can say that he is for medical care for the aged and against socialized medicine at the same time. But for us there is always a day of reckoning. Ultimately we must vote on merits and not on labels and take the consequences—and that, too, in my judgment, is a small price to pay for responsible representation.

Now some call this legislation civil rights legislation while others call it civil wrongs legislation. But a rose is a rose by whatever name it is called. Therefore, let us consider the proposal not either as conservatives or liberals, or whatever, but as responsible Members and let us study it on the basis of content and not labels.

It is on that basis that I would like to present my views. But first a word about the broad provisions of the bill and how it got out of the Committee on the Judiciary.

HISTORY OF LEGISLATION AND BILLS INTRODUCED

The history of this legislation shows that the proponents became bolder and bolder as time went on and wound up by employing tactics or procedures unprecedented during my period of service on the Committee on the Judiciary in bringing it out of that committee.

As usual, many Members introduced various versions of civil rights bills during the last session of Congress. But the important bills to look at are the ones introduced by the Democratic chairman of the committee, Mr. Celler, of New York, and the senior Republican member of the committee, Mr. McCulloch, of Ohio.

On January 31, 1963, Mr. McCulloch, the senior Republican member on the committee, introduced H.R. 3139, containing four titles, as follows:

Title I: Making the Civil Rights Commission a permanent agency; strengthening equal protection of the laws in the field of education.

Title II: Equal employment opportunity by the establishment of a Commission on Equality of Opportunity in Employment.

Title III: Assistance to States in the field of education.

Title IV: Literacy tests, establishing presumption of literacy in Federal elections.

On April 4, 1963, Mr. Celler, the Democratic chairman of the committee, introduced H.R. 5455, entitled "A bill to enforce constitutional rights, and for other purposes," in the field of education only.

And, on the same date, he introduced H.R. 5456, to extend the life of the Commission on Civil Rights for 4 years.

Finally, on June 20, 1963, Mr. Celler, the Democratic chairman of the committee, introduced a bill which became known and is still titled H.R. 7152, containing at that time eight titles, as follows:

Title I—Voting Rights.

Title II—Injunctive Relief Against Discrimination in Public Accommodations.

Title III—Desegregation of Public Education.
Title IV—Establishment of Community Relations Service.
Title V—Commission on Civil Rights.
Title VI—Nondiscrimination in Federally Assisted Programs.
Title VII—Commission on Equal Employment Opportunity.
Title VIII—Miscellaneous.

HEARINGS AND PRELIMINARY ACTION OF THE COMMITTEE

To be sure, general hearings were held over quite a period of time, but the subcommittee, after these general hearings, came out with a complete substitute of its own going far beyond both the scope and coverage of the bills as introduced and the hearings thereon. The substitute then came up before the full committee for consideration in executive session. After some discussion even the most ardent supporters of civil rights legislation said or pretended to say that they could not stomach it. For example, the Attorney General in testifying before the committee in executive session—I can repeat it because his testimony has been released—said:

Title III would extend to claimed violations of constitutional rights in State criminal proceedings or in book or movie censorship; disputes involving church-state relations; economic questions such as allegedly confiscatory ratemaking or the constitutional requirement of just compensation in land acquisition cases; the propriety of incarceration in a mental hospital; searches and seizures; and controversies involving freedom of worship, or speech, or of the press.

Obviously, the proposal injects Federal executive authority into some areas which are not its legitimate concern and vests the Attorney General with broad discretion in matters of great political and social concern.

To illustrate: which types of disputes should the Attorney General make a matter of Federal concern? Should he exempt disputes involving reading of the Bible in classrooms? If so, on what basis? What criteria should he adopt to determine whether to intervene in a particular case of an arrest of investigation, for example, or the banning of a movie as obscene, or a claim that the rate set by a State public utilities commission is unreasonably low?

This, of course, appears at page 2658 of his testimony, which I think you now have before you.

So, it was agreed that a motion would be made, still now in executive session, considering the subcommittee substitute going far beyond the proposals as introduced—it was agreed at that point that a motion would be made to strike out title III when the time came for amendments of the subcommittee substitute.

And it was readily agreed by a number of the proponents that the section of the subcommittee substitute bill dealing with voting rights and providing that it would apply to both Federal and State elections was unconstitutional. There is no secret about that. The only question was who would offer the amendment when we reached the point when amendments would be offered in connection with the substitute then being considered in executive session.

I have been with the Committee on the Judiciary for over 15 years. I have great respect for all the members. I consider all of them to be close personal friends and at the same time I think I know my way around a bit in the committee. And from what I heard and observed, I was completely satisfied that there would be important modifications made in executive session, including a modification of the title dealing with public accommodations and other provisions. It clearly ap-

peared to me that we were making headway and that reason and calm deliberations were prevailing. But I must have been dreaming because, in the words of the song of Gov. Jimmie Davis, "You Are My Sunshine," "when I awoke I was mistaken."

FINAL COMMITTEE ACTION

On October 29, 1963, the proponents took over the proceedings in a grand style.

Chairman Celler offered a brandnew 56-page mimeographed substitute bill which he described as an amendment and moved that the committee approve it. In fairness, he announced that he would recognize a member of the committee to move the previous question and, if it were ordered, that no amendments could be offered to his proposal, no debate had, and no questions asked or answered.

The bill was, upon order of the chairman, read hastily by the clerk, without pause or opportunity for amendment. Several members of the committee repeatedly requested to be permitted to ask questions, have an explanation of the bill, discuss it, consider its provisions, and offer amendments. The Chair refused to grant such requests or to recognize these members of the committee for any purpose. After the reading of the bill in the fashion hereinabove described, the chairman announced that he would allow himself 1 minute to discuss the bill, after which he would recognize for 1 minute the ranking minority member, the gentleman from Ohio. This was an ostensible or pretended attempt to comply literally with the rules of the House but did not amount to debate, as debate is generally understood. Neither of these gentlemen discussed the bill for more than 1 minute; both of them refused to yield to any other member of the committee; and neither of them debated the bill nor discussed it in any fashion other than to say that they favored it. They made no effort in the 2 minutes consumed by both together to even so much as explain the provisions of the bill. In short, there was no actual debate on even an opportunity for debate or to offer amendments. I doubt seriously that anyone in that room really knew what he was voting on.

As stated in our minority report, in reciting these facts relating to the procedures employed in the full committee we do not do so in any captious spirit, but relate these facts to inform the Congress of the tactics employed to bring this bill before the House.

THE BILL REPORTED OUT

Now that we have had an opportunity to compare the bills as introduced, the subcommittee substitute and the full committee substitute, we can assert this. The subcommittee wrote a bill with little relation and less regard to the general hearings and then the full committee rewrote the final product with no hearings at all and with no opportunity for debate or to offer amendments.

There has been a lot of talk concerning the watering down of the subcommittee substitute by the full committee. About the only thing that can be said in this respect is that the full committee took out from and then put back in many important provisions in the subcommittee substitute. Let me give you a list of some of these glaring examples:

1. As indicated by his testimony in executive session, previously quoted, title III, in one fell swoop, would have permitted the Attorney General to file suits in the broad field of civil rights. This short sentence stared you in the face and it looked awful. It dug a glaring, deep penetration like a single rifle shot. So this title was removed by the full committee, but in shotgun fashion little titles III were inserted here and there in the bill reported by the full committee.

And to be sure that the grab for power by the Attorney General is complete, title X provides that nothing in this act shall be construed to deny, impair, or otherwise affect any right or authority the Attorney General already has—broad as those may be.

2. It has been generally reported that the full committee changed the subcommittee substitute so as to restrict this bill to Federal elections. But this is not so. Although the full committee substitute refers repeatedly to "any Federal elections," in the body of the bill, section 101(c) defines a Federal election to mean—

> any general, special, or primary election held solely or in part for the purpose of electing or selecting any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives.

This means that the bill before you does apply to local and State elections in at least 46 States of the Union.

3. There was added in the bill reported out by the full committee in section 101(d) the unprecedented provision that:

> In any proceeding instituted in any district court of the United States under this section the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case.

This provision giving the Attorney General the power to shop around for a forum and special judges did not appear in any previous bill.

4. Section 602 makes it the mandatory duty of every Federal department or agency to utilize the funds provided for Federal financial assistance in every program or activity to enforce civil rights requirement. This mandatory requirement did not appear in the administration bill.

5. The full committee substitute added section 202. This section would make unlawful discrimination or segregation of any kind on the ground of race, color, religion, or national origin at any establishment or place, if either purports to be required by any rule, order, et cetera, of any State or any agency or political subdivision thereof. This section is not limited to public places or facilities and did not appear in any previous bill, not even the subcommittee substitute.

6. Section 711(b) contains the following blanket and unlimited authority:

> 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 an instrumentality of the United States.

This provision was not contained in the subcommittee proposal.

7. Under section 201(b)(c) an establishment is classified as engaging in interstate commerce if it "provides lodging to transient guests" or "if it serves or offers to serve interstate travelers." This broadens the coverage provided in the subcommittee proposal which made such classification if the accommodations, goods, and services "are provided

to a substantial degree to interstate travelers" or if a substantial portion of the goods offered has "moved in interstate commerce." As to the latter requirements the wording of the bill is:

> * * * it serves or offers to serve interstate travelers or a substantial portion of the food which it serves, or gasoline or other products which it sells has moved in commerce.

It will, therefore, be seen that the bill reported out of the full committee covers any establishment offering lodging to transient guests, even though it does not have guests traveling in interstate commerce. The bill also covers an establishment which offers to serve interstate travelers even though a substantial portion of the food which it serves, or other products which it sells, has not moved in interstate commerce.

8. The House Committee on Education and Labor has jurisdiction over labor legislation. Accordingly, that committee reported out the so-called FEPC bill, H.R. 405. That bill is now pendnig before the Rules Committee.

A few witnesses, particularly a Member, appeared and suggested that it would be nice to tack the provision of that FEPC bill to the present one. But the administration had not asked for it; the Democratic chairman of the committee had not included it in his proposal, and the senior Republican member of the committee had not included such an FEPC proposal in his bill. And I can say as a fact that the committee members did not take the suggestion seriously—not at the time the suggestion was made, anyway.

Yet, without having jurisdiction over the subject matter, without hearings, without as much as a "by your leave," the FEPC provision of H.R. 405, reported out by another committee and pending before the Rules Committee, was incorporated as title VII of the bill under discussion.

9. Under title IV the Commissioner of Education is granted broad new powers. Under title VI every agency and department of the Federal Government administering activities or programs involving Federal financial assistance is compelled to take ill-defined action, in addition to cutting out Federal funds. And, as previously pointed out, under section 711(b) the President is granted unlimited and blanket authority to take whatever action he deems appropriate concerning employment in such programs.

It is not my task to measure the depth and breadth of these provisions and other members will discuss their full impact. But it can be seen that a concerted exercise of a combination of these powers would bring about these results. In this I have been awfully careful, including advice of counsel.

Public and private schools and colleges benefiting from any Federal financial program are placed under Federal control in the handling of pupils and the selection of faculty members insofar as they relate to race, color, or national origin and desegregation or discrimination in connection therewith.

I am quite sure that most, if not all, of the proponents would tell you that they do not intend such results, but there they are, nevertheless.

Well, what do we do? We could recommit the bill, or we could defeat the bill, or we could and must at the very least amend it to take

care of harsh and drastic situations and results, above outlined, among others.

RECOMMITTAL, DEFEAT, OR AMENDMENT

I do not think it can be denied by any serious minded and responsible member or person that the bill now before you is the most drastic and far-reaching proposal and grab for power ever to be reported out of a committee of the Congress in the history of the Republic.

I am quite certain that the foregoing and many other open-ended and unlimited provisions would have been removed if the committee had been given an opportunity to debate and amend the bill in calm executive session. And in my opinion, the right thing to do would be to recommit the bill to the Committee on the Judiciary for further consideration.

If the bill is not recommitted, and if it is not defeated, however, I have outlined at least some of the kind of meaningful amendments that should be offered to this bill on the floor. And in resolving any course of action, I again appeal to the membership to vote on it on the basis of merit and content and not on the basis of sectionalism, prejudice, and label.

I shall now identify some of the major weaknesses of title I of the bill—the title on voting rights, starting with the provision of subparagraphs (A), (B), and (C) of section 101(a)(2) of the bill. These begin at page 38, line 16. They impose prohibitions on State election officials in connection with so-called Federal elections.

Our Constitution provides for popular election of Senators and Representatives in Congress. It also provides for the selection of electors who select the Preseident and Vice President of the United States.

The right to vote for these officials is a sacred one. It is protected by the 14th amendment of the Constitution, which prohibits the States from denying to any person the equal protection of the laws, and by the 15th amendment, which says that the rights of citizens to vote shall not be denied or abridged by any State on account of race, color, or previous conditions of servitude.

While article I, section 4, of the Constitution empowers Congress to "make or alter" regulations as to the "times, places, and manner of holding elections for Senators and Representatives," there is no similar provision with respect to elections of presidential electors.

Article II, section 1, merely provides that each State shall appoint its electors in such manner as the legislature thereof may direct.

What is more, and this is most important, the Constitution gives no power to determine the qualifications of voters in elections of Federal officers but leaves this to the States.

Article I, section 2 provides that the people who vote for Representatives in Congress shall have the same qualifications as the electors of the lower ("most numerous") house of the State legislature. The 17th amendment provides the same qualification rule for electors of U.S. Senators. And article II, section 1, gives State legislatures control of the manner of election of President and Vice President electors. In practice, this has resulted in the same eligibility rules in each State for all elections of Federal officials.

To sum up a very simple situation—under the Constitution people who are qualified by State law to vote for members of the lower house of the State legislature are also qualified to vote for Representatives and Senators in Congress and for electors of the President and Vice President. States must not deny equal protection of the laws, or abridge the right to vote because of color or race. Congress can affect the "times, places, and manner" of holding congressional elections, but not of the election of presidential electors, and it has no power over qualifications of voters.

With this simple situation in mind, let us look at the bill——

The CHAIRMAN. Mr. Willis, would it bother you if I interrupted there?

Mr. WILLIS. All right.

The CHAIRMAN. You brought out the Constitution had not given any power to Congress, any power at all in this, unless it is presidential electors?

Mr. WILLIS. That is right.

The CHAIRMAN. Did the committee have an opportunity to consider that very obvious defect in this bill?

Mr. WILLIS. No, sir; that was not discussed. We had not reached amendment time when——

The CHAIRMAN. That was never brought to the attention of the committee, a thing that is so obvious?

Mr. WILLIS. No; that was never discussed. We had no opportunity to discuss it.

With this simple situation in mind, let us look at the bill. Subparagraph (A) of section 101(a)(2) says that no person acting under color of law shall—

(A) in determining whether any individual is qualified under State law or laws to vote in any Federal election, apply any standard of practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote.

If this means that no State official shall deny or abridge the right of citizens to vote on account of race or color, or shall deny any person the equal protection of the laws, I am for it all the way. Because that is what the Constitution says in the 15th and 14th amendments. In other words, if subparagraph capital (A) means that no State officer shall discriminate with respect to voting rights by applying different voting qualifications to different persons because of their respective race or color, it is already the law. But the import of the subparagraph is to permit an encroachment on the constitutional power of the States to establish voter qualifications.

The same is true of subparagraph (B) which begins at line 3 on page 41 of the bill. This subparagraph provides that no person acting under State law shall—

(B) deny the right of any individual to vote in any Federal election because of an error or omission of such individual on any record or paper relating to any application, registration, payment of poll tax, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote.

Here, again, no one, least of all I, wants an applicant for voting registration to be turned away on the pretext of an error or omission

that it not material to his qualifications. But here, again, the question is one of qualification to vote under State law. And here, again, the bill takes the determination of the qualifications away from the States. The Constitution placed it in the States. Now, in the absence of a violation of the 14th and 15th amendments, can it be taken away? Yet that is what the bill purports to do.

There is no precise way of measuring how grave an error or omission must be before it is "material" to the qualifications of a voter. The Constitution gave the question of qualifications to the States. The bill would give it to the Federal courts, again without showing that the purported "immaterial" error omission was used as a pretext for discrimination because of race or color. Mere nonconformity among registrars is made the legal equivalent of deliberate discrimination. What is more, there is no reason to believe and the committee had no basis for assuming that Federal judges would be wiser or more consistent in their appraisal of what is "material" than the local registrars.

I might add, you might say what do you mean by "nonconformity"?

Beyond my prepared statement I might point out that if you take A, B, and C together you may well have an idea, an identity, because when you talk about A and B, as I have described, and when you come to the other passage dealing with literacy tests and the right of an applicant to have a certified copy of questions and answers posed for him for all voters to have if he asks for it, what is behind all this?

Pass this paper around to have a single test that you must—and I am not talking that there should be discrimination but I am trying to find out what is behind all of these things together—is the idea that because of A, B, and C put together, the tests shall be identical?

You have a right to ask for your paper. You can compare it. Now you see when you take them altogether, you are striking at qualifications, taken altogether, this is an effort and a direct effort to reach qualifications of voters.

Thirdly, I turn to subparagraph (C) at line 10 of page 39. This provides that no person acting under color of law shall "(C) employ any literacy test as a qualification for voting"—here the word "qualification" sticks out like Pike's Peak in the Rockies—

> in any Federal election unless (i) such test is administered to each individual wholly in writing except where an individual requests and State law authorizes a test other than in writing, and (ii) a certified copy of the test whether written or oral and of the answers given by the individual is furnished to him within twenty-five days of the submission of his request made in writing within the period of time during which records and papers are required to be retained and preserved pursuant to title III of the Civil Rights Act of 1960.

Subparagraph (C) constitutes another unwarranted interference with the States with respect to their constitutionally granted power to determine eligibility to vote. There can be no denial that the form and content of a literacy test is an element in the establishment of a voter's "qualifications" as that term is used in article I, section 2 and in the 17th amendment, which relates to electors of Representatives and Senators, respectively. It is therefore a prerogative of the States and not of the Congress. Finally, this prohibition—and it is a prohibition if you analyze it—of oral literacy tests is made to apply without regard to whether the test is used to discriminate on account of race or color in violation of the 15th and 14th amendments. Here again the Judiciary Committee lacks sufficient factual basis to support the

blanket inference that the use of oral literacy tests, in and of itself, with nothing more shown, violate the constitutional injunction against discrimination in voting because of race or color.

These provisions of the bill, in my opinion, are unconstitutional substitutions of the judgment of Federal courts for the judgments of State officials. Their enactment would open a Pandora's box for further confusion in Federal-State relationships.

But the bill goes further than merely interfering with the right of the State legislatures to establish and administer their own qualifications for voting. In section 101(b) it establishes an affirmative test of its own. Section 101(b) (at p. 40, line 7) provides that in any voting suit a person who has completed the sixth grade shall be presumed to have sufficient literacy to vote in any Federal election, as that term we thought meant.

Let me make myself entirely clear. I personally agree that such persons should be allowed to vote. The exercise of the franchise should be universal and any literacy bar to voting should be minimal indeed. In my State I can tell you that requirements for voting are less than sixth grade. I can tell you this: I doubt I would vote for a bill saying that this is the test, to achieve the sixth grade.

I can tell you, and I am not ashamed of it, my father would be today over 100 years old and he never went to school but he voted.

This provision cannot disguise the fact that the Federal presumption created by section 101(b) establishes a qualification for voting. The Supreme Court has repeatedly ruled that the States and only the States have the right to establish voter qualifications. Usurpation of this right by act of Congress is clearly unconstitutional.

Nor can much comfort be found in the fact that this presumption of literacy is declared to be rebuttable. They are going in the business, are they not, of qualification of voters?

In a court case, the State voting registrar would have the burden of proving by a preponderance of evidence that the applicant is illiterate. If the applicant can avoid a literacy test, this burden would be considerable.

I have already covered and shan't repeat the fact that this does not relate to only Federal elections. This bill also affects local and State elections.

Before leaving the unconstitutional requirements of sections 101 (a) and (b), I should like to revert to the ostensible limitation of these subparagraphs to "any Federal election." At first glance one would naturally think that this is a material limitation on their scope. But when it is recalled that "Federal election" is defined as—

> any general, special, or primary election held solely or in part for the purpose of electing or selecting any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House Representatives—

it is clear that most elections are included.

Forty-six of the States elect their own officials in elections at which Members of Congress and president and vice president electors are also chosen. What is more, they qualify their voters only once, and registration applies for the election of all officials, both Federal and State. This means, as a practical matter, that vitually all regular elections are "Federal elections," within the meaning of

the bill. To take advantage of the exemption which the bill ostensibly gives them with respect to State elections, the States would have to go to the considerable expense of a double registration system and the separation of the elections conducted for State offices from those conducted for Federal offices, a very impractical alternative. In effect, as I have stated, the provisions of section 101(a) amount to a congressional finding, unsupported by evidence, that the practices prohibited ipso facto involve discrimination in violation of the 14th and 15th amendments. In light of this, any State seeking to continue oral literacy tests, even in purely State elections, would be virtually courting charges of denial of equal protection of the laws.

Another innovation of title I is found in section 101(d) of the bill which authorizes the Attorney General, at his unreviewed discretion, to demand a three-judge court to hear and determine any voting suit. The chief judge of the circuit would have no choice but to comply with the Attorney General's request. Although one of the judges must be from the district in which the suit is instituted, the other two need not. This provision enables the Attorney General, when he has no confidence in a particular district judge, to convert that judge into a minority of a three-judge panel, if, indeed, he is appointed to the panel at all.

It is difficult to understand why this provision, which did not appear in the administration bill nor in the subcommittee substitute, should now make its appearance. It is extremely difficult to perceive why, in this troubled field the Attorney General should have what amounts to a preemptory challenge to the district judge before whom the case would normally be tried. I seriously question whether such a flagrant form of forum shopping should be encouraged, least of all should it be provided as an exclusive privilege of the plaintiff Government.

TITLE II

Just like good engineers construct our highways with separate lanes of traffic, so our Founding Fathers erected constitutional walls separating the functions of our Government into three branches—the legislative branch, the executive branch, and the judicial branch.

When a motorist drives out of his lane of traffic and occupies the lane of another, someone is going to get hurt. And when one branch invades the functions of another branch, not only individual rights but the property rights of all the people will be impaired or destroyed.

As Members of the legislative branch we are prone, in varying degrees, to condemn the other two branches, especially the judicial branch, for invading or intruding on our own functions. We insist that the function of the judicial branch is not to make laws but to interpret our laws in the light of the Constitution.

Yet, the legislative branch of our Government, in title II of this bill, undertakes to compel the courts to accept our interpretation of the Constitution, and especially the 14th amendment and the commerce clause, not only beyond and even contrary to the provisions and previous rulings of the courts but beyond and contrary to the provisions of the Constitution itself. Let me give you two typical examples.

In the teeth of previous rulings of the courts to the contrary, title II undertakes to order that from here on the 14th amendment shall

mean that the private owner of a place of business, such as a restaurant and many others, cannot choose his customers.

Despite previous court decisions and beyond and contrary to the provisions of the commerce clause itself, title II undertakes to regulate intrastate commerce and to make a finding intended to be binding on the courts that the activities of the owner of a private establishment, such as a local hamburger stand, a local gasoline station, or a local grocery store constitutes interstate commerce.

Before discussing how and on what basis this is to be accomplished, let us consider certain fundamental provisions of the Constitution dealing with both civil rights and property rights.

We must and do respect all the provisions of the Constitution protecting the rights of the individual—the 5th amendment and other provisions of the Bill of Rights, the 14th amendment, and the 15th amendment, upon all of which all civil rights are based.

But certainly without putting them above those dealing with individual rights, we must also respect and abide by the provisions of the Constitution dealing with property rights, upon all of which our system of free and competitive enterprise is based.

In fact, the 14th amendment protects the individual rights and property rights in the same sentence, which says:

No State shall deprive any person of life, liberty, or property without due process of law.

And the first 10 amendments—the Bill of Rights—sought to protect property rights as well as personal rights. The third amendment protects the houses of people. The fourth amendment protects the people as to their houses, papers, and effects, as well as their persons. The fifth amendment protects life, liberty, and property, and specifically forbids the taking of private property for public use without just compensation. The seventh amendment protects the right of trial by jury in cases involving property, just as the sixth amendment does in cases involving life or liberty.

What is "property"? In its strict legal sense, "property" signifies that dominion or indefinite right of user, control and disposition which one may lawfully exercise over particular things or objects. As so used, the word signifies the sum of all the rights and powers incident to ownership. So defined, "property" is composed of certain constituent elements, including the unrestricted right of use, enjoyment, and disposal of the particular subject of property. Owners of real estate have the right under the Constitution to use, lease, or dispose of it for all lawful purposes. The right of free and untrammeled use, for legitimate purposes, is fundamental and within the protection of the Federal Constitution.

Here another provision comes to mind which I dictated last night and forgot.

What about the constitutional provision which says there shall be no impairment of obligations on the contracts? That has to do with individual rights and property rights, too.

The sum total of all of the foregoing constitutional provisions and the foregoing illustrations of the meaning of "property" and "property rights" is the foundation of our free and competitive enterprise system just as the sum total of the foregoing constitutional provi-

sions dealing with individual rights is the foundation of all civil rights. And under our Constitution we can no more protect individual rights by impairing or destroying property rights than we can protect property rights by impairing or destroying individual rights. Nor can one freedom be advanced or protected by impairing or destroying others.

Title II of the bill draws under Federal control inns, hotels, motels, and other lodging houses, restaurants, cafeterias, lunchrooms, soda foundations, gasoline stations, motion picture houses, concert halls, theaters, sport arenas, stadiums, and other places of exhibition and entertainment.

Having named these categories of private business establishments, the bill adds a "catchall" category. Any retail establishment in which one of the foregoing categories of business places is located, or any retail establishment located in any of these categories, is covered. Therefore, if a lunch counter is in a drugstore or a department store, the entire store is covered. If a doctor or lawyer has an office in a hotel building, he is covered, even though he has for clients people in that hotel and private clients outside.

In executive session, the Attorney General expressed concern about the broad coverage of the subcommittee substitute. We were then considering this in executive session in the hope of amending it, this criticism of the subcommittee proposal on title II. He said:

> What businesses are covered by this provision (in the subcommittee substitute) are unclear. * * * I have no objection to broadening the bill's reliance on the 14th amendment or broadening its scope if the Congress so desires. But invoking the 14th amendment generally is no substitute for specifying the establishments which Congress, enacting national law to solve a national problem, intends to cover.

Here he was pleading for specificity.

Yet the full committee added a new section (sec. 202) covering "any establishment or place if segregation is required by law or by order of a State, or custom of a State."

The provisions of section 202 were not included in the administration bill or the subcommittee substitute. Its inclusion in the reported bill marks the blanket character of this legislation.

And the same can be said of the provisions of section 201 (b) and (c) which, as I have shown, broaden the coverage of the measure to include establishments which provide lodgings to transient guests (irrespective of their travel in interstate commerce) or if they "offer to serve" interstate travelers (irrespective of whether or not any substantial quantity of the food, gasoline, et cetera has moved in interstate commerce).

Title II is said to be based on two concurrent constitutional provisions. The foregoing enumerated establishments are found by Congress to be "places of public accommodation" and are covered (1) if they affect interstate commerce, or (2) if segregation is "supported" by State action. The word "supported" is defined as meaning that segregation (1) "is carried on under color of law, statute, ordinances, regulations, custom or usage, or (2) is required, fostered, or encouraged by action of a State * * *."

Let me tell you those words "custom or usage" are hookers and I can give you some practical explanations if you ask for them.

The CHAIRMAN. I wish you would because we have been stressing that very much, that aspect of that bill which appeared prior to your bill.

Mr. WILLIS. On the basis of using the words "custom or usage" as a test that this somehow, some say, custom and usage is law.

According to my recollection of decisions—and I have not read the general subjects for many years—you can go to custom and usage as an aid to the interpretation of the meaning of an agreement in the area where that agreement is to be effected. For example, I remember I had one case involving a verbal lease of land for a crop. That may be made verbally in Louisiana. The parties had already agreed that they could use my farm as a tenant, share crops on the usual basis, meaning so far as the sharing of crops. There is no question about that. The custom and usage in my area at that time—I do not know what it is today—was that the landowner got one-third of the crop and the tenant two-thirds. So the custom and usage was permitted as an aid to the interpretation of the agreement, but custom and usage differ from State to State and within the States from parish to parish, in my State, or from county to county in your State.

North Louisiana, in custom and usage and habits, is not like south Louisiana where I live, and you know that.

What is State action? Will there be all kinds of custom and usage as binding the State as State action? For example, sharecropping, as I just discussed it, I do not know whether that is the custom in north Louisiana, but you might have in areas of the States cases where you have by custom and usage local option with reference to liquor. Some areas are wet, and drink; but by custom and usage in dry areas they can buy it, too.

You have custom and usage in church matters, in State matters, and in personal relationships.

Where does this lead us? If custom and usage is law, then the State has a law, but which law is effective, custom and usage or the written law? This business of making it an affirmative State action based on custom and usage, gentlemen, is going to foment litigation and put us in areas we are not dreaming about.

What custom? What usage?

Of course, they will say with reference to discrimination true, but now if you are going to dignify custom and usage as being law for purposes of this bill, Congress is certainly saying that from here on, custom and usage are setting a precedent for it. You might as well make up your minds that custom and usage is law and therefore that is a State action.

By custom or by statistics, you have some areas of the United States where crime is greater. In those areas where the crime rate is high, does that mean that by State action crime is encouraged? Of course, that is an extreme and I am talking without preparing illustrations for you, but I am trying to tell you—as I will show you by court decisions—that this provision in the bill is so broad and open ended with no limit and such a blanket, that we had better do something about it.

The constitutional grounds utilized in title II reflect new extremes in the attempted application both of the commerce clause and of the 14th amendment.

In respect of "commerce" the title indulges the presumption that "transients" generate "commerce" and that offers to serve travelers

affect "commerce." In the area of the 14th amendment and the concomitant requirement of some sort of "State action," it equates "custom and usage" to affirmative action by a State. In both respects, title II constitutes—to say the least—a novel and dangerous experiment in political theory. Its adoption could work a revolutionary change in the existing balance of Federal-State relationships.

In my opinion, however, the attempted utilization of the 14th amendment and the commerce clause to support title II cannot be defended on constitutional grounds. You are well aware of the decision of the Supreme Court in the *Civil Rights* case (109 U.S. 3) which held squarely and unequivocally that the act of Congress of 1875, entitled "An act to protect all citizens in their civil and legal rights" and proposing to do exactly what is proposed to be done by title II, was unconstitutional and could not be supported under the 14th amendment.

The CHAIRMAN. That was the law that Congress enacted that provided general services to any person who came to an inn, hotel, or public place?

Mr. WILLIS. You can say it is identical. I have the wording some place if you are interested. I think I can put my finger on it.

The CHAIRMAN. We discussed that bill yesterday, and a very unusual thing happened because our witness, Mr. McCullough, a very able lawyer, relied upon the minority dissenting opinion in that case, rather than upon the majority opinion, which was the law.

Mr. WILLIS. Here was the title of that act—the act was entitled "An act to protect all citizens in their civil and legal rights." Here is the wording of that act:

> * * * All persons within the jurisdiction of the United States shall be entitled to 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 applicable alike to citizens of every race or color or regardless of any previous condition of servitude.

As I say, that statute proposed to do the same thing as this bill did, but yet it was pronounced constitutional.

Mr. COLMER. You mean unconstitutional?

Mr. WILLIS. Unconstitutional.

Since my guess is as good as anyone's, I venture to say that the reason no effort was made to base the 1875 statute on, or to justify it under, the commerce clause, was because of the feeling that there was far less chance to support its constitutionality on the commerce clause than there was to have its constitutionality upheld under the 14th amendment.

Somebody might have a different guess, but I think mine is as good as anybody else's.

I do not think Congress would undertake to undermine this statute on the basis of the commerce clause. They requested it on the provision or the thought at the time that it might have a chance to be upheld, and that was not done.

Mr. COLMER. Mr. Chairman, may I interrupt right there and ask the witness if it is not also a fact that when that 1875 statute was before the Supreme Court—and that was in 1883—8 years later, the interstate commerce clause was also in effect at that time? Therefore, if the Court had desired to uphold it under the interstate commerce clause, they could have done so?

Mr. WILLIS. Let me remind the gentleman, as he well knows, the commerce clause is in the body of the original Constitution. It is part of the original document. We are not talking about amendments that came a long time later.

That was the original power of Congress. There were cases and there have been built-up cases under the reach of this in connection with the reach and meaning and coverage of the commerce clause on the books a long time before that statute was passed, and a long time before that suit was filed.

One of the recent decisions of the Supreme Court of the United States reaffirming the principles announced in the *Civil Rights* cases is that of *Burton* v. *Wilmington Parking Authority* (365 U.S. 715, 6 L. Ed. 2d 45 (1961)), in which the Court said:

The *Civil Rights* cases (109 U.S. 3 (1833)) "embedded in our constitutional law" the principle—

that the action inhibited by the first section (equal protection clause) of the 14th amendment is only such action as may fairly be said to be that of the States. That amendment erects no shield against merely private conduct, however discriminatory or wrongful.

Mr. DELANEY. Could you give us the facts in that case?

Mr. WILLIS. I must apologize. I do not know the details or facts. I will be pleased to subit them.

Mr. DELANEY. I am not familiar with them. This is a 1961 case.

Mr. WILLIS. I will be glad to.

Mr. CHAIRMAN. It is cited in his statement. Is that what you asked him?

Mr. DELANEY. No. I wanted the facts.

Mr. WILLIS. May I supply that later? I want to be accurate. This is a quotation of the holding. I want to be accurate as to the facts.

As late as May 20, 1963, in *Peterson* v. *City of Greenville* (373 U.S. 244), the Supreme Court stated: "Indvidual invasion of the individual rights" is not within the purview of the 14th amendment, and "private conduct abridging individual rights does no violence to the equal protection clause * * *." Again, I am sorry I do not have the exact facts, but here is the language in the concurring opinion. In his concurring opinion in the *Peterson* case, Mr. Justice Harlan said:

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.

I agree with you I should have the facts, because this is very strong language. I will be glade to submit the facts.

Mr. COLMER. In a very recent case.

Mr. WILLIS. 1963.

The CHAIRMAN. That is a very important feature here, as Mr. Delaney has recognized and I wonder if during the day the staff could give us a statement of those facts, to go in at this point in your statement.

Mr. WILLIS. I will be glad to.

The CHAIRMAN. Then we may have it for the record.

Mr. WILLIS. May counsel give a résumé of his understanding, one paragraph of his understanding of what the case is about?

The CHAIRMAN. He can give us a memorandum. If we can have it this afternoon, it would probably be the easiest.

Mr. WILLIS. All right.

In 1959, the fourth circuit court of appeals in the case of *Williams* v. *Howard Johnson*, 268 Fed. 2d 845, 847, stated clearly this well-recognized rule when it said.

> This argument fails to observe the important distinction between activities that are required by the State and those which are carried out by voluntary choice and without compulsion by the people of the State in accordance with their own desires and social practices. Unless these actions are performed in obedience to some positive provision of State law they do not furnish a basis for the pending complaint. The license laws of Virginia do not fill the void.

It is clearly unconstitutional to bottom any claim of Federal control of State action upon "custom or usage" involving acts which constitute merely private conduct.

The attempt to base Federal regulation of public accommodations upon the interestate commerce clause is equally unconstitutional.

"The broken package doctrine" is succinctly stated by the Supreme Court in *Dahnke-Walker Co.* v. *Bondurant*, 257 U.S. 282, 290, as follows:

> Where goods in one State are transported into another for purposes of sale the commerce does not end with the transportation, but embraces as well the sale of the goods after they reach their destination and while they are in the original packages.

The claim that the intrastate sale or renting of goods which have moved in interstate commerce is in itself interstate commerce is in the teeth of the long line of cases illustrated by the statement of Mr. Justice Brandeis in *Pacific States Box & Basket Co.* v. *White*, 296 U.S. 176, 80 L. Ed. 138:

> The operation of the order is intrastate ,beginning after the interstate movement of the containers has ceased and after the original package has been broken.

That the basis used in this bill to attempt to transform intrastate commerce into interstate commerce is untenable is demonstrated by the decision of the Court of Appeals of the Fourth Circuit quoted above, *Williams* v. *Howard Johnson*, 268 F. 2d 845 (1959) as follows:

> 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.

See also *Elizabeth Hospital, Inc.*, v. *Richardson*, 269 F. 2d 167, decided by the Court of Appeals of the Eighth Circuit in 1959, which cites the decision of the Supreme Court supporting the rule as follows:

> We think that the plaintiff's operation of a hospital, to include rendition of hospital services to some persons who came from outside the State, is no more engaging in interstate commerce than was Dr. Riggall in rendering medical services to persons who likewise came from other States. The fact that some of the plaintiff's patients might travel in interstate commerce does not alter the local character of plaintiff's hospital. If the converse were true, every country store that obtains its goods from or serves customers residing outside

of the State would be selling in interstate commerce. Uniformly, the courts have held to the contrary (*A.L.A. Schechter Poultry Corp.* v. *United States*, 1935, 295 U.S. 495, 55 S. Ct. 837, 79 L. Ed. 1570; *Lawson* v. *Woodmere*, 4th Cir., 1954, 217 F. 2d 148, 150; *Jewel Tea Co.* v. *Williams*, 10th Cir., 1941, 118 F. 2d 202, 207; *Lipson* v. *Socony-Vacuum Corp.*, 1st Cir., 1937, 87 F. 2d 265, 267, certiorari granted 300 U.S. 651, 57 S. Ct. 612, 81 L. Ed. 862, certiorari dismissed 301 U.S. 711, 57 S. Ct. 788, 81 L. Ed. 1364).

That is what is sought to be done here. I am satisfied counsel on the other side might find cases that are closer to what they think the law is, but one thing is sure: We are, if we are to pass this bill, going to such extremes, more and more every day, in what constitutes interstate commerce, irrespective of whose guess is best and to whether this bill is a good bill or not. As a matter of policy, we are engaging in the stretching of the Constitution to the point where like a fiddle's string it is going to pop loose after a while.

Congress cannot constitutionally enact a statute converting intrastate commerce into interstate commerce, as is here proposed, without upsetting every one of the original unbroken package cases and their long line of successors.

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 Congress can say what guests they must take, then it can say what rates they must charge for their rooms, or even can tell them what they can put on their bill of fares, and maybe not to serve things that are objectionable to certain people.

If Congress can make a finding that the business of these private and independent operators constitutes "places of public accommodation," then we may as well make a finding that such private and independent businesses are "affected with a public interest" and regulate them like public utilities, guarantee them a return on their investment, or maybe just run them by the Government.

That concludes my statement.

The CHAIRMAN. Mr. Willis, you discussed only two sections. Could you tell me, or do you know who will discuss the other title of this bill so that we may try to get it in some order?

Mr. WILLIS. I will let you know after a while. I have it in my office someplace. It was a general assignment.

The CHAIRMAN. If you would, I would like to get them in order.

Mr. WILLIS. Pardon me, Mr. Chairman. You will, of course, consult in that connection the Republican members, Dick Poff and Bill Cramer as to the point of their appearance.

The CHAIRMAN. Yes.

Mr. WILLIS. As well as others.

The CHAIRMAN. I would like to ask you some questions but I have some notes on the testimony of the previous witnesses. I wanted to call your attention to certain contentions. There I would like to defer my questions until a later time. Others on the committee may have some questions.

If it is agreeable to the committee, then, we will recess until 1:30.

Mr. Willis, will you come back?

Mr. WILLIS. Yes.

(Whereupon, at 12:05 p.m., the committee was recessed to reconvene at 1:30 p.m. the same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will be in order.

Mr. Willis.

Mr. WILLIS. Mr. Chairman, may I give a report on the facts of the case we talked about a while ago?

The CHAIRMAN. Yes. That goes in at the point we discussed this morning.

Mr. WILLIS. That goes in at that point.

Referring to the case of *Burton* v. *Wilmington Parking Authority, et al.*, reported in 365 U.S., page 715, the general counsel of the committee has given me a memorandum of the facts in that case as follows:

A restaurant located in a publicly owned and operated automobile parking building refused to serve appellant food or drink solely because he was a Negro. The building had been built with public funds for public purposes, and it was owned and operated by an agency of the State of Delaware, from which the private operator of the restaurant leased its premises. Claiming that refusal to serve him abridged his rights under the equal protection clause of the 14th amendment, appellant sued in a State court for declaratory and injunctive relief against the restaurant and the State agency. The Supreme Court of Delaware held that he was not entitled to relief, on the ground that the restaurant's action was not State action within the meaning of the 14h amendment and that the restaurant was not required by a Delaware statute to serve all persons entering its place of business.

Actually, the Supreme Court of the United States reversed the decision of the Supreme Court of the State of Delaware and held that the building, being a public building, financed with public funds, et cetera, and the lease having been made from the State, et cetera, that that did constitute State action.

The language I quoted from occurs at page 721 of the decision. I am reminded, I should say, the majority opinion reversed the lower court. There was dissent by three Supreme Court Justices. However, the language I quoted still stands in this, that the Supreme Court, paraphrasing, I think correctly—what the Court did was not to overrule by any means, but to recognize the rule in the civil rights cases, that when there is no State action, there is no violation of the 14th amendment, but that in this case the facts of this case warranted or called for in the opinion of the majority a reversal of the lower court decision.

We are still in this situation as I now see it, knowing the facts and the holding. Would this Court as now constituted, having as late as 1963 recognized the civil rights cases as far as they went, hold at the present day that the operation of a restaurant or gasoline station on his own premises, without the intervention of State funds and so on, would the Court now overrule the civil rights cases or would they hold on to it? They respected it in 1963. It is any lawyer's opinion what they would do today. It would be my opinion that this case, the *Burton* case, does not weaken the civil rights cases and that the Court would still have to hold today that a private filling station, or restaurant or an inn would not constitute State action, and this bill undertakes simply to say that when interstate commerce is affected or when an action is supported—and that is the word used by the State—then this bill would justify Congress making a finding that a private establishment is a place of public accommodation and that therefore we have a right to pass this bill.

The CHAIRMAN. Thank you, Mr. Willis, your testimony this morning on this bill was so devastating, so clear that this bill has many effects as far as the first title I; it is unconstitutional, clearly so, and has been held so by the Supreme Court of the United States. It seems to me that your committee would really want to hold some further consideration of this bill before it goes to the floor.

I think if it goes to the floor in its present shape it is going to be cut to pieces with amendments and when you write a bill on the floor it is very rarely a good bill. I wonder if your committee would not wish in the interest of getting through a proper bill, want to take some more looks at this bill in the committee with a view to correcting some of the patent and obvious unconstitutional provisions?

Mr. WILLIS. I would not control that procedure. I would be delighted to have that done and for the committee to agree in advance that we are given so many days to do it, or so many weeks to try, within committee, when no one is looking over my shoulder and the shoulders of the opponents, that in calm, deliberate fashion, we have an opportunity to, like lawyers, go over all of this language and try to perfect it, but as I say, I would not control that.

The CHAIRMAN. I know you do not control it, but in the interest of good legislation—of course, this in my judgment would never be good legislation—but in the interest of the best legislation that could be devised and would be at best subject to unending legislation, that your committee might want to do that. I wish you would suggest it to your chairman.

Mr. WILLIS. I will, shall I say, deliver the message and make the recommendation.

The CHAIRMAN. I tried to convey that message to him when he was on the witness stand, but I never could get through. You are closer to him than I am.

Maybe you can do it. I am not suggesting any further hearings. I am not suggesting any further delay. You could be doing that while we are holding these hearing up here, but this is—well—I wanted to ask you a few questions about the two titles of the bill that you mainly discussed.

The provision in title I, the voting provision—you referred to that in your testimony.

Mr. WILLIS. Yes.

The CHAIRMAN. There is a new provision put in there that permits the Attorney General to select the court, so to speak. I termed it the other day, I think properly, when I said, "The court-packing provision," when instead of having the regular judge the Attorney General, anytime he wants to, can go in and say, "I want three judges so I can get one from over yonder and another one from over there and not depend on this one here who might not decide this case the way I want it decided."

That is the obvious purpose of that clause. I have never known of any such provision as that for a special purpose to be in any legislation that I have ever been familiar with in my 30 years in the Congress; have you?

Mr. WILLIS. Well, I accept your statement for a special purpose. There have been statutes passed by the Congress creating three-judge courts. I suppose there were particular purposes.

The CHAIRMAN. Those were antitrust cases.

Mr. WILLIS. I don't think the purposes were as sharply directed to possible misconfidence or lack of confidence of the district judge who would otherwise have to hear a case as is presented here. I agree, I cannot remove from my mind that since this provision was put in here to give this power to the Attorney General that behind it all is certainly a large probability that it is to be exercised when in his judgment, for reasons of his own—and I don't question them—he would prefer to have another set of judges try the case than the judge to whom the case was originally assigned, rather than for considerations of broader objectives. But there it is. And now the question is whether Congress should do this, with its eyes wide open. As I pointed out in my testimony this particular peculiar power given to the Government plaintiff only is one we had better look into very carefully because, let me tell you, when an individual—and we are now saying we want to protect the rights of individuals; I am for that, as far as that can be or should be constitutionally pursued—but the basic philosophy of our law is that when there is prejudice or possible prejudice the right to a new venue, the right to a new forum to try it because of local prejudice of the defendant. In a criminal case, for instance, when there is great agitation—a rape case, a lynching case, a horrible murder case—when there is great local agitation, under the Constitution and concept of the right to be tried by the jury of your peers, that the defendant, when he shows that the jury of his own peers are prejudiced, that he is given the right to ask for a change of venue, but here the prosecutor, if you please, or the plaintiff in the case, the Federal Government, is given the right. I call it "shop around for another forum." This is quite another departure from our concepts of the right to change forums.

I repeat that we have had statutes creating three judge courts. Now whether we are going to do it this time, that is up to us. I must admit that I would doubt that there would be a violation of a constitutional provision. For instance, it has been suggested that maybe it might be wise to strip the Supreme Court of the United States of its rights to hear certain cases. That has been done. It was done during the Civil War at one time. There was a special act of Congress depriving the Supreme Court of hearing certain cases, and that was held to be constitutional. Those who now advocate doing the reverse; that is, stripping a district judge of his jurisdiction, find themselves on the other side of the fence. So there you are. I think it a provision we held no hearings on, a provision not recommended by the administration, not included in the administration bill, and not included in the bill of the senior Republican member, not included in the subcommittee bill, but nevertheless by the full committee, under proceedings I have described, were incorporated at the last minute in this bill.

The CHAIRMAN. Now, Mr. Willis, I come to the other phase of it that you discussed this morning where this whole bill all the way through refers to Federal elections, and, of course, the man in the street thinks a Federal election is an election of somebody to serve the Federal Government, but then hidden away down at the bottom of page 49 is a little clause that defines Federal elections as being any election held in whole or in part, and as a majority of the States hold their State elections for everything from Governor down to the justice of

the peace, the same time the Federal elections are held, that ipso facto brings all those State elections under the provisions of this act.

Mr. WILLIS. To be specific, it brings 46 States under the provisions of this act.

The CHAIRMAN. I did not know the number. Forty-six States.

That is obviously unconstitutional, is it not, to interfere with the State's elections?

Mr. WILLIS. Yes. That is my opinion. I so expressed it in my presentation, and don't ask me to name names—I won't—but certainly there were expressions by prominent members of the committee during the executive sessions on the subcommittee substitute to the effect that, like you say, application of this statute to both State and Federal elections was unconstitutional, and it was really a question of time as to when it should be done, at the point when we knew we would have no right to pursue the amendment process.

The CHAIRMAN. And the opportunity to offer that amendment so as to bring this within the constitutional provisions, if they could, was denied you in the committee.

Mr. WILLIS. We were deprived of that opportunity.

The CHAIRMAN. That is another reason why that committee ought to take a look at this bill.

The other thing in the voting title is the sixth grade provision; the qualification for voting. Of course, that is clearly a literary qualification.

Mr. WILLIS. There is no question about that. May I say to the chairman that there, again, we had discussions about that, and I don't want to leave the impression that I am wholly right on my impressions, but we have been wrestling with two proposals for quite a while, when one was how to treat the subject matter of poll taxes and one permitting Congress to have something to do with State as well as Federal elections.

On the one hand the committee at one time tried to do away with poll taxes—five still have poll taxes, via an act of Congress. We had bills introduced but it was decided by the full committee—I am bound to be right on that—that the right way was by constitutional amendment and that is the way it passed the committee and frankly. there was a question of judgment as to whether it should be done.

I don't think we hardly debated that bill but for a short while, anyhow.

The CHAIRMAN. There was very little objection to it.

Mr. WILLIS. Very little objection to it. Then, I repeat, that in wrestling with this problem of State-Federal elections there were considerable expressions of opinion that that would be unconstitutional. I should stress this. I should say this. This is mighty important. In the bill, in the proposal to amend the Constitution to do away with poll taxes, that constitutional proposal has to do, not with elections held wholly or in part to elect Senators and House of Representative Memebrs and Presidential electors, but to Federal elections, so there we had an oppportunity to deliberate and to work our legal brains on it. I suppose 35 lawyers put together might be able to come out with something fairly good, and even in proposing a constitutional amendment we restricted the poll tax provision to Federal election.

The CHAIRMAN. As I stated the other day, it seems to me that the only legal opinion, or the first legal opinion that ever was exploited in connection with the sixth grade was as you will recall the Democratic National Convention, through its resolutions committee in the smoke-filled room, so-called, brought out that provision and recommended that Congress do it and a few weeks later the Republican Party met in a smoke-filled room and said, "Me, too," and they put it in their platform. That is where that originated, isn't it? I never heard of any such thing before.

Mr. WILLIS. I think that is about the genesis of the proposal.

The CHAIRMAN. And I do not expect there was much consideration given to the legal phase of it in those smoke-filled rooms, either the Democrats or Republicans.

Mr. WILLIS. I was not there and I don't want to characterize the action, but that is how it came about.

The CHAIRMAN. Let's talk a little about title II. I will not keep you long.

I think you have pretty well discussed this provision about discrimination by State action and then as in title I they then proceed to define State action as custom or usage. I do not think there are any questions I would want to ask about that. I was interested in this question the other day in connection with title II. There is a provision in there that is that if there is a building that is subject to the provisions of this law, such as the hotels, then if there is any other business in that hotel that caters to the public that business likewise comes under the provisions of this law.

Mr. WILLIS. That is correct.

The CHAIRMAN. And to illustrate it, if there is a barbershop in a hotel, then it comes under the provision of this law.

Mr. WILLIS. But barbershops generally would not. Barbershops operating singly would not. That is correct.

The CHAIRMAN. In other words, a barbershop that is in a hotel is under the law; the barbershop across the street that is not in the hotel is exempted from the law.

Mr. WILLIS. That is correct.

The CHAIRMAN. So that is a pretty violent discrimination, is it not?

Mr. WILLIS. Well, it certainly is. There is no question about that, in that one is covered, the other is not.

The CHAIRMAN. I understand that a good many hotels have an arrangement with country clubs that the courtesies of the club will be extended to guests of certain hotels. Would those country clubs not then be brought under the provisions of this act?

Mr. WILLIS. Yes, I would think so. There is a provision with regard to clubs elsewhere which in turn says that—my answer to you is "Yes," but I will call your attention to——

The CHAIRMAN. I am familiar with it.

Mr. WILLIS. To (e) on page 45, which says, "The provisions of this title shall not apply to a bona fide private club or other establishments 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 (b)."

The CHAIRMAN. That is the section I was talking about. It very clearly would bring that club under the provisions of this act and they would have to integrate.

Mr. WILLIS. Yes.

The CHAIRMAN. I wonder how many of these country clubs know what we are doing to them? You know there are a great many people who like to see civil rights imposed upon other people, but don't like to have them imposed upon themselves and I am wondering if the country clubs of the country knew about that how many of them would be anxious to have this bill.

Mr. WILLIS. I don't know. This (e) raised questions in my mind, what was the idea, upon what basis should a special provision be made for country clubs—not country clubs, but private clubs. Those are pretty well-heeled boys and this is not for the others. They now wind up with a disappointment. If they were intending to be placated, they will find themselves in trouble, too, if that is trouble as they conceive it.

The CHAIRMAN. Right in that connection, you know you have got a provision over there somewhere——

Mr. WILLIS. You have these private clubs all over the lot, petroleum clubs, private clubs, you have them in New Orleans, in Houston, in New York. You now have such arrangements under the housing provision. We don't want to go into that but some of these fellows find a way, although they want civil rights and all the rest in public housing, but there is always a provision under the name of private club, in the name of privacy, special keys and all of that and a special card. These high-faluting boys take care of themselves pretty good.

The CHAIRMAN. But they do not know what is happening to them in this bill.

Mr. WILLIS. No. They are being euchred.

The CHAIRMAN. I get a lot of letters.

Mr. WILLIS. They gave them the key, but they took away the lock in this case.

The CHAIRMAN. I get a lot of letters at home crying about this terrible thing that we have, that everybody does not have equal facilities, et cetera, but a lot of those people writing those letters do not know what will happen to them when this bill comes along.

I want to ask you one more question and I am about through. On page 45 you have a provision exempting private clubs that we were talking about here, but following that provision we have section 202. It says:

> All persons shall be entitled to be free at any establishment from discrimination if such discrimination is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a State.

Mr. WILLIS. Yes.

The CHAIRMAN. That brings me to my question. Many States already have integration laws of their own. They are State laws. In them I have no doubt that they exempt, as this bill does, private clubs.

Mr. WILLIS. That is true.

The CHAIRMAN. If private clubs are protected by State laws, does that not bring them within the provisions of this law?

Mr. WILLIS. Yes. My answer is yes, but I call your attention to my view on these words, "at any establishment or place." You must realize "any establishment or place" includes a home.

The CHAIRMAN. That includes everything.

Mr. WILLIS. I know, it includes the church. It includes the cemetery. It includes any establishment or place. I used the word "cemetery," I am talking about, I really had in mind religion. How deep we should cut in that area without some definition disturbs me a great deal because of two or three things: To his credit, the Attorney General of the United States appeared before the subcommittee in executive session, and his testimony has been released, so I quoted it, and he did express concern of the broad, blanket, open ended coverage of the subcommittee bill that referred to places being, or establishments being covered if they were licensed by the State and he said, "I am concerned about what this is going to do," and he said that he didn't mind broadening this bill if that was the wish of Congress, but he patted himself on the back and said that at least the administration had specified places to be covered, and they did. The administration bill did. The Celler bill did. The subcommittee broadened it with a catchall and open ended provision but yet without recommendation on the part of the administration, without hearings, without it being put in the subcommittee substitute—and we know nothing about it—section 2 was added by the full committee under the circumstances I have related and here we have an undefined situation talking about any establishment or place. To be sure it is anchored upon, to be effective, State action of some kind, but I would like to know where is this heading us to?

The CHAIRMAN. That is just what I am trying to find out. You take the Masonic fraternity, the Elks fraternity, sororities, even the Knights of Columbus. If it is protected by State law, exempting clubs from the provisions of the State law, then this section 202 clearly brings it under the Federal law and those clubs, private clubs, would all be subjected to the provisions of this bill if——

Mr. WILLIS. Yes, and being a Catholic, I say the same thing is being done to the Masons, Jews, and everyone else, but that is what is happening.

The CHAIRMAN. I suppose your committee never had any opportunity to consider this because you weren't given an opportunity to consider this bill in committee.

Mr. WILLIS. That is right.

The CHAIRMAN. That is one of the reasons that I am asking you now to use your great influence with that committee to take this bill back and read it and look at it and see what it means, see how they are doing things that nobody in this Congress ever wanted to do.

Mr. WILLIS. Like Garcia, I will carry the message, but I do not know whether I will come back.

The CHAIRMAN. You have covered this thing so fully that I cannot think of any more questions to ask you.

Mr. Brown, do you have any questions?

Mr. BROWN. I just couldn't help but wonder, sitting here, if you did not have any influence in connection with writing the bill, how are you going to have any influence in getting it corrected?

Mr. WILLIS. I wonder that.

The CHAIRMAN. Maybe they would disclose some features of the bill they hadn't thought about. That is why.

Mr. BROWN. He did a pretty good job of disclosing what was in these two sections of the bill. I thought the gentleman made a pretty able presentation of his viewpoints.

Were you consulted as a member of the committee or as a member—not getting into politics—of your party which controls your committee, when the task of rewriting this bill suddenly came up after it had been before your committee for many months?

Mr. WILLIS. No, sir. I was not.

Mr. BROWN. You mean you weren't even invited in on any of the conferences?

Mr. WILLIS. No, sir, I was not in on the conferences. I had no conversation, if you start with the Attorney General, his assistants, on down, I had no conversations or consultations with anybody.

Mr. BROWN. And your opinions were not sought or requested?

Mr. WILLIS. Well, I do not know that they would have been inferenced but they were not.

The CHAIRMAN. He was discriminated against because he was against the bill.

Mr. BROWN. Did you take that matter up with the Civil Rights Commission?

The CHAIRMAN. That would be a good forum for him.

Mr. WILLIS. No, I did not.

Mr. BROWN. You are sort of running an exclusive organization of your own, or somebody does over there. Some of the boys are in on the know and some of them stay out; is that right? How do you pass on who shall be consulted in your committee? Who is to be given the opportunity to discuss amendments or to speak on them, or consider them?

Mr. WILLIS. Let me say, very frankly—and I alluded to it in my statement—that I have personal admiration for all the members; high regard. We do have conversations, not on this bill in particular, but even on this bill I find out a little bit what is going on, but it is not through action across the table.

Mr. BROWN. How many members are on your committee, 31?

Mr. WILLIS. Thirty-five.

Mr. BROWN. All lawyers?

Mr. WILLIS. All lawyers.

Mr. BROWN. It is a little difficult to get 2 or 3 lawyers, let alone 35, to agree on anything, isn't it?

Mr. WILLIS. You can say that again.

Mr. BROWN. You did not discuss this bill?

Mr. WILLIS. Not this bill, no, sir, nor indeed the substitute subcommittee bill to the extent of amending it. We did discuss the subcommittee substitute bill and I thought we were doing pretty good. In fact, I have an idea that, it might have been suspicions or inclinations, that "Look, we had better, to quote Sam Rayburn, 'hind in, horns out, and get together on this thing,' " because those boys are making progress and through reason and deliberation it looks like they might get by. I don't know. We always do. That is the first time, and I don't reproach anyone, that is the first time in 15 years that we have not had an opportunity, including civil rights legislation, to aerate our views, to deliberate without any move to shut debate. It never happened before. It happened this time. That is it.

Mr. BROWN. Were there protests lodged at that time against the speed with which this was handled?

Mr. WILLIS. Yes; I think I can say this: We went so far as to appeal from the ruling of the Chair, but you know when you do not have the votes you are mighty lonely.

Mr. BROWN. As to the subcommittee bill, part of your committee favored it; did they not?

Mr. WILLIS. Oh, yes.

Mr. BROWN. And it was not reported?

Mr. WILLIS. It was not reported; it was rejected. After we had a couple of days—I don't remember how long—of general discussions on the entire coverage of the subcommittee substitute, there was a motion made to report it out. Well, that struck a sensitive chord here and there, and maybe for varying reasons, I do not know, but it looked like it might come out for a while and without reproach——

Mr. BROWN. Something changed suddenly, overnight or something.

Mr. WILLIS. Well, quite a few nights of deliberations and consultations, obviously.

Mr. BROWN. But you weren't a party.

Mr. WILLIS. I wasn't a party. I didn't change my mind. I was against the subcommittee substitute, I voted against it and I voted against this one.

Mr. BROWN. As to the Attorney General, I have been trying to read his testimony before the committee on the other bill, on the subcommittee bill. Was there any attempt made to get the views of the Attorney General on this particular bill such as you have expressed here today on these sections?

Mr. WILLIS. No, sir.

Mr. BROWN. Did anybody inquire of the Attorney General as to what he thinks of it now?

Mr. WILLIS. I wouldn't know. I did not.

Mr. BROWN. You do not know of anybody who has inquired? He is still chief law officer, is he not?

Mr. WILLIS. He is, and he probably was and it wouldn't horrify me if he was consulted about the draftsmanship of the product before you. That would not horrify me. Administrations do that, but I don't know anything about it.

Mr. BROWN. It just appears if he was willing to give advice on the first bill he should be willing to give advice on the second one. He is over in Japan now. I understand he has straightened things out at home and now they are going to have him straighten out the rest of the world.

Mr. WILLIS. I don't know whether it was a question of voluntariness. I suppose this has been said when we were deliberating, "Call him on this subcommittee substitute," we were so dad-gummed curious and raised so many questions about "What does this mean?", and "Did you hold hearings on FEPC?" "No; we just lugged it in," and finally, by action of the committee, by vote of the committee, the Attorney General was invited. That is about the word to use. He refused. I don't know what would have happened if he did come. We have to treat a Cabinet officer with respect. He was invited by a committee vote. It could have been an order, too, to come and explain the subcommittee substitute. But then they got together, brought this one out and then we heard no more in the shape of testimony.

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Mr. BROWN. That is interesting, in view of the fact that the committee took action as you say to invite him on that bill, but didn't invite him on this bill.

Mr. WILLIS. We had no chance. The thing was over. The bill was out. "Goodby my honey, goodby."

Mr. BROWN. You are still trying to digest and understand this bill.

Mr. WILLIS. Yes, sir.

Mr. BROWN. It wouldn't be too late to seek some good counsel now, would it?

Mr. WILLIS. That is what the chairman suggested. I am willing.

Mr. BROWN. The ordinary lay Members of the House, those of us who have not had the benefit of serving on your great committee, to serve there, would be interested to find out what the chief officer of the U.S. Government might think about this bill and some of the points that have been raised in connection with it.

Mr. WILLIS. Very seriously——

Mr. BROWN. I am serious about it.

Mr. WILLIS (continuing). You make a point that I would go for and as part of the chairman's suggestion that we take another look at it would be an understanding to invite the Attorney General, in executive session, to give us his calm views on this new project.

Mr. BROWN. These are suggestions you are going to add on behalf of Judge Smith?

Mr. WILLIS. I will add that to it.

Mr. AVERY. Will the gentleman yield?

Mr. BROWN. I yield.

Mr. AVERY. I believe it was stated in the committee the other day that when this bill was delivered to the House Committee on Judiciary on this now rather famous Monday morning, I believe it was, that it was delivered in Department of Justice envelopes.

Mr. WILLIS. It was what?

Mr. AVERY. It was delivered in envelopes from the Department of Justice.

Mr. WILLIS. I don't know that. I haven't heard that discussed.

Mr. AVERY. I heard that statement made here in the committee. I was just going to——

Mr. BROWN. I wonder if they sent the gentleman one. Did you get one?

Mr. WILLIS. No, sir.

Mr. BROWN. You mean you were neglected on that, too? I thought your party believed in taking care of the forgotten man.

Mr. WILLIS. We have bounced that slogan around in years past.

Mr. BROWN. I think that is all, Mr. Chairman. It has been very illuminating.

Mr. COLMER. Mr. Willis, I would like to join with my colleague here who has addressed himself to you previously, and compliment you upon the very splendid effort you have made and the product you have presented as a result of your studies and preparation for your testimony here.

I shall be very brief, and I am very serious about that. I shall ask you one or two questions, but as one who is opposed to this legislation and as one who questioned your chairman for practically the whole day Monday, I want to defer to those on this committee who now

apparently have intentions to vote for this bill, to give them the opportunity to break down the rather devastating attack that you have made on it. I do not see why I should rehash all of the points that you have made here, many of which I tried, frankly, to approach with the other witnesses. I shall not go into all of this star chamber proceedings that you have thrown the first real light on here. Other witnesses were quite evasive about that.

I do want to raise a question here that seems to me to be most dangerous. I think I have said this to the gentleman privately on previous occasions. The most dangerous thing we are faced with here as a practical proposition is that we are legislating by labels. We were told by the Attorney General, I believe, in a press conference, we were told here by the distinguished chairman of your committee, and we had the same thing emphasized by the ranking minority member here, Mr. McCulloch, on yesterday, that this is a moderate bill.

If I read the bill correctly and if my comparison of this bill which the House is to consider with the so-called more stringent bill which the subcommittee had is correct, I just cannot arrive at the same conclusion that they do. If I understood the gentleman's testimony correctly, he does not arrive at the same conclusion; namely, that this is a moderate bill.

As a matter of fact, in that connection I call the gentleman's attention to the fact—because I do not think he was here yesterday when the distinguished gentleman from Ohio, Mr. McCulloch, testified—that in response to an inquiry from me he said that, to the best of his knowledge, there had never been, even back in the days of the Reconstruction, a more stringent proposal made to the Congress than the one that is here.

Therefore, I ask the gentleman if he agrees or disagrees that the danger here is that this is going out to the country, going out to the country club boys, going out to the private club boys, going out to the barbers, going out to the unions, the Knights of Columbus, the Masons, and so forth, that this is a moderate bill. Therefore, does the gentleman agree that it is dangerous to legislate under such labels?

Mr. WILLIS. I completely agree that this is the most drastic, far-reaching bill, and I cannot help but call it a grab for power, which in my opinion has ever been presented to the Congress. I am unaware—and we have counsel here—of any such bill having been introduced, heard, much less passed, during Reconstruction days. I do not know of any bill ever presented to Congress in our whole history as broad and drastic as this bill, because when you take a combination of the various titles, you realize you have, instead of one bill, a number of bills under separate titles.

For example, an FEPC bill, passed by a committee with no jurisdiction over that subject, but tacked on a civil rights bill, even under our tight rules, so-called, of germaneness. Then if you take the combination of powers, as I pointed out this morning, such as are contained in title IV, granting quite open-ended powers to the Commissioner of Education; if you add to that that every agency and department of the Federal Government administering activities or programs involving assistance are mandatorily required to take action, again broadly undefined, in addition to cutting funds; and you add

to that a provision, added to the bill now before you, not having been heard, not included in the administration bill, not included in the subcommittee substitute bill, giving the President the power, unlimited and blanket authority to take whatever action he deems appropriate concerning employment—if you add these three together, it is my considered opinion, verified by competent counsel, including some on the committee, that the power is there to go into the question of the handling of pupils, the placement of pupils, and the selection of faculty members insofar as they relate to race, color, and so on.

We passed, under the chairmanship of a southerner, Graham Barden, a school-impacted bill, and we voted for that, but in that bill, as well as in the so-called Federal aid to education bill, you have literally paragraph after paragraph negating any implication that the Federal Government will go into the area of control of these matters; but there they are, by combining all these powers together.

I repeat that most, if not all, of the proponent members would seriously, conscientiously tell you that they do not intend such a result.

So, I think it is there. What to do? I have been wrestling with this thing. I have offered suggestions. I do not know who will be with me, but I have offered suggestions here this morning, to bounce them around and let it be known, if the best thing we can do in the interests of legislation which in the long run I must confess I would be opposed to, is to remove these implications. We owe that to the proponents who do not intend it, we owe it to ourselves, and we owe it to orderly legislation.

I will go one step further, being completely frank. I think we have a good opportunity to remove some of these provisions. Left alone, I do not think the Judiciary Committee members would go for FEPC. I honestly do not think so. If we had had a chance to debate, deliberate, amend, I am pretty sure we would have knocked it out, not with the idea of knocking it out for the sake of knocking it out, but because we have no jurisdiction over it and it does not belong here.

Then, too, not only for that—this might even be taken advantage of, but that is the way I feel about it—let's do something on this side and let the Senators earn their pay on the other side.

Mr. COLMER. Very well.

Following the same question for the purpose of emphasis, the gentleman has wrestled with this for hours and days and weeks, and I have spent considerable time because of my interest in this matter studying this bill, trying to get its meaning, its implications, its far-reaching grab for power, and so on. Is it not true that the average Member of Congress has so many duties to perform, so many extra-curricular things, as it were, that he simply does not have the time or does not find the time or does not take the time to study these bills, and he will not on this bill?

I do not ask the gentleman to comment on this particular thing but, as a matter of fact, I make the bold prediction here now that when this bill is voted upon, I think substantially less than 10 percent of the Members of this House, with all due deference to them, will ever have sat down and read this bill through from cover to cover and studied it.

Mr. WILLIS. There is no question about that.

Mr. COLMER. Therein lies the danger of legislating by labels. We are legislating civil rights. That is a beautiful thought. We are all do-gooders in varying degree. We are all our brother's lover and keeper. But these provisions in this bill affect the liberties, the rights, and the privileges of every citizen in the United States, regardless of race, color, or previous condition of servitude, et cetera, including the pigmentation of the skin which I referred to yesterday.

Mr. WILLIS. Sections (A), (B), and (C) of title I on their face have nothing to do with and are not anchored to race, color, or creed.

Mr. COLMER. I do not want to pursue this and I do not care if you do not even comment on it, but I want to get this across while we are talking about it ourselves here. I am guilty of the same sins of omission, in many instances, that I am charging to my fellow members here.

I was talking about private clubs a moment ago and how far-reaching that is. We have a number of private golf courses around this town. In fact, one of them is named the Congressional Golf Course. I understand that is a private course.

Mr. WILLIS. That is a place covered by this bill, by the way.

Mr. COLMER. Yes. Are we here to legislate and tell the people of this country that we are going to reserve a private club out here under the name of Congressional Golf Club where we can play golf and choose our members, but tell the public that they cannot do the same thing?

As I say, I do not want any comment on that, but let me get on.

There is one other thing I wanted to call to the gentleman's attention because we had it up on a previous occasion. Ever since this question has been up, we have had the question of jury trial. Without going into all of the legal ramifications, is it correct to state that in this bill the old provisions in the 1956 and 1957 bills are promulgated or carried on with reference to jury trial?

Mr. WILLIS. That is correct.

Mr. COLMER. And the people affected by this, the great majority of the people of the United States, are not going to have the benefit of jury trial. I went into that with the distinguished chairman of your committee at some length on previous occasions, and again yesterday. I recall he fought most eloquently and pled most tearfully for the benefit of jury trial for the labor groups, but he would deny the great majority of the people here.

Does the gentleman care to comment on that?

Mr. WILLIS. Yes; and I will add to it.

Under title III, "Desegregation of Public Facilities," the benefit of trial by jury, such as was written in the previous act, the 1957 act, is not even accorded in that section. Let me call to your attention again the fact that under the public accommodations and voting rights, if the action results in trial and in criminal contempt, a jury trial to the extent accorded in the 1957 act is not accorded at all under title III. So, if in connection with the desegregation of public facilities, which is pretty broad, contempt results, there is no jury trial at all.

May I compliment—I cannot avoid it—the gentleman who is our chief counsel and has to wear two hats. He advises me and advises the other side. He is always completely objective. He called my

attention to this. I say that because he observed it. It had escaped me.

With reference to the jury trial provision in the 1957 act, I do not want to repeat that history, but I might point out to the gentleman that when we fought it out on the House side we were fighting for a real, slam-bang jury trial. Maybe we should have compromised. We thought we should not. As it turned out, we made a mistake.

I can say without reservation the jury trial provision hammered out on the other side could, with such ease, have been put in on this side, but the kind of jury trial incorporated in the bill in the other body was the kind of jury trial that we refused to accept here. That is why I say maybe we had better do a lot of schoolwork ourselves here.

I am not saying that in criticism, but it is a fact.

Mr. COLMER. I get the gentleman's point. To keep this part of the record straight and to get me straight, if I am in error, because the gentleman has given so much more attention to it than I have, in certain cases other than those that the gentleman mentioned here as denying any jury trial, if under the old acts, 1957 and 1960, the judge could sentence a man to jail for up to 45 days and fine him up to $300 without the benefit of trial by jury? That is correct; is it not?

Mr. WILLIS. That is true, but I have not been able quite to understand—if I am wrong, there are three or four lawyers of the committee here—there is one thing about that provision that I cannot for my soul understand. Usually you will pass a statute and will say if the sentence is so much, then such-and-such happens. It must be in the statute, and it varies. If a person is entitled to the jury trial, he should know in advance. So, the bill should say if the sentence is up to so-and-so, you are entitled to a jury trial. If not, you are not entitled to jury trial.

But as it turns out, he is tried by the judge. He does not know in advance how he is going to come out. Then what happens in practice? I wish the Government lawyers, if there are any here, would tell me what happens. The judge tries you and he has in his mind what the sentence is to be, and you do not know. Then, if he imposes a sentence of over 45 days, whatever it may be, and $300, at that point you are entitled to a retrial? How it works out, I do not know. I do not understand what the result is. I do not think you know. In advance of trial I do not think you are warned. You are entitled to a jury trial or you are not. It is an aftereffect and afterresult, or am I wrong? It is only upon imposition of the sentence that you know whether you are entitled to a jury trial.

Mr. COLMER. Then you have two trials.

Mr. WILLIS. I do not know. You can demand a trial de novo. Of course, the Federal judge is looking down your throat. If he imposes sentence upon you, even one sentence every so often until he wears you out—if he imposes a sentence of less than 45 days and less than $300, then you cannot ask for jury trial. If you continue in your position of defiance from his point of view, he might do it again.

Mr. COLMER. Throughout the whole bill the machinery for enforcing these proposals is largely left in the injunctive field is that correct?

Mr. WILLIS. Surely; that is right.

Mr. COLMER. Therefore, to all intents and purposes, the people charged——

Mr. WILLIS. Every element of this bill, as far as I know, is injunctive, civil.

Mr. COLMER. Yes. So, in the final analysis, people charged under this bill are denied the historical privilege to be tried by jury.

Mr. Chairman, I have finished what I started. I am against this bill. I would like to hear those who are for it.

Mr. WILLIS. I am afraid you are goading these gentlemen into crowding me out. I hope they do not take the challenge.

Mr. COLMER. No; I do not want to take all of the time. I want to hear from the other side. I think the gentleman will be capable of taking care of himself and the subject matter.

Thank you very much, Mr. Willis.

The CHAIRMAN. While you are on this peculiar situation with respect to contempt, the act of 1957 provided that that would happen in cases of criminal contempt.

Mr. WILLIS. That is correct.

The CHAIRMAN. But it also provided that it shall not disturb the previous jurisdiction of the court to punish for civil contempt.

Mr. WILLIS. That is right.

The CHAIRMAN. Then it says, including the power of detention, which is a polite way of saying, including the power to stick you in the jailhouse and let you stay there.

Mr. WILLIS. That is right. They get around that by saying you have the key to the jail yourself. It is up to you not to go so far.

The CHAIRMAN. If the judge jails you, he can put you there from now on, and there is no limitation to what he can do to you, without a jury, in civil contempt cases.

Mr. WILLIS. That is true.

Mr. COLMER. Of course, in the same sense of having the key to the jail, that applies to any violation, to all laws.

Mr. WILLIS. That is right.

Mr. COLMER. If I do not commit murder I am not going to be put in jail for murder.

The CHAIRMAN. Mrs. St. George.

Mrs. ST. GEORGE. I have no questions at this time.

The CHAIRMAN. Mr. Madden, you indicated you had a great many questions.

Mr. MADDEN. I was going to ask Bill to yield to me there, and I found out the question I was going to ask, Bill had asked yesterday or the day before, so I did not want to take up the time of the committee, owing to the fact that it has already been answered by, I think, Mr. McCulloch.

I was very much moved, Mr. Willis, this morning, by your preliminary statement when you were telling about the treatment that you received in the Judiciary Committee. I looked over the members here, and I think I was about the only one who really had grief for you and sympathy for you on my face, because I really felt it.

I mentioned the other day when this same thing was brought up, that I went through the very thing that you went through, only my experience was far more brutal than what you went through. That was probably the next most important piece of legislation to this. That was the Taft-Hartley law in the 80th Congress, when eight or nine of us—we were in the minority—were never even invited in on

any executive session when the bill was being formulated. I do not know, I think maybe they held meetings in the dead of the night. All of a sudden, on a Thursday morning, Chairman Hartley—this was the 80th Congress—invited us in, and we were presented with a 75-page bill on the Taft-Hartley law. Immediately they proceeded to put it to a vote. We objected that we did not even have an opportunity to read the bill. It was laid right before us. It took us one-half hour to get finally the consent of the committee to wait until the next morning so we would have an opportunity to read the bill. The next morning we met and we did not even have an opportunity to talk about the bill. It was voted on, and voted out.

The reason I sympathized with you this morning—I really did, Ed. I sympathized with you. We came over to the Rules Committee and did the same thing you are doing today. I noticed that morning some of the members even laughed at us.

Judge, you were a member then, and I think Clarence Brown was, too. I will say this for the judge: He didn't laugh. I inquired about it after the meeting, and was told the judge very seldom laughs. Then I looked ——

The CHAIRMAN. That was terrible treatment, Ray. I hope we will not do it this time.

Mr. MADDEN. I did not know my good friend Clarence then as well as I do now. I noticed a kind of glisten in his eye, and I thought, my gracious, Mr. Brown sympathizes with the treatment we got. I thought because of maybe a little crocodile tear he was sympathizing with me. After some of the questions we went through from Mr. Brown and after I learned more about Clarence, I decided that that morning he did not have any tears in his eyes. He must have been eating a piece of onion over there. We did not get a bit of sympathy.

That is why you have one member of this committee, if what you say is true, who sympathizes with you.

Mr. BROWN. Ray, will you yield?

Mr. MADDEN. I yield.

Mr. BROWN. It has all evened out in the passage of time.

Mr. MADDEN. The statute of limitations has run about this.

Mr. BROWN. You have been talking about the Taft-Hartley Act ever since.

Mr. MADDEN. If we could get 14(b) repealed as we tried to do then, we would not have four depressions under Eisenhower where all this industry moved out to these so-called "right to work" States and had cheap wages and they were not able to buy these 3,000 or 4,000 automobiles. If you went along with us and repealed 14(b), we would not have had three or four depressions under Ike. But that is water over the dam.

Ed, I want you to know you have one member on this committee who sympathizes with you.

Mr. WILLIS. I am very appreciative.

Mr. COLMER. That was, of course, under a Republican administration.

Mr. MADDEN. That is true.

Mr. COLMER. We Democrats believe in more democratic processes and following the rules a little better, don't we?

Mr. MADDEN. Of course, over across the aisle that year we had Clare Hoffman, Hartley, Ralph Gwinn, of New York, and 8 or 10 others

who never made any Labor Day speeches that I know of. So, we were not expecting very much.

The CHAIRMAN. I am glad we have you on our side, Ray.

Mr. MADDEN. I have already asked a number of questions last Thursday and Tuesday and Wednesday. I would have to repeat something that the chairman has asked or something that Mr. Colmer has asked. I do not want to take up so much time repeating, because it just adds to the expense and the reporter has to write all this up.

I do want to ask how many lawyers are on the Judiciary Committee.

Mr. WILLIS. You mean member-lawyers?

Mr. MADDEN. Yes.

Mr. WILLIS. They all must be admitted to the bar to be a member of the Judiciary Committee.

Mr. MADDEN. Thirty-five. They are all outstanding, as far as I know. For the life of me, I cannot figure out how 35 outstanding lawyers, whose districts thought enough of them to elect them—they must have had a great reputation as lawyers in their districts or they would not have sent them to Congress—how they could report a bill which has as many boobytraps and unconstitutional things as you say exist in this bill. I do not think any one of them who ever voted to report this bill out should go back to practice law, because they couldn't. If what you say is true about all the boobytraps and all the unconstitutional things, they should never try to go into a courtroom or into law business again.

There are 35 outstanding lawyers on the Judiciary Committee. How many days' hearings did you have on civil rights this year?

Mr. WILLIS. It was quite lengthy, as I indicated.

Mr. BYRON G. ROGERS. Page 44 of the report.

Mr. WILLIS. It is indicated that it is 22 days.

Mr. MADDEN. You had hearings on civil rights in 1960, did you not?

Mr. WILLIAM R. FOLEY. And 1959.

Mr. MADDEN. I do not think there is a provision of this bill, of all the various facets that have been mentioned here, that was not debated and considered and talked about by the committee during the 22 days this year and the 2 or 3 months you had in 1959; is that not right? All these different facets, regarding education, voting, and so on?

Mr. WILLIS. There were allusions made.

Mr. MADDEN. They were debated, were they not?

Mr. WILLIS. When you talk about committee action, let me say I am not on that subcommittee, so I can only speak about the action of the full committee. I think it is a little exaggeration to say the provisions in one fashion or another were debated.

Mr. MADDEN. In justice to the other 420 Members of this Congress who are not members of the Rules Committee, Congressman Celler and Congressman McCulloch both agreed, and I presume you agree, there should be 17 hours of debate or 20, or whatever it is.

Mr. WILLIS. Whatever they recommended. I was not here, but it is all right with me.

Mr. MADDEN. There will be 17 hours when this bill is going to be laid out before the Congress on the floor of the House when it comes up. Then, after the 17 hours of debate, we are going into the 5-minute rule and, from what you stated in regard to the question of constitutionality

of this bill, I predict there probably will be an amendment offered on any question concerning the provisions of this bill that might be unconstitutional, and the other 420 Members can sit there and listen to learned lawyers. There will be 35 members of the Judiciary Committee, all schooled in the law, who no doubt will express themselves on the floor of the House as to the constitutionality of all these so-called boobytraps and unconstitutional provisions that are alleged to be in here.

As a legislator, don't you think these other 420 Members ought to have something to say themselves? No doubt they will, and then vote whether they in their own mind think these provisions are constitutional or unconstitutional.

Mr. WILLIS. I disagree with you on two premises. My answer to your last question, that they are entitled to debate and vote, of course, is in the affirmative, but I think one should acknowledge that all of this cannot be a substitute for real committee action, particularly executive committee action.

Mr. MADDEN. They are all lawyers on that committee.

Mr. WILLIS. Then, No. 2, to say that all of them will be there listening is not the facts of legislative life.

Mr. MADDEN. What was the vote of the full committee when they voted the bill out favorably?

Mr. WILLIS. The final action was 23 to 11.

Mr. MADDEN. Twenty-three smart lawyers will speak to the House and explain all these complications, and the remainder will talk on the other side. I follow my leader here, Mr. Colmer, on giving the Members an opportunity to vote. I have heard him a number of times say the Members should have an opportunity to speak on these things, and I follow Mr. Colmer on that. I think it is a good idea to give the membership an opportunity to speak, because I remember when tax bills come in here, my good friend, Bill, always protested the closed rules. He is against closed rules. I am following Bill on that.

I think we as members of the Rules Committee and I think the Judiciary Committee should be anxious—there is a learned lawyer back there, Mr. Rogers, and there is Mr. Meader over there, who are waiting to testify and we are anxious to hear them, but I think the Members of Congress would like to hear what all you good lawyers have to say.

I say with the highest regard for your legal ability that you should have an opportunity to lay all these facts before the Congress. I am not a bit hesitant. They are not going to make many mistakes. No body wants to vote for a civil rights bill that will be declared unconstitutional. I will join you on anything in here that is presented in the way of an amendment that, in my mind, I think is unconstitutional. I will vote it out, because it is just going uphill and downhill, voting for legislation that is unconstitutional, any part of it. We were here last Thursday, yesterday, and the day before, and I think every question I can think of has been covered.

Mr. Chairman, with that said, affiant sayeth not. That was a good question I asked.

The CHAIRMAN. I have a question that nobody has asked. That is, Of that 11-man subcommittee that held hearings on this bill and participated in the preparation of the subcommittee bill, how many were members who are well known to be opposed to the civil rights bill?

Mr. WILLIS. Answering your specific question, "How many are well known?" I would have to say "None." There may be some. I may be wrong. I accepted your qualifying adjective, "well known." I suppose there may be one or two who would vote for some versions of civil rights and have voted so. I am afraid mentally I was being regional rather than nationwide. So, I take it back. There are some who do vote for some version of civil rights.

The CHAIRMAN. So, members who were known to be opposed to civil rights were excluded from that subcommittee which took all these hearings and could have asked questions that are being asked now.

Mr. WILLIS. Mr. Chairman, I do not want to get into the committee formation of subcommittees.

The CHAIRMAN. In other words, you quite properly do not want to admit that the chairman packed that subcommittee.

Mr. Delaney?

Mr. DELANEY. I have just one or two questions to clarify a point.

Custom and usage are generally limited where there is no clear-cut law, is that not right?

Mr. WILLIS. Yes, where there is no law it is a question of what you are going to use it for, if you admit there is custom and usage. Custom and usage, as I understand general law, is limited to customs in the particular area in aid of the interpretation of a contract, rather than something you can lean on as being an accepted law binding on everybody.

Mr. DELANEY. We do not have that, generally speaking, unless we have a statute.

Mr. WILLIS. Let me read the sentence from the bill. The particular provision appears on page 44 under title II, "(d) Discrimination or segregation by an establishment"—those are the ones enumerated and which are found to be public accommodations—

Discrimination or segregation by an establishment is supported by State action within the meaning of this title if such discrimination or segregation (1) is carried on under color of any law, statute, ordinance, regulation, custom, or usage——

Mr. DELANEY. Is that not what the *Lombard* case turned on?

Mr. WILLIS. Is that the Louisiana case?

Mr. FOLEY. The New Orleans case.

Mr. WILLIS. There was no ordinance. There was no law. But the action taken was taken pursuant to an order of the chief of police and the mayor.

Mr. DELANEY. It was the custom and usage.

Mr. WILLIS. No. The words "custom and usage" were not even used in that decision. I was about to say that, and I had to get advice.

Mr. DELANEY. You explained very clearly when the sharecropper makes a deal for his land, it is custom and usage to take one-third for the landowner and two-thirds for the sharecropper, and that is an oral agreement.

Mr. WILLIS. That is right. In that case they do not discuss the terms of the sharing, but just say, "I am going to farm your land on the usual basis." Then they follow custom and usage in the interpretation of the contract.

Mr. DELANEY. It would be in the contract, but that would not apply in the civil rights bill; would it?

Mr. WILLIS. I hope not, but yet——

The CHAIRMAN. What did they put it in there for?

Mr. DELANEY. I do not know. I cannot understand "custom and usage" unless it has positive application.

Mr. WILLIS. We have to take two sections to get the import of what I just read to you. The structure of the act is this. It says:

> Each of the following establishments which serves the public is a place of public accommodation if its operations affect commerce, or if discrimination or segregation by it is supported by State action.

The word is "supported." In hotels, and so on. Only those would be affected by this bill and can be dignified with the congressional finding that they are places of public accommodation if the operations of the inn are supported by State action.

What is meant by "supported by State action"?

Then the bill says it is supported by State action if by usage or custom there is discrimination.

In other words, if by usage or custom in a particular locality the custom is segregation, that means there is in effect a State law forcing you to comply with it; even though there is no State law, and it is supported by custom or usage, and custom and usage is equated to a law, that you are being ordered to do it because of a custom or usage which becomes State law.

Custom and usage as being State law—I cannot get that.

Mr. DELANEY. If I recall your testimony, you say what would be common usage in the southern part of Louisiana would not necessarily be so in the northern part.

Mr. WILLIS. Of course not. That is a well-known fact in Louisiana in politics, in religion, in customs, in habits, and everything else.

Mr. DELANEY. Do you not think this should be eliminated or you should have positive language, one way or the other?

Mr. WILLIS. At least, one of the amendments that I would propose is that you strike out "custom or usage" and say that there is discrimination if they are being operated under a State law. I will lose out on that, so I doubt I would even offer an amendment on that, but I think the words "custom or usage" must come out, because you are penalizing and it is not a suit against the State but a suit against an independent proprietor for following custom and usage in his community when there is no law saying he must do it.

Mr. DELANEY. We will leave that for the moment.

There is one other phase. You referred to the 46 States where there were statutes. There are four other States.

[Off the record.]

Mr. WILLIS. Virginia has taken the precaution over the years, not in the light of this bill but by law, to separate its elections, State and Federal.

The CHAIRMAN. Virginia is one of the four States which would not be affected.

Mr. WILLIS. One of the four States where State elections are completely separated from Federal elections. That is, Members of Congress are not elected in an election where local officials are also elected.

Mr. DELANEY. This is a civil rights bill aimed to protect voting rights and also facilities. Would it be possible that a qualified voter would be able to vote in one election and not in the other?

Mr. WILLIS. I did not get the significance of your question.

Mr. DELANEY. Would it be possible that a qualified voter under this law would be able to vote in, say, a Federal election, and then not in the local election?

Mr. WILLIS. No; unless he wants not to vote for local people. Usually they are more interested in the sheriff.

Mr. DELANEY. It is a question of the right. He would have the right to vote in any election if he qualified?

Mr. WILLIS. If he qualified.

Mr. DELANEY. If he qualifies for one election, he is certainly qualified for the other. He would be qualified for all purposes.

Mr. WILLIS. Not necessarily.

Mr. DELANEY. That is the point we were arguing the other day when I said it would raise a double standard. To me, I cannot conceive under the 14th amendment how this would be constitutional. The 14th amendment deals with the rights of citizens. We have spoken a great deal about pigment of skin and other things here. We recognize, under these amendments, citizens. A citizen who is qualified should be able to vote in every election, whether it is a local election or a State election.

Then further, section 5 of the 14th amendment gives the right to Congress—as a matter of fact, it imposes a duty—amendment No. XIV, section 5:

The Congress shall have the power to enforce by appropriate legislation the provisions of this article.

Mr. WILLIS. That is the 14th amendment?

Mr. DELANEY. That is the 14th amendment, section 5.

So, it is our duty by appropriate legislation to insure the rights; is it not?

Mr. WILLIS. Within the amendment. The amendment, you understand, does not talk about voting. It talks about equal protection of the law.

Mr. DELANEY. Then we go back to the amendment before it, section 2 of amendment XIII, which——

Mr. WILLIS. Not XIII. That is slavery.

Mr. DELANEY. Amendment XV, section 2, has exactly the same language.

Mr. WILLIS. What?

Mr. DELANEY. Amendment XIII, section 2, very short:

"Congress shall have the power" to enforce this action by appropriate legislation.

Then we have the 14th amendment.

Then we go to amendment XV, section 2, where again we have the same thing:

The Congress shall have power to enforce this article * * *.

Mr. WILLIS. "This article." But read what "this article" says.

Mr. DELANEY (reading):

The right of the 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.

Mr. WILLIS. Then you come to qualification of voters.

Mr. DELANEY. I say that under section 2:

The Congress shall have power to enforce this article by appropriate legislation.

Mr. WILLIS. That is right.

Mr. DELANEY. So, that would give us the duty.

Mr. WILLIS. No. There you are talking about the substance of XV, which is—

the rights of citizens shall not be denied or abridged because of race or color or previous condition of servitude.

If all this bill did was to put in a sentence and implement both XV and XIV and said there shall be no discrimination——

Mr. DELANEY. That is what XIV says.

Mr. WILLIS. Wait a minute. There shall be no discrimination in the right to vote, whoever performs an act which constitutes discrimination of a qualified voter shall go to jail, you prepare it and I will vote for it right now.

But you have to go to XVII and talk about qualification. To deprive a person of the right to vote is one thing, but also, he must be deprived of the right to vote under qualifications outlined in the Constitution, meaning qualifications established at State level, which means the State—they can hardly cheat if they want to be honest about it—the State passes a law on the qualification of voters. Let us say literacy or whatever other conditions for qualification are imposed, under the Constitution they must be equally enjoyed and not denied or abridged.

But in imposing conditions of qualification, they are talking about the qualifications of all citizens. If you want to use races, of white people, too.

Mr. DELANEY. There is no distinction between a white person and a colored person in the eyes of the law. They are all citizens.

Mr. WILLIS. I completely agree. It is a question of, Should the Government undertake to pass a law on qualifications? If you assume that the States are going to pass different lays, laws applicable to the white race and laws applicable to the colored race, if you assume that, I can tell you that law is unconstitutional. The States cannot do that.

It is a question of who can go into the field of qualification of voters. That is the issue. If a law is passed, it must be uniform in its application. If there is discrimination, the law is unconstitutional if it is drafted to discriminate. If it is not uniformly applied consistent with voter qualifications, it is unconstitutional and Congress can say and Congress has said and there is an act of Congress, the one we are now amending, the statute of 1870, to that effect.

You know what we are doing here is to amend. We are amending an old statute of 1870 and here is how it reads. I am for it. Here you say that under these constitutional provisions, Congress can implement it and I say to you, sir, that Congress already has done that. It says—this is 1971 of title 42:

* * * All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections without distinction of race, color, or previous condition of servitude.

Any constitution or law to the contrary notwithstanding, all—I repeat, all—citizens of the United States who are otherwise qualified under State law to vote shall vote, and now we are amending it.

If you wanted to add a criminal provision to that and say that whoever violates that law goes to jail, I am for it. If you want to put any kind of punishment in there, I am for it. You sure can make it simple.

Mr. DELANEY. That does not correct the situation here.

Mr. WILLIS. Well, you are talking about the desirability of the right to vote.

Mr. DELANEY. What is in this legislation is not effective.

Mr. WILLIS. Please do not ask me to talk for others. There are so many others, I have trouble representing the Third District of Louisiana. In round figures, I represent 400,000 people and of that number 170,000, in round figures, are white people of voting age. Of those, 72 percent have taken advantage of it and I am sorry that 28 percent have not done it. In round figures, there are about 60,000 colored people of voting age and of that number 52 percent have seen fit to register. I am sorry again that 48 percent have not registered. So, there is no problem in my district. We are talking about the Constitution of the United States and I am for the right to vote.

I said a while ago something that was rather personal about my father. I cannot impose any more restrictive condition on anybody else, but the right prescribed, the qualification of voters, is in the State and all of the statutes we are amending say that all citizens of the United States who are otherwise qualified by law. What law? State law. That is all we have done in the past and now we want to impose qualifications here and it causes differences of opinion.

Mr. DELANEY. That is the very crux of this question, is it not, in many respects?

Mr. WILLIS. Sure it is the crux of the question from the point of view of people being discriminated against unjustly and in violation of constitutional law. That is the crux of the question. I am against that. I will say it on the floor.

Mr. DELANEY. Mr. Willis, we are not going to settle that here and now.

We have heard something about boobytraps in here and I note that section 10, which is more or less the omnibus section, is called miscellaneous. It is the omnibus clause. It seems to me that in section 10, the omnibus clause, they would have another sentence or two to protect the constitutional rights of all citizens guaranteed by the 14th amendment.

Mr. WILLIS. What page of the bill?

Mr. DELANEY. That is the last page. It is called the miscellaneous clause.

Mr. WILLIS. It is a separability clause.

Mr. DELANEY. We brought in here lunch programs and disqualifications.

What we are interested in, in this particular bill, is civil rights, the right to vote, the right of facilities, and so forth. Could there not be a coverall clause in there to take the rights of all citizens under the 14th amendment into consideration? This is really not

meant to go into education, for example, and there is no omnibus clause to protect that.

Mr. WILLIS. Any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act and the application of the provision to other persons and circumstances shall not be affected thereby.

What would you want to add to it?

Mr. DELANEY. Just a clause that would protect. I did not intend to go into anything other than section 1 and section 2 that you were representing, but you did touch upon title 4.

Mr. WILLIS. That deals with what?

Mr. DELANEY. Title 4 deals with schools. There is a definition there of public schools. Public schools means any elementary or secondary educational institution and public college. Public college means any institution of higher learning or any technical or vocational school above the secondary school level operated by a State, subdivision of a State, or governmental agency within the State or operated wholly or predominantly from or through the use of Government funds or property, or funds of property derived from a Government source.

In looking at the Congressional Record of January 15 under the heading of the Government role of future discovery, I want to say one other thing. You do not get the point, the title of what is a public school.

Mr. WILLIS. Let me take a look at that.

Mr. DELANEY. This would affect college or almost every institution. I do not want to prolong this but I see an article by Tom Curtis here and it is in the Congressional Record on page A–1463. I want to read just this section:

> Twenty percent of the dollar expenditures for the activities carried out in institutions of higher learning now come from Federal sources.

Twenty percent comes from Federal sources.

Mr. WILLIS. May I interject at this point?

Mr. DELANEY. Yes.

Mr. WILLIS. I think the words "funds" or "property" derived from a governmental source, they are talking about both State and Federal Government there, particularly and most predominantly, State funds. That is governmental, not the Federal Government alone.

Mr. DELANEY. Yes.

Mr. WILLIS. Governmental source there includes State governments.

Mr. DELANEY. Maybe even New York City and the government of the city of New York?

Mr. WILLIS. Yes, sir; something like that.

Mr. DELANEY. Then following the statement I read:

> * * * About 75 percent of all academic research in the physical and life sciences is now being paid for with tax money.

Seventy-five percent is tax money and that would put nearly all of these private institutions receiving it under the heading of a "public school." That would have an effect and I do not think it was ever meant——

Mr. WILLIS. The words are "wholly or predominantly."

Mr. DELANEY. Yes.

Mr. WILLIS. In other words, you quarrel about the generality of these words, and I am with you. If you do not like them——

Mr. DELANEY. We are not going into this title, but you did touch upon it and that is why I am bringing it out.

Harvard University received 25 percent in 1961 from the U.S. Government. Then we have Howard University——

Mr. WILLIS. To that point, let us take that one at a time. That 25 percent would not constitute "wholly or predominantly."

Mr. DELANEY. For other services and other parts of the school under this article, they received 75 percent for research. Howard University is here in Washington and has been supported since right after the Civil War almost wholly by the Federal Government.

Another university in New York through government agencies and also through the Federal Government has received, perhaps not predominantly, but a great portion.

All of these institutions would be public schools and come under the heading of public schools.

I do not want to belabor the point but I do not think this belongs in this particular civil rights bill. I do not think that section could very well, or should, be in here. It could very well go out, this definition in any event.

Mr. WILLIS. Let us be frank. You and I may have the same feeling on this. Is it part of your objection that it neatly excludes certain schools?

Mr. DELANEY. No; it would make almost all receiving grants "public schools." That would have an effect on other legislation, some pending and some that has not even come up, and some that is proposed.

Mr. WILLIS. I see.

Mr. DELANEY. I think that section should go out.

There are other points on which I will reserve my time until someone speaks on sections 4 and 6 in particular.

The CHAIRMAN. Mr. Smith?

Mr. SMITH of California. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Bolling, any questions?

Mr. BOLLING. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Avery?

Mr. AVERY. No questions, but I would like to state, Mr. Chairman, I came to Congress 9 years ago and Mr. Willis and I had not been here very long until I concluded that if I ever needed a lawyer to defend me, I would have him very high on my list.

You are one of the most capable that I have seen address the House. Certainly, I would say, although I cannot agree with all of your conclusions, I think you have made a most scholarly and, to a layman at least, impressive a presentation and explanation to the committee.

You have been articulate in expressing your point of view.

Mr. WILLIS. Thank you very much.

The CHAIRMAN. Mr. Elliott?

Mr. ELLIOTT. Mr. Chairman, I would like to reiterate what my friend from Kansas has said and add also that I agree with your conclusions.

First, Mrs. Willis,

I have three questions. First, Mr. Willis, will you describe again the mechanics for the record of how a three-judge court under title I, voting cases, is obtained?

Mr. WILLIS. Well, any suit filed must be filed in the district court where the alleged offending cause of action arises. There is no control over that and that cannot be stopped. That is the law.

Then, having filed the suit in that court, the Attorney General who filed the suit may, in his discretion, address a letter to the clerk of that court saying "I want to have a three-judge court assembled."

The clerk must take that letter and send it to the chief judge of the circuit court involved—meaning, in my case, if the suit were filed in my district, the clerk of that court having received that letter from the Attorney General, would have to write a letter to Chief Judge Tuttle of Atlanta, Ga., who is the chief judge of that five- or seven-State circuit. I believe it takes in five, six, or seven States; Texas, plus the Canal Zone.

It is not a "Please, sir" or "Dear, sir, would you please consider assembling * * * " letter but it is an order to Chief Judge Tuttle to assemble a three-judge court to try that case.

Mr. ELLIOTT. The chief judge has no discretion?

Mr. WILLIS. Has no discretion. He must assemble. Under general law, then, the panel may or must be composed of three, and may be composed of two, judges residing anywhere in that five- or six-State circuit, plus the Canal Zone; any two, anywhere, plus the third. A judge, usually the judge before whom the case was initially filed, plus a judge of the district where that suit was filed, so that the prerogative of that judge is diluted at least 2 to 1 if he becomes a member of that three-judge court, and if he is not, then there are three new judges being appointed to compose it. So, he is completely eliminated but he is faced with the possibility anyway of being in a minority of his prerogatives, or having them diluted certainly 2 to 1.

Mr. ELLIOTT. If the word gets around that a certain district judge has been deciding——

Mr. WILLIS. And discretion to do that resides with the Attorney General having filed the suit. He may go on and try it before the judge of that court where he files it; he may do that, but he has the choice of trying the case before the judge who presides over that district.

For reasons embedded in his own court and conscience he may decide on another procedure. That privilege of assembling a three-judge court is given to whom? Is it given to the one who files the suit, the Government only? The citizen who is being sued has no say in it.

Mr. YOUNG. Would the gentleman yield at that point?

Mr. ELLIOTT. Yes.

Mr. YOUNG. Maybe the witness ought to also explain the procedural affect, once the three-judge court has been established.

Mr. WILLIS. I do not know. Will you state it? I do not know what is in your mind.

Mr. YOUNG. The appeal then is directed to the Supreme Court, is that correct?

Mr. WILLIS. Yes, sir.

Mr. YOUNG. It has the effect of expediting it?

Mr. WILLIS. It does have that effect. I would say that the proponents might have argued and could have argued if they wished, that the appeal from the three-panel court is being initiated by the chief

justice of a circuit court and the appeal goes directly to the Supreme Court, whereas if it is tried by the judge in whose court the suit is filed, the appeal would go to the circuit court of appeals and then to the Supreme Court.

Mr. ELLIOTT. So this title, in effect, and to use an analogy, this title gives the Attorney General the right to strike the jury but nobody else can or has the right to strike?

Mr. WILLIS. That is right.

Mr. ELLIOTT. It gives him very, very great power?

Mr. WILLIS. There is no question in the world about it.

Mr. ELLIOTT. If word gets around that a certain district judge is deciding these cases, in this type of case, or might decide this type of case, based upon other decisions he has rendered in a manner that the Attorney General thinks he would not like, all he has do is to request a three-judge court?

Mr. WILLIS. Right. In other cases in which the Government might be interested—and I happen to have been party to a bill passed in connection with sentencing procedure—I attended a very enlightening session in the West of all of the Federal judges of the United States. There was just myself there and the chairman of the committee and believe me there are patterns of judges; human prejudices. On income taxes you would be surprised at the disparity of sentences and in condemnation proceedings and under the Mann Act and theft of automobiles and in bootlegging cases, you have a pattern of opinion by these lower judges.

They are spotted out and they impose different sentences.

We have not undertaken to give to the Attorney General the choice of saying, "Well, this judge is too light on income tax violators. This judge is too heavy on moonshiners. This judge is too softhearted on compensation cases. This judge is against citizens and he takes for the Government in condemnation proceedings. Therefore, in all cases we will give the Attorney General of the United States the right to shop around for judges."

How do you like that? They are doing it here.

Mr. ELLIOTT. Mr. Willis, I thank you for that explanation and I want to propound my second question here:

Somebody made the point in these hearings that about 30 States of the Union already have public accommodation laws and FEPC laws that some people said went further than do the titles in this case. You are addressing yourself particularly to the public accommodation title and would you say, based upon your study, that as many as 30 or 32 States have tougher public accommodation laws than title II or as provided by title II of this bill?

Mr. WILLIS. There are varieties of degrees. I am told that most States' statutes go as far as that and some are penal. That is not, in my opinion, a tougher proceeding because in penal cases you are entitled to jury trial.

Mr. ELLIOTT. There are no jury trials here?

Mr. WILLIS. That is right.

Mr. ELLIOTT. The point I wanted to try to make was this:

If, as is said here and has been said here, 30 States have tougher public accommodation laws than provided by title II, then it would seem to me reasonable to give these States that do not have the laws

more time in which to give consideration and enter into judgments about these things. I do not see the reason for States that have these laws to impose upon States that do not have the provisions of title II. You would not have thought about this in 1960, would you?

Mr. WILLIS. No, I do not think so. I doubt that anybody would have. We did think about title III but it was defeated.

I will say this: The Attorney General of the United States made the strongest attack on title III that I have ever heard anyone say. I questioned him or tried to question him on it, on that subject, and he cut me short by saying—which was not displeasing—that "title III, I am against it."

That was about the accentuation.

You see, these provisions are going further and further and further with these bills in areas that are sensitive, sentimental, political, philosophical, racial, and what have you. How far will the Government go in the regulation of individual and property rights directed in one vein, such as giving the right to the Attorney General, a right not sought by him or at least in his administration bill, and a right not given by the subcommittee bill to choose his forum.

As I said this morning, usually the man who has a right to ask for a change of venue because of local prejudice is the guy who is being prosecuted and who is being sued.

The other plaintiff, the Federal Government, is given the right to shop around. It is a very broad provision.

I said a while ago I do not consider it unconstitutional. I cannot say, nor would it be constitutional if we passed a bill to cut the jurisdiction of the Supreme Court.

It has been done but the proponents of this bill would sure raise a ruckus if we tried that. Therefore, I introduced a bill in that direction.

Mr. ELLIOTT. Mr. Willis, this is my third question or statement: You and I have been cast in the role by history of having to understand this problem and live with it, more so than do many Members of Congress. In your district you have just said you have two large racial groupings. I now represent a State that has two very large racial groupings.

After the events of 1963, my observation has been that if we are ever going to reach a solution to this problem in keeping with good judgment and good sense and good taste, we are going to have to let this thing cool off a little bit now. The people who do not understand that, it seems to me, are making a very serious mistake. I do not know whether you agree with that or not but that is the way I feel about it.

Mr. WILLIS. I will say this: This is probably in the minority here but you know the sit-in's, boycotts, used to be unpopular words. You have them. I hope there is no reaction to it, but there may come a time when you have other economic sit-in's and boycotts from the other direction.

What do we do?

I agree that all conditions and all generations can be improved, but I doubt that you are going to improve them with laws of this kind with the reach that this would propose.

It is awfully difficult to believe in civil rights as a label, as a fact, and then to be against civil rights legislation. It is awful tough to be in that position, that I think I believe in civil rights and I do not think I am kidding myself, and I know that I believe in the right to vote. I know I do not want discrimination. There is none in my district. My district has probably been in the lead in that direction, but my friend from Mississippi, as I said this morning, we live in an age of labels. We are rated and the best that I can do is to quote Bobby Burns again:

> Oh, wad some power the giftie gie us
> To see oursels as others see us!

Maybe I am wrong about myself but I have no supernatural power to do any better than live with my conscience.

Mr. ELLIOTT. That is all.

The CHAIRMAN. Mr. Sisk?

Mr. SISK. Mr. Chairman, I want to compliment the gentleman from Louisiana for the very fine statement. I am not in a position to heartily agree with everything that the gentleman said, but I do have a high respect for his legal ability. I always appreciate the fact that he can usually explain legal matters to where even a layman can seemingly understand.

I wish to pay tribute to him.

It is my understanding that the gentleman feels quite strongly that there are certain provisions within the proposed piece of legislation that, in his opinion, are unconstitutional?

Mr. WILLIS. Yes, and some that are constitutional but go too far.

Mr. SISK. Let me ask the gentleman this question, and I am simply thinking about the mechanics of action on this piece of legislation. The gentleman may not desire to even comment on it, but does the gentleman feel that this bill, or any part of it, because of procedures in his committee, or because of language within the bill, all or any part of it, might be subject to a point of order?

Mr. WILLIS. Honestly, I would have to look at the rule book. I usually do that before we engage in battle on the floor. Offhand, I do not know about points of order, but usually when a bill come out of committee with extraneous matter, then there is a good deal of difficulty to knock it out on points of order.

You could object to an FEPC bill in the first instance being introduced before the committee, but when the committee lugs it in as part of the bill, unless my good chairman can cook up, or find out points of order on that one, I honestly right now feel like I am in the box.

The CHAIRMAN. I am a very poor chairman but I would think that there is a possibility that FEPC might be subject to a point of order.

Mr. WILLIS. As I said, I want to reserve the right to look it up.

The CHAIRMAN. Jurisdiction on that subject.

Mr. SISK. I might say, Mr. Chairman, I had no intention of trying to put the witness on the spot.

Mr. WILLIS. Fire away.

Mr. SISK. Frankly, I have some reservations, as I understand it explained, about the method of handling the FEPC section. It is my understanding your committee never had any hearings on this at all.

Mr. WILLIS. You had references to it. You had suggestions expressed that we should take over and you had testimony on it, but you

know Members offer bills and they have to defend them. I repeat that as far as I could tell, there was not much seriousness attached to these appearances.

I would not say we had hearings, as you would require hearings on a provision of that kind.

Mr. SISK. Does the gentleman offhand know who on his committee proposes to discuss specifically title 7?

Mr. WILLIS. When I said this morning we had sort of divided the task here ourselves, to be frank—referring to Members from the South—and there are other Members certainly and I see Mr. Meader here—I do not know what section he proposes to discuss.

George, do you intend to cover the whole bill?

To answer your question, I do not have that information but I will supply it.

Mr. SISK. I have some specific questions on title 7 which I am quite concerned about because I question whether this is the proper approach for FEPC legislation.

I was trying to find out if there is anyone on the committee who proposes to discuss this question.

Mr. WILLIS. It will be discussed separately and then generally by those who want to discuss the whole bill.

Mr. SISK. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Young?

Mr. YOUNG. I have no questions.

The CHAIRMAN. Ed, you told me this morning you would let us have these other Members' names who are going to discuss these various titles, including title 7. Do you have that information?

Mr. WILLIS. No; I do not. But I will let you know.

I said this morning, and I will make it more clear now, that did not include Mr. Meader, Mr. Rogers, and Mr. Cramer.

The CHAIRMAN. I know that.

Mr. WILLIS. It was limited to a small group who would discuss that.

Mr. COLMER. The six of you who signed the joint statement?

Mr. WILLIS. Let me be specific. I will speak for the six who signed the minority report only.

The CHAIRMAN. They will discuss different titles?

Mr. WILLIS. Right.

The CHAIRMAN. All right.

Mr. DELANEY. Mr. Willis, you were quoting Bobby Burns and long before civil rights was it not Bobby Burns who said that "Man's inhumanity to man makes countless thousands mourn"? That was long before we had these civil rights.

Mr. WILLIS. That is true.

He also said something about despite the efforts of mice and men, their plans often go astray.

Mr. DELANEY. I thought I remembered that.

The CHAIRMAN. Thank you very much, Mr. Willis.

Sorry we have taken so long.

I was in hopes we could proceed a little faster from now on. We have a lot of witnesses yet and I wonder if it would suit Mr. Rogers and Mr. Meader to go on Tuesday?

Mr. ROGERS. Mr. Chairman, either now or Tuesday, whenever you suggest, as far as I am concerned.

The CHAIRMAN. I am here but I do not know about the rest of the members. I would gather from your interest in this subject, and our interest in it, that you are going to take some little time.

Mr. ROGERS. I think I can present what I am going to present in an hour's time.

Mr. COLMER. Five minutes?

Mr. ROGERS. I have to discuss every section and the constitutionality and how we interpret it as it relates to the Constitution and how it developed from the subcommittee.

If you want to do that——

The CHAIRMAN. I think we had better do that later.

Mr. Willis is a tired man and if you are going to answer his massive constitutional statement of this morning I am sure that he is going to stay here and listen to you.

He likes to be advised.

Mr. ROGERS. I will be delighted to be here Tuesday, if you wish.

The CHAIRMAN. All right.

Then we will meet Tuesday.

(Thereupon, the hearing was adjourned at 4:10 p.m.)

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