# CIVIL RIGHTS



# HEARING

BEFORE THE

# COMMITTEE ON RULES

# HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH CONGRESS

SECOND SESSION

ON

## H. Res. 789

A RESOLUTION PROVIDING THAT H.R. 7152, THE CIVIL RIGHTS BILL, SHALL BE TAKEN FROM THE SPEAKER'S TABLE AND THE SENATE AMENDMENTS AGREED TO

JUNE 30, 1964

Printed for the use of the Committee on Rules

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# CIVIL RIGHTS

TUESDAY, JUNE 30, 1964

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

The committee met, pursuant to call, at 10:30 a.m., in room 313, the Capitol, Hon. Howard W. Smith (chairman of the committee) presiding.

The CHAIRMAN. The committee will be in order.

The committee meets this morning for the purpose, and the sole purpose, let it be understood, of considering House Resolution 789, to make it an order to take H.R. 7152, the so-called civil rights bill, from the Speaker's table, and upon the adoption of the resolution, the Senate substitute bill to be finally passed by the adoption of the Senate substitute.

Understand that the members of this committee are under strict orders to dispose of this matter today. I want it equally understood that I am opposed to disposing of it at any time. There will have to be some record votes in the committee when we go into executive session.

(H. Res. 789 follows:)

[H. Res. 789, 88th Cong., 2d sess.]

RESOLUTION

*Resolved*, That immediately upon the adoption of this resolution the bill (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 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, with the Senate amendment thereto, be, and the same is hereby taken from the Speaker's table, to the end that the Senate amendment be, and the same is hereby agreed to.

The CHAIRMAN. I believe Mr. Celler is here, and Mr. McCulloch, I believe, is here. Those are the cooperating heads of the Democratic and Republican Party who are putting this bill through.

Is there anyone in opposition?

I see three in opposition.

Mr. MADDEN. Mr. Chairman, there is a little comment I would like to make.

Mr. COLMER. Mr. Chairman, if the gentleman would yield, I would like to address the Chair, although I do not want to cut the gentleman off at all.

Mr. MADDEN. Go ahead.

Mr. COLMER. Mr. Chairman, on those who would like to appear against the bill, I would like to state that the ranking Democrat on the Judiciary Committee, Mr. Willis, would like to appear. It is not that he has had a chance to know what is in these amendments, but he would like to file his protest against this second railroading.

The CHAIRMAN. He will be here?

Mr. COLMER. Yes.

The CHAIRMAN. Mr. Madden.

Mr. MADDEN. Mr. Chairman, this is a kind of extraordinary session of the committee, particularly when we consider how long it has been since this committee first met on this legislation. We happen to be right now on the threshold of a great event that is going to take place.

As I understand it, as I have been thinking the situation over, this week, I think Thursday, they are planning on the demise of a number of our Members to go to San Francisco. Clarence Brown and I want to go.

The CHAIRMAN. I hope you have used the wrong word.

Mr. MADDEN. Mrs. St. George is going to be officially out there. I say this in the best of spirits. There are so many different little technicalities that can arise, and I don't know what source they might arise from, but, by jiminy, if possible, I want to get to San Francisco along with some of my Republican friends.

I am going to make a little statement here which is made in the best of spirits: that if there is any motion to adjourn this committee during the day, I am going to ask for a record vote on the adjournment, and if there should happen to be a quorum call or some interruption, I am going to ask that it be a temporary recess pending the official business on the floor, whatever it is, and not an adjournment.

Furthermore, considering the fact that for some reason or other this particular legislation seems to always have somebody else to talk and somebody to put in a proviso, for some reason or other it took 85 days in the other body, in order that we can get away this week according to the program, I am going to move—there is nothing new that is going to come up here today—I am going to move—and, of course, I haven't any time limit particularly in mind, but even if it is an hour or 2 hours, which would be sufficient, I think, maybe to bring out all the new facts that can possibly come up, and maybe 30 minutes or 5 minutes could do that—I am going to move that this committee on these hearings today on this resolution adjourn at 5 o'clock and go into executive session and vote. I make that motion.

Mr. COLMER. Would the gentleman yield?

Mr. MADDEN. I yield.

Mr. COLMER. The gentleman made the observation that we could dispose of this in 30 minutes or 5 minutes. Is the gentleman familiar with the 80 or 90 amendments?

Mr. MADDEN. I have read them all.

Mr. COLMER. Can you explain them to the committee?

Mr. MADDEN. I can explain them in detail, but that would take quite a while.

Mr. COLMER. Then I want to congratulate the gentleman because I am confident that he is in the one-tenth of 1 percent of this House of Representatives that knows what is in this bill.

Mr. MADDEN. Don't insist that I should follow the Senate for the last 85 days while one or two members should talk to a lot of chairs.

I didn't follow them that diligently. But I do think that the Senate, in its wisdom, has turned out a pretty good bill that has been long delayed.

Mr. COLMER. Would the gentleman explain one amendment to me?

Mr. MADDEN. I don't think there is anything new that can be added by any witnesses today that this committee over the years has not heard.

Mr. COLMER. Can the gentleman explain one amendment?

Mr. MADDEN. I don't want to take up the time of this committee.

Mr. BROWN. Mr. Chairman, has the filibuster started already?

Mr. COLMER. Would the gentleman take time to explain to me the provisions of the jury trial amendment in this?

Mr. MADDEN. I don't want to take up the time of this committee to explain that to you because it is very difficult.

Mr. COLMER. I thought you wanted us to vote in 5 minutes.

That is all, Mr. Chairman. I think the gentleman has answered my question.

The CHAIRMAN. I merely want to say that what time we shall adjourn and whom we shall hear is simply an expected continuation of the rule and power of the majority has shown in both the Senate and the House in consideration of this measure.

As to the statements of the gentleman from Indiana, we will cross those bridges when we get to them. In the meantime, if we are not to be permitted to explore this new bill and nobody else is to be permitted to explore it because we will be confined to 1 hour of debate, I think we better get along with what we have to do.

The Chair recognizes the chairman of the Judiciary Committee, Mr. Celler.

## STATEMENT OF HON. EMANUEL CELLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. CELLAR. Mr. Chairman and members of the committee, we ask you to permit the unfolding, as it were, of the last scene of the last act of the legislative drama called civil rights.

H.R. 7152 has had a long and tortuous course. As you know, frustrations and delays have beset its unfolding. No exhortation of mine is necessary to bring the performance to a close. There has been a veritable Niagara of words spilled already.

The Senate made changes in our handiwork. These changes are not lethal. They do not do serious violence to the purposes of the bill. They may not be to my personal liking, but I think the country can live with them.

Mr. McCulloch, the distinguished Republican member on my committee, who fought shoulder to shoulder with me in this bipartisan support of the bill, also believes the amendments might well be adopted.

As you know, gentlemen, politics is the art of the possible. Success at politics is getting things done. No bill that finally passes is in perfect form. Yet by the shoals and reefs, even if you are buffeted and battered in the process—this we have done. Acceptance of the amendments is the reasonable price, I believe, to pay to avoid a conference of both Houses which might renew lengthy debate, open up old sores, again encourage bitter controversy, the wounding of sectional pride, and searing of personal sensibilities.

I shall confine my following remarks to the substance of the changes made by the Senate in the House version of H.R. 7152. In the House, title I of the bill requires registration officials to apply uniform standards in registering voters and prohibits denial of registration because of immaterial errors or omissions on voting applications in Federal elections. It presents a rebuttable presumption that a citizen who has completed a sixth-grade education is literate for voting purposes.

It further provides that where literacy tests are employed as qualification for voting, the tests must be conducted wholly in writing and certified copies maintained.

It also authorizes the Attorney General or defendant to request a three-judge court to hear and dispose of voting cases. It is particularly important to settle voting cases promptly because the right to vote is of little value after the election has been held. The Senate added a provision which would permit the Attorney General to exempt from the literacy test provisions those States which he determines are not discriminating in voting registration and procedure.

That, in substance, is the change made by the Senate to the House bill.

Title II—Public Accommodations: Title II of the House bill provides that no citizen shall be subject to discrimination because of his race, color, religion, or national origin, in certain places in public accommodations. In the Senate, under the provisions added by the Senate, an aggrieved party involved in a dispute arising within one of those States which has a public accommodation statute in local jurisdictions must wait 30 days before filing civil action under the provisions of this bill. After 30 days, during which the State or local agencies can attempt to resolve the dispute, the aggrieved party may file an action in the Federal court.

The court is authorized to receive the case without cost, may furnish an attorney for the complainant, and may permit the Attorney General to intervene in the action if he certifies the case to be of general public importance. The court may also stay the proceedings pending termination of State or local enforcement action.

This extension authority is necessary because many State public accommodation statutes provide criminal penalties and the State courts must be allowed sufficient time to hear and decide the case. Where a complaint arises in a State which does not now have, or at the time of the operation of the statute, comparable public accommodation laws—and I believe there are 30 such States, plus the District of Columbia, which have such laws—if the State does not have comparable public accommodation laws, the Federal court may receive the case and refer the complaint to the Community Relations Service, which is provided for in title X of the act, for a period of 60 days, which can be extended to not more than 120 days in an attempt to obtain voluntary compliance with the law.

Under the Senate amendment, title II, the accommodations section, also authorizes the Attorney General to file action to secure compliance with the law when he has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the law. In such actions, the Attorney General may request a court of three judges to hear and determine the case.

The new language of title II provides effective relief for aggrieved parties both in instances where there are individual violations of the

law and in situations where there is massive resistance to the law, requiring action by the Federal Government to protect the rights of all citizens.

Title III—Desegregation of Public Facilities: As to the House, title III of the bill secures for all citizens the right of equal access to State-maintained public facilities such as parks, playgrounds, and libraries. It authorizes the Attorney General to initate or intervene in suits to desegregate such facilities when individual citizens are unable to initiate or maintain appropriate legal proceedings.

The Senate amendment adds language which clarifies the criteria which the Attorney General will use in determining whether to initiate suits authorized by title III.

The Senate amendment deletes the so-called section 302 from title III of the House bill and places it in the latter part of the bill and calls it title IX. This section authorizes the Attorney General to intervene in any Federal court action required for the purpose of seeking relief from the denial of equal protection of the laws on account of race, religion, color, or national origin.

The CHAIRMAN. Would you mind an interruption at that point? It is a very vital point. You know we had a lot of debate in the House.

Mr. CELLER. That is the old title III.

The CHAIRMAN. I am following you as you go along. We have had a great part of debate in the House on the question of how much autocratic power is going to be vested in the Attorney General. This Senate bill, in title IX, applies generally to the whole bill. It gives the Attorney General blanket power to intervene whenever in his judgment he deems it desirable in any civil action under this whole bill, all the titles.

Mr. CELLER. That is correct. But, of course, you must remember, Mr. Chairman, that by the votes both in the House and the Senate it was so determined.

The CHAIRMAN. What was that?

Mr. CELLER. By the votes in the House preponderantly and by the votes in the Senate preponderantly, it was determined that that provision remain in the bill.

The CHAIRMAN. It was never in the House bill.

Mr. CELLER. Part III? Yes, it was. This has been taken from title III and is placed now in title IX. It has been transferred from title III and put in title IX. It has been voted on by the House and the Senate. All the Senate did was to put it in a different place in the bill.

The CHAIRMAN. You say it was in title III?

Mr. CELLER. Yes, sir; section 302.

The CHAIRMAN. That provision, section 302 of title III, applies to title III.

Mr. CELLER. That is not limited, sir. "Whenever any action has been commenced," reading from the House bill, on page 13 of the House bill.

The CHAIRMAN. Your contention is that that section 302 not only applied to the title in which it is, but that it is applied to the whole bill?

Mr. CELLER. Yes, sir. If you take the legislative history, you will see that that is so, sir.

The CHAIRMAN. Go ahead.

Mr. CELLER. Title IV—Discrimination Under Public Education: In the House bill, title IV authorizes the Attorney General to initiate and intervene in public school desegregation cases where students have parents who are unable to institute and maintain legal proceedings. It provides for Federal technical and financial assistance when requested by school boards in communities to assist in the desegregation of their schools.

In the Senate, the Senate amendment proposes several language changes to clarify the intent of this title. It provides that the Attorney General must receive a complaint in writing which charges that a school board is denying children equal protection and must determine that the complaint is meritorious prior to initiating action.

The Attorney General must give notice of a complaint to the appropriate school board or college authority and give them reasonable time to correct the situation. It deletes the authorization for dependents' allowances when school personnel attend special training sessions.

A new section 410 states that nothing in this title is intended to prohibit classification and assignment of schoolchildren by reasons other than race, color, religion, or national origin. The amendment further defines the intent of Congress with reference to the question of racially balanced schools. New language added to section 407(a) provides that nothing contained in this title shall empower the U.S. courts to issue any order which seeks to achieve by so-called bussing or transportation or any other means, racial balance in the public schools.

The Senate amendment also clarifies a complaint filed under this title as a writing or document under section 1001, title 18, United States Code, which title of the code makes the filing of a false paper a criminal offense. So a complaint, if false, would be deemed a violation of this provision of the code.

Title V—Commission on Civil Rights: In the House, title V of the bill extends the life of the Civil Rights Commission for 4 years and broadens it. The Commission will serve as a national clearinghouse for information in respect to equal protection of the laws and is authorized to investigate civil rights and charges of fraud in State or Federal regulations.

In the Senate, the Senate amendment to title V relates primarily to the rules of procedure for Commission hearings. The new procedure rules will more nearly comply with those now in effect for all other Federal administrative agencies.

Title VI—Nondiscrimination in Federally Assisted Programs: In the House, title VI of the House bill would permit the withholding of Federal funds from programs administered on a segregated basis. Final action to withhold such assistance will only take place after efforts to achieve voluntary compliance with the law have failed.

In the Senate, the Senate amendment makes clear that Federal funds will be cut off for only those political entities or particular programs or parts of programs in which discrimination is practiced. This means that all Federal aid to a State, or aid to a particular program, will not be cut off because one particular part of the program or institution is being operated in violation of the law.

The Senate amendment adds a new section 604 which provides that nothing in this title authorizes Federal department or agency action with respect to employment practices except where a primary objective of the Federal financial assistance is to provide employment.

That probably needs a little explanation. For example, if there is a grant under the Hill-Burton Act for a hospital to be built and the hospital authorities hire a contractor to build the hospital wing and that contractor discriminates in employment, that would not affect the granting of the aid for the purpose of giving the money to a hospital to build a wing. But the title would apply to Government contracts, for example, on public works, where the objective, the prime objective, of the public works program might be to encourage employment and decrease unemployment.

Title VII—Equal Employment Opportunity: Title VII of the House bill provides that employers, labor unions, and employer agencies whose actions affect interstate commerce are prohibited from discrimination on the basis of race, color, religion, sex, or national origin against an individual seeking employment.

The Senate amendment to title VII, like the amendment to title II, requires increased resort—title II being accommodations—requires resort to State antidiscrimination agencies where they exist. This is consistent with the intent of the House bill.

The Senate amendment provides that a charge of unfair employment practices must be filed by the person aggrieved or by a member of the Equal Employment Opportunities Commission, which is established by the title. In the case of an alleged unlawful employment practice occurring in a State or local community, which has laws prohibiting practices comparable to what is provided in this bill, a person cannot file the charge with the Commission prior to 60 days after he has instituted proceedings under the State or local law unless such action has been earlier terminated. The bill extends this period to 120 days during the first year after the enactment of a comparable State or local law; that is, the States that do not now have a Fair Employment Practices Commission Act. I believe some 25 now do. If they subsequently pass such acts, then the bill extends this period of waiting to 120 days during the first year after the enactment of the comparable State or local law.

Where a charge of unfair practice is filed by a Commission member, in contradistinction by the party aggrieved, the Commission shall notify the appropriate State or local agency and afford that State or local agency a period of time in which to resolve the complaint; that is, 60 days or 120 days.

The Equal Employment Opportunities Commission is given a maximum of 60 days in which to obtain voluntary compliance with the provisions of the law. If they are not able to do so, the aggrieved party in any case then may file an action in the Federal district court in which the practices occur.

Like title II, the Senate amendment authorizes the court to accept the case without cost, furnish the complainant legal assistance, and also, as in title II, permits the Attorney General to intervene in the action. If the court finds that the respondent has intentionally, and the word "intentionally" is used, if the court finds that the respondent has intentionally engaged in or is intentionally engaging in unlawful practices, the court may order such affirmative action as may be appropriate.

Again, under this title, the Attorney General may bring a civil action where he finds the pattern or practice of resistance to the law, and may request a three-judge court to hear the case. This, again, is

so in not only title II, but also in title I, the reference to the three-judge court.

In addition, numerous revisions were made in the recordkeeping section of this title. The substitute language provides that where records on employment practices are required by State laws or Federal Executive orders, any additional information required by this law may be added to what is already being kept. In other words, there need not be any duplication. If they keep records under the State law, there is no need to keep similar records under the Federal law.

The Senate amendment also (1) validates nondiscriminatory ability tests given by employers. The words there are "the intelligence test or the lie detector test." I take it that would be permitted anyhow, whether you have it in the law or not. The law provides that an act can be only unlawful if it is discriminatory on the basis of race, color, creed, sex, or national origin.

The Senate version also requires that compliance with the National Fair Labor Standards Act, as amended, satisfies the requirements of the title barring discrimination because of sex. In other words, if you want a particular job which you feel cannot be performed by a woman because of sex, like a flagpole sitter, I suppose, you would have a perfect right to hire a man and that would not be deemed discrimination.

The Senate amendment deletes the provisions of exempting discrimination against atheists. Of course, we put that in. I don't think it is necessary. The bill, again, provides for discrimination. You can discriminate on any grounds, but you can't discriminate on the grounds of race, color, creed, sex, religion, and national origin.

Four, the Senate amendment exempts corporations owned by Indian tribes. You can discriminate in favor of Indians on certain reservations.

The Senate amendment also subjects all employees of the Equal Employment Opportunities Commission to provisions of the Hatch Act.

The Senate amendment also exempts educational institutions with respect to employment connected with their educational activities. That means that if you want a man with a certain educational expertise, an expert on Asia or an expert on anthropology, there could be no charge of discrimination because of race, color, creed, or national origin. It also provides that you can get rid of an individual in your employ for security reasons.

Title VIII—Registration for Voting Statistics: In the House, title VIII of the House bill directs the Secretary of Commerce to make a survey of registration and voting statistics in geographical areas recommended by the Civil Rights Commission. A Census Bureau survey would include a count of persons of voting age by race, color, or national origin, plus statistics on the extent to which persons are registered to vote and have voted for Members of the House of Representatives since January 1960.

In the Senate, the Senate amendment adds language to preserve the privacy of census information and provides penalties for disclosure violations. It provides that persons who do not wish to disclose their race, color, national origin, political party affiliation or voting preferences are not required to do so. They must be fully informed of their right to refuse to answer such questions.

Title IX of the House bill provides the right of appeal from a remand back to a State court of a civil rights case from a State court in which it was removed. The Senate amendment adds section 902, which was formerly written, as I indicated before, section 302 in title III.

Title X—Community Relations Service: The House bill establishes a Community Relations Service to assist State and local communities in the solution of racial problems arising out of discriminatory practices. The object of this agency would be to secure voluntary compliance with the law through conciliation and mediation of disputes.

The Senate amendment deletes the limitation on the number of personnel. We restricted the number to six additional persons. They restrict the number of personnel to be appointed, which was fixed in the House version, not to exceed six in number. Other Senate amendments are of a clarifying nature.

Title XI of the House bill contains sections on separability, appropriations authority and antipreemption provisions.

The Senate amendment adds two new sections—a new section 1101, providing for a jury trial in all cases of criminal contempt arising under the bill except voting right cases under title I. As you may remember, title I provides for a jury trial in criminal contempt cases where the penalties imposed originally in the contempt action is more than 45 days in jail or a $300 fine.

The provision now is that in all criminal contempts there shall be a jury trial in all provisions of the bill, all titles of the bill, with the exception I spoke of in title I.

It further provides that to be punishable as a criminal contempt, the disobedience to the court order must be intentional. Criminal contempt proceedings under title I would remain, as I said, subject to the provisions of the 1957 Civil Rights Act, which, incidentally, have been declared constitutional by recent decisions.

A new section 1102 guarantees that no person will be placed in double jeopardy by virtue of a criminal contempt proceeding and criminal prosecution being undertaken for the same matter.

That, ladies and gentlemen, gives you a bird's-eye view of the House bill and the changes from the Senate.

The CHAIRMAN. Does that conclude your statement?

Mr. CELLER. That does, sir.

The CHAIRMAN. Mr. Celler, I am not going to detain you. I know you have personal engagements of a very important nature. I have noted under this resolution, if adopted, the Senate substitute bill that has never been considered by the House, except as it was considered in connection with the provisions of the House bill, is to be adopted on 1 hour's debate under this rule.

I noted that you have taken something over 30 minutes to explain your version of the differences. I wonder if you would think that a decent respect for the legislative process dictates that this matter should be considered by the House for only 30 minutes on a side?

Mr. CELLER. I don't think it is a new bill. If it were a new bill, I would say, of course, 30 minutes on either side would be woefully insufficient.

The CHAIRMAN. I understand there are something like 80, differences between the new bill and the old bill.

Mr. CELLER. But as I indicated, there are no great differences. Most of the 80 have been clarifying amendments. They have been inconsequential. I have touched the high spots. Even with reference to those I read you, they are not highly important. They are easily understood.

The important amendment is, as Mr. Colmer pointed out, the one with broad reference to jury trials. That is the real substantial amendment that was made in the bill. We are willing to accept that as a price to avoid a conference.

I don't think an hour of debate is too short, in view of the fact that we spent almost a year on this bill, hearings that consumed weeks and weeks. We touched on almost everything that the Senate indicated. In our limited judgment, we, the members of the Judiciary Committee, didn't accept all the suggestions that were offered and which were repeated by Members of the Senate. Now they have added these provisions and we feel, as I indicated before, it is a good price to pay to avoid the rehash of all the difficulties, all the disappointments, all the frustrations that we went through in the last year. I don't want to go through all that again. I don't think you do, either, Mr. Chairman, nor do the members of this committee. I don't think the country wants it. The country wants action.

Mr. Chairman, I realize your position. You have made your position known. I think the people of your district realize it and you will have no trouble being reelected. But the country wants action. It is as clear as a pikestaff. I think we ought to give the country action and ring down the curtain, as I said, on this performance.

The CHAIRMAN. Are there any other questions of Mr. Celler?

Mr. BROWN. I have just one question.

Mr. Celler, don't you feel that the amendments adopted in the Senate that provide, in substance, that in States like Ohio, where we already have civil rights laws, rather strict and rather stringent, and have had for a good many years, that the State authority shall first have the opportunity to settle differences and to handle any of these matters that come up before the Federal Government moves in? Isn't that rather important?

Mr. CELLER. It is.

Mr. BROWN. I mean that is an important change, isn't it?

Mr. CELLER. Yes sir. I indicated in a number of these titles that is the situation, that the State must act first. That is a condition precedent before any Federal action can be taken.

Mr. BROWN. I have other questions, but I will waive. I wish to wish you a happy anniversary.

Mr. CELLER. Thank you very much.

The CHAIRMAN. Mr. Colmer?

Mr. COLMER. Mr. Celler, taking up where Mr. Brown left off—and, incidentally, that was as brief an examination I have ever heard my distinguished colleague from Ohio conduct—the question of giving the States who already have State laws on these questions some preference here, I wonder what your great court over here across the Capitol will do when the doctrine of preemption comes up and the Federal Government has already legislated in this field. Do you think they are going to let that stand?

Mr. CELLER. I think we have a number of provisions in this act. I can whittle them out for you.

Mr. COLMER. I know you do, but I don't know that they know.

Mr. CELLER. Don't visit thy sins at my door.

Mr. COLMER. I don't know who to hold responsible for it.

Let's go to another angle of it.

Was this provision put in the bill, Mr. Celler, to make it a little more palatable to the so-called Northern States that have these provisions?

Mr. CELLER. Are you referring to what the Senate did?

Mr. COLMER. That is exactly what I am referring to.

Mr. CELLER. I don't know what is inside the Senators' minds who offered these amendments. I couldn't say. I said before that politics is the art of the possible. If, for example, they got votes in that way, they are welcome to it. We provide for that in almost all bills. If you are an activist and want things done, you will have to yield. In other words, if you want the rose you must put up with the thorns. Sometimes we have to take the thorns, too, if we want the rose, and vice versa.

Mr. COLMER. Isn't it a fact, Mr. Celler, that this being a political monstrosity from the very beginning, conceived in politics, that that is exactly what is done, so that when the enforcement of this bill is begun, and all of the powers given, unprecedentedly given, to the Attorney General, that the prosecution will start down in the so-called Southern States where maybe it is pretty good politics to have it done rather than starting up in the so-called Northern States, and particularly in view of the impending presidential election and congressional election?

Mr. CELLER. I want to say in the first instance to answer that, that there was originated in the House a Community Relations Service so that these matters could be amicably adjusted before the Federal authority steps in, before the Attorney General steps in. In other words, in your State, for example, when we have this Community Relations Service, a great deal of good may be done in your State.

Mr. COLMER. I hope it applies in your State, too.

Mr. CELLER. It sure does.

Mr. COLMER. I hope that some good may come up there.

Mr. CELLER. But we have laws already, as Ohio does, with reference to fair employment practices, with reference to public accommodations, as 30 States have them. I hope Mississippi will follow suit.

Mr. COLMER. That might be an idea. If I thought that the nine black-robed gentlemen over here would bring in, as I pointed out a moment ago, the doctrine of preemption, we might consider that so as to get on a parity with the great States of New York and Ohio.

I recall that since all of this stuff started, and Ohio seems to be held up here as a model, that they had some little trouble, around Yellow Springs, with their barbers. They had a law there requiring involuntary servitude when it comes to administering their barbers' art and beauticians' art, to people of another color and race and so forth. When all of this agitation began, they hadn't done anything about the State law out there, to enforce it, but when this started, agitators got busy and you had the Yellow Springs episode.

I don't know what finally happened. I know Mr. McCulloch will tell us if asked. At any rate, I understood he was put out of business.

But going on, Mr. Celler, I want to come back to another provision of the situation we are faced with. You have been around here a

good while—in fact, several years longer than I have been—and I am not regarded as a freshman around here myself.

Isn't this a rather extraordinary procedure, a rather extraordinary procedure to take a bill that affects the lives, living, and property of every individual in these United States and cram it through here in an hour? Even my colleague, Mr. Madden, who seems to have joined the team, says we are not going to even hear from——

Mr. MADDEN. Which team are you talking about?

Mr. COLMER. I am not talking about the Wallace team that carried your district out there.

May I continue?

We are not going to even have an opportunity to have this bill explained in this committee, much less on the floor of the House. Isn't that a rather extraordinary proceeding?

Mr. CELLER. May I answer that? The act is quite analogous to what we did in 1957 and in 1960, in the first and second civil rights acts, all of which were my bills, also. I didn't even appear before this committee in 1957 and 1960. We agreed to accept the Senate amendments. So you had no explanation at all in 1957 and 1960.

Now at least I have tried to give you some explanation. I hope I have given you an understanding of it.

Mr. COLMER. I think I will have to take a little credit for your giving us a little explanation here. Had no objection been made to your taking this up without any consideration, as you requested, by unanimous consent, the bill would have already been adopted.

Mr. CELLER. That is exactly what we did in 1957 and 1960.

Mr. COLMER. Does that make it right? Does the fact that you took a new version of this bill overnight and reported it out without submitting it to the members of your committee, the full committee, justify it?

Mr. CELLER. I take it, Mr. Colmer, that your objections are so basic and so fundamental that no matter what would be done, you would object anyhow.

Mr. COLMER. Yes, Mr. Celler, I object to the deprivation of the liberties, the rights, and the privileges of all of the people of these United States in behalf of one group, even though it might be an important election factor.

Let me ask you another question. In the orderly procedure, legislative procedure, have you called your full Committee on the Judiciary together and gone over this bill with them, as to the Senate amendments?

Mr. CELLER. No, I have not. I discussed it with the leadership of the committee and with my colleague, Mr. McCulloch here, and with the Democratic leadership and Republican leadership of the House.

Mr. COLMER. In other words, you and Mr. McCulloch and the leaders determined the procedure that would be followed here, and the able gentlemen on your committee, such as Mr. Willis, whom I see here, one of the ablest men on your committee, and former Governor of a once formerly sovereign State of this Union, and others, weren't even shown the consideration of having the committee called together to consider these amendments?

Mr. CELLER. May I ask a question of you, sir? Do you think that technically——

Mr. COLMER. You happen to be on the receiving end, but I will permit it.

Mr. CELLER. Would you say technically at this stage the bill is before the Judiciary Committee?

Mr. COLMER. Let me put it this way, and I hate to put it this way: If I were chairman of a great committee of this House and we had labored on a bill of this importance, I think I would show them the courtesy and the consideration of calling them in and saying, "Here is what the Senate has done to our bill. What do you think we ought to do about it?" I would think the least you could do would be to ask that it be sent to conference. That procedure would be regular. But that was not suggested here.

I recall that the distinguished and the very able, the very astute, the very learned, the very—well, all the rest of the adjectives—the great gentleman from New York——

Mr. CELLER. You warm the cockles of my heart, sir.

Mr. COLMER. Mr. Celler, I recall that you have appeared before this committee and you have appeared on the floor of this House, and you have strenuously opposed the right of trial by jury that we, some of us, have insisted might happen, might be provided for in this legislation. And, yet, with all of your valiant fight against the right of trial by jury, you are perfectly willing to take a jury trial of sorts, that provided by the other body. Don't you have any pride of opinion? Don't you want to stand by your conviction?

Mr. CELLER. Might I answer that last proposition by saying that there is no such thing as the constitutional right of trial by jury in a criminal contempt? That is only by grace of the State, not by right. That was decided by the Supreme Court only a few months ago in the case of Ross Barnett. They distinctly said——

Mr. COLMER. I happen to know about that case.

Mr. CELLER. They said that there was no such thing as an inherent right of trial in a contempt case. It was only by grace of the State or Federal Government to give you trial by jury.

Mr. COLMER. As I recall, the nine black-robed conservative gentlemen split on that for a change. That was a rather close decision. But my friend here is willing to throw everything overboard that he has been arguing about on this trial by jury.

Let me ask the gentleman another thing. Really what, if it is not politics, is behind all of this rape of the constitutional and the legislative processes here to get this thing? Is it true that the idea is that this bill may be signed on the Fourth of July? I hear that rumor, but I don't know. Is that true?

Mr. CELLER. I think that is a very strong rumor. What is wrong with that?

Mr. COLMER. I would think there would be a lot wrong with it from my point of view. I would think it would be absolutely contrary to the Independence Day, the Declaration of Independence. The gentleman asked me a question and I am going to use his prerogative and elucidate on it a bit.

If I recall my history, the people who were responsible for the Declaration of Independence fled from the autocracies of the Old World to set up an independent form of government and to escape the dictatorship of the crown heads of Europe. I would hate to think what they would think now if they recognized what was pro-

posed to do, to do to that form of government, by the regimentation and centralization of power here.

I wonder who is turning the clock back here. Mr. Celler, I hope that is not true. I think it would be desecration today, myself. We are entitled to our opinions, and you have asked me.

You propose, finally, to take this bill and all of these 80-odd amendments, or whatever it is—because I know and you know that 99 percent-plus of the Members of this Congress don't know what is in this bill. You are going to take it down there on the floor with 1 hour of debate, 1 hour of debate controlled possibly by my learned friend, Mr. Madden—and I am glad he is going to control it because he is one Member of Congress who knows all about what is in it and no doubt he will explain it to us at that time.

And possibly somebody from the other side. Not even a member of the Judiciary Committee will have time to debate this bill on the floor of the House under this broad procedure unless it be by the grace of those who are handling the rule on the floor. I think that is pretty highhanded, raw procedure. God pity this young Republic.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Smith.

Mr. SMITH of California. If I understood you correctly, you said under title VII the Senate had language which would exempt employees of the Commission from the Hatch Act.

Mr. CELLER. No; that the Hatch Act would apply to them.

Mr. SMITH of California. What was your statement?

Mr. CELLER. That the Hatch Act would apply to members of the Commission.

Mr. SMITH of California. The language was added to make it apply? Was there any question about whether or not it would apply?

Mr. CELLER. We didn't have anything in the House bill making it applicable.

Mr. SMITH of California. In other words, the statement I wrote down that it exempts employees of the Commission from the Hatch Act, that is completely reversed. It places them under the Hatch Act. Is that correct? I can't find it in the bill where it says that.

Mr. CELLER. Let's read the section. In taking the Senate version, page 102, line 5. "All officers, agents, attorneys, and employees of the Commission shall be subject to the provisions of," and so forth, to section 9 of the Hatch Act.

Mr. SMITH of California. What is section 9 of the Hatch Act?

Mr. CELLER. It is about political activities, if I remember correctly.

Mr. SMITH of California. That is all, Mr. Chairman.

The CHAIRMAN. Are there any other questions?

Mr. Anderson?

Mr. ANDERSON. On this business under title VII, as I understood your explanation of the Senate amendment, the State agency must be given 60 days to consider a complaint or a charge before any action can be taken under the Federal statute. Is that regardless of whether or not an agreement has been concluded? As I remember the original House bill, it called for the conclusion of an agreement between the State agency and the Federal agency. So, even though there is no such agreement, the 60 days would still apply?

Mr. CELLER. That is right. And it is 120 days if there is a new statute.

Mr. ANDERSON. But is that absolutely inflexible? I am thinking of the situation that might obtain after this act goes into effect where there might be a tremendous flood of these cases filed and most of the State commissions are fairly modest numbers of personnel. What if they couldn't process them?

Mr. CELLER. If the State already has a commission, I take it the State has had it for some time and there has been a fair degree of compliance in the State. There probably wouldn't be many cases arising.

Mr. ANDERSON. You don't think there would be any problem?

Mr. CELLER. No. I may be wrong, but I doubt it.

Mr. ANDERSON. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. O'Neill.

Mr. O'NEILL. May I extend to you and Mrs. Celler highest congratulations on your 50th wedding anniversary and hope that you will consider the Rules Committee voting this out a wonderful gift to both of you.

Mr. CELLER. Thank you.

The CHAIRMAN. Mr. Elliott.

Mr. ELLIOTT. Mr. Chairman, I would like to ask Mr. Celler one question about the trial by jury amendment added by the Senate. I notice on page 124 of the bill, section 1101 says that the amendment applied to any proceeding for criminal contempt existing under titles II, III, IV, V, VI, or VII of this act.

My question is in the light of the effort that we made in the House in 1957 and again in 1960 to engraft a trial by jury amendment upon the civil rights bill for that year; is this amendment broad enough to apply to prosecutions that may be undertaken under the civil rights bills of 1957 and 1960?

Mr. CELLER. No. The provisions of 1957 will apply throughout under this bill, as to title I with reference to voting. It was felt that a jury trial might be prolonged and that by the time the verdict of the jury was had the election would be over. Therefore, they left the provisions of the 1957 act, that there could be a contempt and the judge would invoke the sanctions.

If he invoked the sanctions beyond 45 days or beyond $300 fine, then they could demand a trial de novo. Of course, the purpose would be to keep the fines low and keep the jail sentences low. It would be just as effective.

Mr. ELLIOTT. So, this trial by jury amendment applies only and specifically, and as limited, to the title II?

Mr. CELLER. Titles II, III, IV, V, and section 7 of this act.

The CHAIRMAN. All except the voting rights title; is that right?

Mr. CELLER. And there it applies if the sanctions are there under the 1957 act.

The CHAIRMAN. Are there any other questions? If not, thank you.

Mr. Celler, in view of the length of time that you have taken to explain this, would you object to a special provision in this rule which would permit, say, something like 4 hours of debate on it?

Mr. CELLER. I am afraid I would have to object to that, sir.

The CHAIRMAN. Thank you. Would you object to anything more than 1 hour?

Mr. CELLER. I think I have to, Mr. Chairman, because I think we have done enough debating on this subject. The country awaits anxiously action.

The CHAIRMAN. I knew what your answer was going to be but I wanted to put it down.

Mr. MADDEN. Mr. Chairman, concerning the remark that my good friend, Mr. Colmer, made. that most Members of Congress don't know about these amendments, practically every newspaper in the country has devoted several columns setting out the changes.

Maybe a lot of Members of Congress haven't read the newspapers. But in my district, even the Chicago Tribune had a whole page stating the different changes that were made. I think they had about 8 or 10 major changes and the rest were more or less changes in phraseology. I don't think it is so mysterious.

Mr. BROWN. I appreciate a report on the newspaper business, but let's get along with the hearing.

Mr. CELLER. Mr. Chairman, could I speak for Mr. McCulloch, though I know he can speak for himself, on the question of shortness of time? He also is going to journey to New York to attend this very important function that you spoke of.

Mr. COLMER. Mr. Chairman, if I may comment on the latest statement of my colleague, I was under the impression that these laws were considered by the law rather than the newspapers.

Mr. MADDEN. The newspapers disseminate information. Clarence Brown has done great work in letting people know what is going on.

Mr. COLMER. I thought maybe we had new procedures here.

The CHAIRMAN. Mr. McCulloch.

## STATEMENT OF HON. WILLIAM McCULLOCH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. MCCULLOCH. Mr. Chairman and members of the Rules Committee, civil rights legislation has been under consideration in the Congress of the United States longer than any other major topic except revenue raising, for at least a decade. It was 17 months ago, on January 31, 1963, that a score of bills were introduced in the House of Representatives. On June 20, 1963, H.R. 7152 was introduced. The bill which is now before you is based in large part upon those bills, same as it was amended in the Senate.

The chairman of the committee has given a lucid and accurate statement of the major changes in this legislation by the Senate. It is unnecessary to cover that ground again. I agree with the statements made by the chairman, and I am of the firm opinion that, at long last the time has come to finally enact into law this legislation which has been so long needed in this country.

Since it will serve no useful purpose to go into the details of the Senate amendments, by reason of the fact that most, if not all, of the members of the committee have been listening carefully and have been reading the press, and have been reading the comparitive analysis which we were glad to provide for the committee, I shall, with some temerity, submit to any questions which any members of the committee wish to direct to me.

The CHAIRMAN. Mr. McCulloch, I though you probably would give us a more lucid exposition of the differences because I understood you were one of the architects of the Senate bill.

Mr. McCULLOCH. I had some consultation with some Senators on the hill.

The CHAIRMAN. I am not talking about newspapers, by the way.

Mr. McCULLOCH. I will give it to you direct, Mr. Chairman. I had some conferences with some of the Senators who had no little part in drafting the amendments and approving the amendments which have been so thoroughly described by the chairman.

The CHAIRMAN. As long as we are not going to be permitted to have it discussed on the floor of the House, I thought you could give us some information out of the horse's mouth, so to speak.

Mr. McCULLOCH. I could give you some information. I have a statement of some seven or eight pages which, if the committee wishes to hear it, I shall be glad to read it to the committee.

The CHAIRMAN. I shall not ask you to do that. We will include it in the record at this point.

(The prepared statement of Mr. McCulloch follows:)

STATEMENT OF WILLIAM M. McCULLOCH, A REPRESENTATIVE IN CONGRESS, FROM THE FOURTH DISTRICT OF OHIO

Mr. Chairman and members of the committee, months of hearings and debate have been devoted to the civil rights bill, H.R. 7152. Through the millions of words that have been spoken on the subject, I believe a clear need has been demonstrated for the prompt enactment of this legislation. For that reason I do not propose to take the time of this committee to cover that ground again. I shall limit myself to explaining the important differences between the House and Senate versions of the bill.

I am pleased to say that the Senate amendments to the bill as passed by the House do not materially change the intent or purpose of the House bill. In some instances, the Senate amendments improve the House bill. In others, the amendments do slightly weaken the House bill. In substance, though, the bill, as passed by the House, remains intact, and should be enacted into law, without further delay.

Little change has been made in Title I—Voting Rights. The title provides certain procedural safeguards to protect the right to vote of those persons who are qualified under State law. The only change of consequence involves the convening of a three-judge court. In the House version, such a court could be requested by the Attorney General, or the defendant, in any voting rights suit brought under the 1957, 1960, and 1964 Civil Rights Acts. By a Senate amendment, however, a three-judge court may only be convened where the Attorney General requests a finding of a pattern or practice of discrimination.

Under Title II—Public Accommodations, the establishments which are covered remain the same. These establishments are hotels, motels, and other places of lodging serving transient guests; eating establishments; gasoline stations; places of entertainment (such as theaters and sports arenas); and places which include or house such establishments. The overall means of enforcement has also been left intact. The difference between the two versions is primarily in the type and duration of voluntary measures that must be taken before suit may be instituted.

In the House bill, a person aggrieved could institute a suit to require a place of public accommodation to serve all customers, without delay. The Attorney General, on the other hand, was authorized to institute such an action only after he had referred a complaint to a State or political subdivision thereof, having an agency which enforced desegregation of public accommodations; or a Federal, State, or local agency which was available to secure voluntary compliance.

On the other hand, the bill passed by the Senate requires that, where a State or political subdivision, by law, prohibits discrimination in places of public accommodation, an aggrieved party must first refer a complaint to such State or local agency for corrective action for a period of 30 days. Thereafter, if the party aggrieved files a complaint in a Federal court, the court may stay proceedings pending termination of the State or local proceedings.

Where no State or local agency exists for considering a complaint, the party aggrieved may file the complaint directly with the Federal court. But, the court may refer the matter to the Federal Community Relations Service (created by

title X) for a period not to exceed 120 days, in an effort to secure voluntary compliance.

In addition, the court is authorized, if it believes the circumstances so warrant, to appoint an attorney for a party aggrieved and also to permit the Attorney General to intervene in the case.

The Senate bill permits the Attorney General to immediately institute a legal action in a Federal court, if he has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice of resistance to the rights secured by title II. In such an action the Attorney General is authorized to request the convening of a three-judge district court, if he certifies that the case is of general public importance.

Title III—Desegregation of Public Facilities—remains unchanged. This authorizes the Attorney General to institute a legal action to enjoin the discrimination or segregation of public facilities owned, operated, or managed by or on behalf of a State or local government. Such facilities would include public playgrounds, parks, and swimming pools.

Section 302 of title III of the House bill which relates to a denial of equal protection has been transferred to section 902 of the Senate bill.

Title IV—Public Education—remains practically unchanged. This title authorizes the Commissioner of Education to extend limited technical and financial assistance to school boards and other local units of government, upon their request, to assist them in desegregating public schools. In addition, the Attorney General is authorized to institute civil action to desegregate public schools.

The House bill prohibited the Commissioner of Education or the Attorney General from taking action under the title to correct so-called racial imbalance. The Senate version strengthens this prohibition by providing that neither a government official nor a court may, under this title, order the transportation of students from one school or one school district to another to achieve racial balance.

Title V—The Civil Rights Commission—has, in substance, been retained as it passed the House. The Commission's life is extended 4 years, it is authorized to act as a clearinghouse for civil rights information, and is empowered to investigate instances of vote fraud. A minor change assures greater protection for the rights of individuals who are to appear before the Commission.

Title VI—Nondiscrimination in Federally Assisted Programs—retains the authority and protective safeguards as were required by the House bill. Federal departments and agencies, empowered to extend financial assistance by way of grant, contract, or loan are required to terminate or to refuse to grant such assistance to recipients who discriminate among those who are intended to benefit from the assistance.

As in the House bill, contracts of insurance and guarantee are excluded from the title's coverage, thereby exempting Federal housing programs. Rulemaking authority is granted subject to the President's approval. Public hearings must be conducted and findings of noncompliance with the title's requirements must be made by a department or agency before assistance can be withheld or terminated. Voluntary efforts to secure compliance must be attempted before assistance can be denied. Appropriate legislative committees of Congress shall be served with a written report 30 days before assistance is withheld or terminated, setting forth the grounds for such action. A person aggrieved shall have the right to judicial review of the action taken by the department or agency in terminating or withholding assistance.

The Senate, in addition to concurring in the provisions of this title, also provided that the termination or refusal to grant assistance shall be limited to the particular political entity and the particular program in which noncompliance is found to exist.

In addition, the Senate bill provides that no action may be taken with respect to any employment practice of an employer, employment agency, or labor organization except where a primary objective of the assistance is to provide employment.

Title VII—Equal Employment Opportunity—as passed by the Senate contains more changes than any other title.

Both in the House and Senate bills, employers having 25 or more employees, employment agencies, and labor organizations, having 25 or more members, are prohibited from discriminating in employment or membership practices. A bipartisan Equal Employment Opportunity Commission is created in both bills.

The primary change by the Senate involves the authority of an aggrieved individual or the Federal Government to overcome discrimination in employment or union membership because of race, color, religion, sex, or national origin.

In the House version, a charge could be filed with the Equal Employment Opportunity Commission by or on behalf of a party aggrieved, or by a member of the Commission himself. Thereafter, the Commission could investigate the charge and, if two members determined that the charge were true, the Commission could seek to eliminate the unlawful practices by voluntary means. If such means fail, the Commission could file a civil action in a U.S. district court to enjoin the unlawful practice. Where the Commission failed to institute a civil action within 90 days, the person aggrieved could file his own charge if one member of the Commission gave permission. In spite of this authority, however, the Commission was authorized to enter into agreements with States or political subdivisions thereof, having fair employment practice laws, whereby the Equal Employment Commission would refrain from taking action in deference to the State or local agencies.

The Senate-passed version, in contrast, provides that where a State or local fair employment law exists, a person aggrieved must first file a complaint with the State or local agency and permit such agency 60 days to consider the charge. Authority to file a charge on behalf of an individual was deleted. If a member of the Commission files a charge, where a State or local fair employment law exists, the Equal Employment Commission shall take no action for 60 days. Thereafter, if action is not concluded by the State or local agency, the Commission may investigate the charges. Where, however, no State or local law exists, the Commission may begin to investigate immediately. Then, if within 30 days after the Commission has completed its investigation it fails to obtain voluntary compliance, it shall notify the person aggrieved. Thereafter, the person aggrieved shall have 30 days to file a suit in a Federal court. In this suit, the court may appoint counsel for the person aggrieved and also authorize the Attorney General to intervene in such suit. Upon conclusion of the suit, the court may enjoin an unlawful employment practice as was so authorized in the House bill.

In addition to the authority granted above, the Attorney General is authorized, under the Senate bill, to file a civil action in a Federal court without any delay, if he believes that a person or group of persons are engaged in a pattern or practice of resistance to the rights secured in title VII. In such action, the Attorney General may request the convening of a three-judge district court to try the case.

The Senate bill retains the exemptions and limitations of the House bill, except that the provision excluding atheists from the title's coverage was deleted. Another exemption excludes from coverage religious organizations and societies. Members of Communist organizations are barred from coverage.

In addition, the Senate bill excludes individuals who fail to obtain a security clearance, where required, and business enterprises located on Indian reservations. The administration of professionally developed employment tests cannot be declared an unlawful employment practice, if not discriminatory in nature, and the use of quotas or the grant of preferential treatment may not be ordered by a court.

Finally, in those States having a fair employment law, persons subject to the provisions of title VII shall not be required, under the Senate bill, to keep more records than are required by State law. Additional notations on the State-required records may be demanded, however. Similarly, no additional records may be required of employers who must maintain records pursuant to Presidential Executive orders relating to Government contractors.

Title VIII—Registration and Voting Statistics—remains basically unchanged. This title authorizes the Bureau of the Census to gather statistics on persons of voting age by race, color, and national origin who have registered to vote and who have voted. The Senate bill provides that no one shall be compelled to disclose his race, color, or national origin, or be questioned about his political affiliation or how he voted.

In Title IX—Intervention and Procedure After Removal in Civil Rights Cases—the authority provided in the House bill for appeal of remand orders to the Federal court of appeals is retained. In addition, the authority granted in title III of the House bill for the Attorney General to invervene in a suit in order to protect an individual's right to equal protection of the laws was transferred to title IX.

Title X—Community Relations Service: The scope of authority granted to the Commission remains the same. The only major difference is that the limitation in the House bill concerning the number of personnel that may be appointed by the Director of the Service has been eliminated.

Title XI—Miscellaneous—provides in both the House and Senate bills that State law shall not be invalidated by this act, unless inconsistent therewith. The

Senate bill provides for a jury trial in cases charging criminal contempt in titles II through VII. Title I contains the provisions for criminal contempt which were provided in the 1957 Civil Rights Act. These authorize that a defendant shall be entitled to a new trial with a jury if he has been fined more than $300 or jailed for more than 45 days in a previous trial without a jury.

Mr. Chairman and members of the committee, there is a compelling need for this legislation and the need is now. The changes made in the bill by the Senate have done much to clarify and have done little to weaken it. Fundamentally, the bill remains the same; I therefore respectfully request this committee to favorably report House Joint Resolution 789 to the House without unnecessary delay.

Mr. McCULLOCH. I expected that, Mr. Chairman, so I did not offer it in the first instance. But I am prepared to do it, sir.

Mr. BROWN. It is a good idea to be considerate of the committee.

Mr. McCULLOCH. I have found it so because the committee has been most considerate of the Member of Congress from the Fourth Congressional District of Ohio. Without the consideration of this committee, there would have been no civil rights legislation in 1957 and in 1960.

The CHAIRMAN. I was a member of this committee on both occasions, and I don't want to be blamed for having any part in it.

Mr. McCULLOCH. I wouldn't want to blame the gentleman from Virginia at any time.

The CHAIRMAN. Mr. McCulloch, let me ask you, first, would you object to the House having more hours of debate than 1 hour, to understand this monstrosity?

Mr. McCULLOCH. The resolution provides a time which is agreeable with me.

The CHAIRMAN. I didn't ask you that question. I asked you if you would object to an extension of the time.

Mr. McCULLOCH. I would object, sir, and I would say that I would object because this legislation has been long under debate and under discussion on the floor of the House and the Senate, and in committees of the House.

The CHAIRMAN. Not this new bill.

Mr. McCULLOCH. The provisions thereof for some 17 months.

The CHAIRMAN. Not this new bill. It has never been under discussion by the House.

Mr. McCULLOCH. The provisions thereof have been discussed over and over again, Mr. Chairman.

The CHAIRMAN. I have before me this analysis which I believe you referred to, of the differences between the two bills. It has your stamp on it.

Mr. McCULLOCH. And I accept responsibility for the statements therein contained, Mr. Chairman.

The CHAIRMAN. The most alarming thing that I see about it is the apparent extension of the power to the Attorney General to intervene in all cases, making him, really, the czar over this legislation. Aside from the general provision which you have carried back into a separate title so as to make it applicable to the whole bill, there are a number of other places in the Senate bill where the Attorney General is given power specifically to intervene.

It makes me wonder if it was the purpose and intent of the collaborators in this new piece of legislation, of which you were one, to give the Attorney General complete power to intervene in any private litigation that he wanted to in connection with civil rights.

Mr. McCULLOCH. No; that was not the intention and that is not the effect of the legislation as amended by the Senate.

The CHAIRMAN. I will refer you back to page 20 of your analysis, which says that the Attorney General is authorized from the time of the application to intervene in a civil action instituted by an individual, if such individual claims a denial, and so forth, of equal protection of the law, if the Attorney General certifies that the case is of general interest.

If he is the fellow who decides whether he shall go in there, he can certify to anything as a matter of general interest. I can't imagine anything connected with this bill that is not of a general interest. There it is in plain language.

Mr. McCULLOCH. Mr. Chairman, that plain language was in the bill when it——

The CHAIRMAN. It was under a separate title.

Mr. McCULLOCH. The language was in the bill when it was debated in the House and when it was passed by the House, and its intent and purpose is now the same.

The CHAIRMAN. To give the Attorney General power in any of these cases where he certifies it is of general interest to intervene in private litigation?

Mr. McCULLOCH. Subject to the finding of general interest by the court, yes, sir.

The CHAIRMAN. It doesn't have to be in the finding. It has to be the Attorney General's opinion.

Mr. McCULLOCH. I know, but his declaration must be sustained by the court.

The CHAIRMAN. The bill does not say so, does it?

Mr. McCULLOCH. I repeat what I said before, that the provision was contained in the bill as it passed the House. It was section 302. The Senate transferred it to section 902.

The CHAIRMAN. And a lot of people construe that as confined to that title of the bill. That is, that one specific title.

Mr. McCULLOCH. That wasn't our construction, Mr. Chairman.

The CHAIRMAN. If it was intended to be general, and it certainly is general, why do you have so many other instances where, in the Senate bill, you give the Attorney General the power to intervene, that being absent in the House bill. I will cite the specific instances.

Mr. McCULLOCH. I presume you are referring to public accommodations as one of them. It has been thought that that was a field of the law in which there should be a right of the Attorney General to intervene under the conditions set forth.

The CHAIRMAN. Why is it in there if you have the general authority for him to do it?

Mr. McCULLOCH. I suppose for the same reason that out of an overabundance of caution we made the declaration about the lack of authority.

The CHAIRMAN. In other words, it is the general purpose to make the Attorney General the czar over this bill?

Mr. McCULLOCH. No, we have no intention of making the Attorney General the czar of this legislation, or any other type of legislation.

The CHAIRMAN. Why did they put it in there? That is giving the Attorney General power to intervene where the House did not give him power.

Mr. McCULLOCH. In title II, again, under public accommodations, the Attorney General only has final power to come in if the court authorizes it.

The CHAIRMAN. If the court doesn't authorize it, he can go back to this other general provision on page 20 and get in anyhow, can't he? It says so. I am not taking what the newspapers say about it.

Mr. McCULLOCH. The discretion still remains in the Federal court to which intervention is sought, or in which intervention is sought.

The CHAIRMAN. Then why do you give him this general authority, which is as follows according to your analysis of the bill:

> The Attorney General is authorized, from the time of the application, to intervene in a civil action instituted by an individual where such individual claims a denial of equal protection of the law, if the Attorney General certifies the case of public interest.

Mr. McCULLOCH. Again, under title IX, the authority is directly related to the equal protection of the laws. Under title II, it is limited particularly to public accommodations.

The CHAIRMAN. I wonder why it is in there when you have the general power under the other title?

Mr. McCULLOCH. We wished to make it unmistakably clear in title II, Mr. Chairman.

The CHAIRMAN. I want to hurry along and not detain you, but there are several questions I need to ask. You will remember in the House there was a great deal of controversy about this unusual provision that permitted the Attorney General to come in and ask for a three-judge court. That one provision was adopted with some considerable discussion. On page 4, under "Public accommodations," you give the Attorney General the right, again, in that clause, which was not in the House bill, to intervene in a three-judge court. Why did you do that?

Mr. McCULLOCH. I suppose that was done in the Senate——

The CHAIRMAN. Don't suppose. In a law as important as this, we would hate to pass it on supposition.

Mr. McCULLOCH. I am advised it was done in the Senate so that there could be the security and the judgment of a three-judge court.

The CHAIRMAN. I know there is a lot of opposition to it.

Mr. McCULLOCH. In addition, there was probably the desire to expedite the appeals, which appeals have been so inordinately delayed in several of the voting rights cases that have been pending from 1 to 2 or 3 years.

The CHAIRMAN. You wanted to make it more expeditious to put the screws on, in other words.

Mr. McCULLOCH. I don't agree with the latter part of your question, but to make it more expeditious. It has been long observed that justice delayed is often justice denied. Certainly, it would be in the case of accommodations, Mr. Chairman. You cannot delay sleep indefinitely.

The CHAIRMAN. I don't want to cut you off from anything you want to say, but I don't want to appear to be taking up unnecessary time. I think these questions are matters of great importance, where the Senate gives to the Attorney General power and enforcement in this matter that the House did not give, and I may say the House very grudgingly gave him the power that was given him in the House bill.

I refer you to page 13 of your analysis. There is a new provision in there that gives the Attorney General more power to run this show. We find it under "F." No such provision is in the House bill, according to your statement. This authorizes the Commission to refer matters to the Attorney General, and recommend that he intervene in civil actions, for an aggrieved party or for the institution of a civil action by the Attorney General, and to advise, consult, and assist the Attorney General in such matters. That is another authority given to the Attorney General to run this show.

Mr. McCULLOCH. I think the principal reason for the action of the Senate in that field was by reason of the fact that they amended the House provision which authorized the Commission to bring actions, and in the absence of that authority, it was concluded that there should be authority someplace.

That is my memory of the discussion of that amendment. I subscribe to it, Mr. Chairman.

The CHAIRMAN. It does enlarge the powers of the Attorney General.

Mr. McCULLOCH. If the powers had not been there, they would have been in the hands of the Commission.

The CHAIRMAN. I call your attention to your analysis on page 15, under paragraph 8, which seems to me to vest in the Attorney General very considerably more power in two respects. There, again—that is the second bell. I know we are operating under a considerable handicap today.

Mr. McCULLOCH. I would like to answer the question, if I may.

The CHAIRMAN. I haven't completed asking the question. I am in the hands of the committee.

Mr. MADDEN. Could we have an agreement on when we would adjourn after the rollcall?

The CHAIRMAN. No. The Chair fixes that. You know what we customarily do. We go down and answer the rollcall and come back.

Mr. BROWN. I am sure the Chair will resume.

Mr. COLMER. In that connection, Mr. Chairman, I might call attention of the Chair and the membership to the fact that immediately following this rollcall there will be the rule on the foreign aid bill to be taken up. It will be difficult for us to be in both places. I just throw that out. I am not making any request or anything.

The CHAIRMAN. I suggest that the committee reconvene at 1:30. That will give you time to get lunch.

(Whereupon, at 12:10 p.m., the committee recessed, to reconvene at 1:30 p.m. the same day.)

AFTER RECESS

(The committee reconvened at 1:30 p.m., Representative Howard W. Smith, chairman of the committee, presiding.)

The CHAIRMAN. The committee will come to order. We have a quorum present.

Mr. McCulloch?

Mr. MADDEN. Mr. Chairman, before we proceed, after the hearing this morning, continuing as it is, and it looks as though with the other witnesses who want to be heard and the questions to be asked, I think in justice to the other witnesses—some of them were here this morning and I am sure they will be back—I am going now to press

my motion that the committee stay in session and hold hearings on all the witnesses that are here to appear up until 5 o'clock. I move that the committee hold hearings this afternoon until 5 o'clock and at that time, go into executive session and vote on the resolution.

The CHAIRMAN. That motion is not in order. Motions are only in order when the committee is in executive session. If the gentleman wishes to make such a motion, he should proceed first to make the motion to go into executive session. I might remind him that there are only nine members present and that means there are six absent. We don't usually take advantage of the absence of members to put something over on them.

Mr. MADDEN. We are not putting anything over, Mr. Chairman. We appointed the hour to come back here, which was 1:30. They had notice on that. I can see on account of the quorum calls that are taking place downstairs this is going to be a rather rocky afternoon. So, I move we go into executive session, Mr. Chairman.

The CHAIRMAN. The Chair says that the motion is not in order at this time. You can move to go into executive session and vote this thing if you want to, but you can't do it in an open session. It has to be an executive session.

Mr. BOLLING. Do I understand the gentleman correctly that he moved that we go into executive session?

Mr. MADDEN. Yes.

Mr. BOLLING. That is a proper motion as I understand.

The CHAIRMAN. That is a proper motion at the proper time.

Mr. MADDEN. I move we go into executive session. I insist on my motion.

The CHAIRMAN. Do you want to do it in the absence of these other members?

Mr. MADDEN. Yes, because at 1:30 we agreed to convene here. It is now 20 minutes to 2.

The CHAIRMAN. Mr. Clerk, you will call the roll on the motion to go into executive session.

Mr. CARRUTHERS. Mr. Madden?

Mr. MADDEN. Aye.

Mr. CARRUTHERS. Mr. Delaney?

Mr. DELANEY. Aye.

Mr. CARRUTHERS. Judge Trimble?

Mr. TRIMBLE. No.

Mr. CARRUTHERS. Mr. Bolling?

Mr. BOLLING. Aye.

Mr. CARRUTHERS. Mr. O'Neill?

Mr. O'NEILL. Aye.

Mr. CARRUTHERS. Mr. Elliott?

Mr. ELLIOTT. No.

Mr. CARRUTHERS. Mr. Sisk?

Mr. SISK. Aye.

Mr. CARRUTHERS. Mr. Young?

Mr. YOUNG. Aye.

Mr. CARRUTHERS. Mr. Martin?

Mr. MARTIN. No.

Mr. CARRUTHERS. Judge Smith?

The CHAIRMAN. No. You will announce the vote.

Mr. CARRUTHERS. Six yeas and three nays.

Mr. BOLLING. Four nays.

Mr. CARRUTHERS. Four nays. Six yeas and four nays.

The CHAIRMAN. The Chair rules the committee will go into executive session.

(Whereupon, at 1:42 p.m., the committee proceeded in executive session until 1:50 p.m., at which time the following transpired in open session:)

The CHAIRMAN. The committee will be in order.

## FURTHER STATEMENT OF HON. WILLIAM M. McCULLOCH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. MCCULLOCH. Mr. Chairman, I would like to address this question——

Mr. BROWN. May we have order so that we can hear what is going on?

The CHAIRMAN. The committee will be in order.

Mr. MCCULLOCH. I should like at this time, Mr. Chairman, to ask consent of the committee to insert in the record, since I understand there will be a record, the formal statement that I would have presented to the committee but for the fact that it was in large part covered by the chairman.

The CHAIRMAN. It is so ordered.

Mr. MCCULLOCH. I would like to have it placed into the record at the place where I began to testify, where I was first recognized.

The CHAIRMAN. Mr. McCulloch, I was questioning you with regard to the powers given to the Attorney General. I was referring to the provision on page 15 of your analysis. No. 1 is that there, again, is given the Attorney General the power to intervene in litigation between private parties, and the other is the further provision authorizing the Attorney General to convene a three-judge court for the convenience of the people who are seeking enforcement of this bill.

Have you any comment about that? They are additional powers imposed on the Attorney General.

Mr. MCCULLOCH. These are powers that are granted to the Attorney General. With regard to the power to intervene, this is subject to the authorization by the court and in the courts sound discretion. With reference to the second authority which you mentioned, the language grants the Attorney General much discretion.

The CHAIRMAN. This authorizes the Attorney General—and the court doesn't have anything to do with this. The court authorizes the Attorney General——

Mr. MCCULLOCH. To request a three-judge court in those cases where it would expedite the trial of the case.

The CHAIRMAN. It is the same provision that we fought over so long in the House, and it adds something to the House bill in that respect. The other one is authorizing the Attorney General himself to bring suit. That is not dependent on the permission of the court. He is not required to get permission of the court to bring suit.

Mr. MCCULLOCH. He may request it, and it is part of the great compromise between the House and the Senate when this power was taken away from the Commission where it was felt that it might not be as expertly and as carefully used as in the Department of Justice, which is in the executive department of Government, and which, at least, every 4 years is subject to the representative elective processes.

The CHAIRMAN. I call your attention to the actual language in your own analysis of the bill:

> Irrespective of the above provisions, whenever the Attorney General has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of the rights insured by this title, the Attorney General may bring a civil action in a U.S. district court.

And he doesn't have to get the authority of the court.

Mr. MCCULLOCH. He may bring the action. This is part of the compromise that I mentioned. Those who were fearful of the Federal Equal Employment Commission's authority argued that it was safer in the hands of the Attorney General, and that was one of the Senate proposals that was not objected to by those who had worked so long on the legislation in the House.

The CHAIRMAN. I am compelled by the action of this committee during the executive session in curtailing the time in which this matter could be explored, to curtail my questions of you. Therefore, I am only going to ask you one other thing. That is found on page 2 of your analysis, under "Public Accommodations." We had a great deal of controversy about this matter of private clubs, and you changed the language of the House bill which provided a bona fide public club being exempted, unless they were open to the public. You changed it to say that private clubs or other establishments not in fact open to the public are exempt.

What does that "in fact" mean? Remember, you have a lot of public clubs. You have fraternity houses at colleges where everybody comes in. You have golf clubs, where invited guests come. Who is going to decide what is in fact a private club?

Mr. MCCULLOCH. I suppose ultimately, that would be a decision by the court, Mr. Chairman. I am very happy to say that this amendment was proposed by Senator Russell Long, of Louisiana.

The CHAIRMAN. I don't care who proposed it.

Mr. MCCULLOCH. I am just saying how it came about. I understood that you were inquiring about the rapport in the House and the Senate, or Members of the House and the Senate. I repeat, it was offered by Senator Long. It was thought that it was more definite and certain in meaning and would give more protection to the clubs than the House provision. We accepted his critical analysis of this part of the bill. We never contended that the bill was perfect, and wherever it could be improved—and there were places that it could be improved—we were willing to accept the improvements.

The CHAIRMAN. If my recollection serves me, you didn't take that attitude when the bill was in the House. It was perfect. There shouldn't be any amendments to it at all.

Mr. MCCULLOCH. I think, Mr. Chairman, the record will show that I said that the bill was not perfect.

The CHAIRMAN. But you resisted amendments.

Mr. MCCULLOCH. I resisted amendments, of course, being mindful of that story that I read in school about the break in the dike.

The CHAIRMAN. I know one thing, that you were very firm about amendments.

Mr. MCCULLOCH. That is right.

The CHAIRMAN. As a matter of fact, I resented it at the time and resent the instance, still, and expect to continue to do so. We had an amendment there that was agreed to by the Democrats, an amendment of mine that I was about to offer. The coalition between the

Democratic leadership and the Republican leadership had it so that no amendment could be adopted without your agreement. I came over to get your agreement and you said, yes, you supported the bill but you wouldn't support it unless it was publicly offered. I didn't think that was a very objective way in which to handle the bill.

Mr. McCULLOCH. Mr. Chairman, may I reply to that? Everything that is done on the floor of the House is not perfect. I spoke very frankly to the chairman. It so turned out that an overwhelming number of the Members of the House, all of whom were free agents regardless of what has been said, supported our stand in the matter.

The CHAIRMAN. I was going to ask you to interpret when it came down to the administering of this law what, and in fact, a private club was. You are going to have a lot of trouble with that, even if Mr. Long did offer it.

Mr. McCULLOCH. I should say that it is as definite and certain, in fact more definite and certain, than a bona fide club. I presum that there has been litigation about both phrases.

The CHAIRMAN. I have no further questions.

Are there any other questions of Mr. McCulloch?

If not, thank you.

Mr. McCULLOCH. I thank the committee very much.

The CHAIRMAN. Mr. Willis.

## STATEMENT OF HON. EDWIN E. WILLIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Mr. WILLIS. Mr. Chairman, I am pleased to appear before your committee. It is obvious that the coalition is in full swing with even greater efficiency, so I don't delude myself into believing that whatever I have to say will influence anyone, and I don't expect to talk more than 2 or 3 minutes.

As a matter of fact, by official leave of the House, I have been away for almost a week on congressional business. To be perfectly frank about it and honest, I haven't had an ample opportunity to study these amendments. But I have an idea, too, as to what ought to have been done in this thing.

It is obvious from the testimony of Mr. Celler, our good chairman, that his evaluation of the depth and meaning of these amendments doesn't jibe with the opinion of others.

For example, he said that they were of so little consequence, and that was his word, that little time need be devoted to a discussion of these amendments. That is not going to be very pleasing to some of our colleagues in the other body. A lot of them do believe that the amendments are meaningful, although I have heard it said from responsible Members on both sides of the aisle and on both sides of the issue that they have differing opinions as to the meanings of these amendments. Two of them might be given as an illustration. There are some who say that the jury trial amendment is a very meaningful amendment, weighted in favor of the opponents of the bill.

There are some who say, with different ideas about the bill, that the meaning of the amendment giving a breathing spell to States having laws on their books on civil rights, is very heavily weighted in favor of the proponents of this bill, to the extent that some of them say it makes this bill far worse than it was when it left the House.

But that is the way it goes, and I suppose that is the legislative process.

You have amendments in one direction and in the other. Most of them, I should say, go in the same direction. But this is the sort of thing, the differing opinions as to what the amendments do, that is the very reason why we ought to have had a conference on this bill. I imagine, and I don't know, but knowing Mr. Celler as I do, and being a senior member on the committee, entertaining views different from his, I probably would have had a substantial chance of being a member of the conference. I would have hoped to be able to give deep study to the amendment I just referred to, heavily weighted, as I see it, in favor of the proponents, or the States from the North, if you please.

I would have wanted to study that and maybe make suggestions. I imagine if we had had a conference, Mr. Celler would have wanted to maintain his views against the jury trial provision, in which eventually would have stood the other way. But that is why you have to have conferences. That ought to have been done, but it was not. The shape we are in now is, as the Chair has pointed out, that apparently proponents are bent on holding consideration on the floor to 1 hour. I think that is wrong. I would hope that there is still a little bit that this committee could do on the side of reason, on the side of judicial process, so that we must debate it on the floor.

That is for this reason, and Mr. Smith put his finger on it a moment ago: I don't know about other committees but I do know it is the practice of the Judiciary Committee for more reasons than one, that before accepting the Senate version to any bill we always have a committee meeting. It is the custom for whoever is going to handle the bill on the House floor to say, "By direction of the full committee I move that the bill be acted upon, taken from the Speaker's table, and that the Senate amendments be agreed to."

Why? Because it is part of the minority process rule. We must do that because we are trained to know that if we don't announce that in advance, a Member of the other side of the aisle, the minority party, is going to get up and question us, and say, "Wait a minute, has this been cleared with the minority Members? Are you asking the House in the blind to accept the Senate amendments? Have you cleared it?"

That is in the interest of a protection of the minority. Obviously, some of us are in the minority here. I would have hoped that our chairman would have maintained regular procedure. Here, again, at the last minute, just like we started with a rush, we wind up with the same speed. I would hope the committee would at least exercise—and I suppose it has that right—the right to give us a reasonable time to talk about this bill on the floor. Let's not take all of the interpretation or misinterpretation or misunderstanding of the newspaper reporters and other dispensers of news. That is all I have to say.

The CHAIRMAN. Or assumptions, as the previous witness has said.

Mr. WILLIS. That is all I care to say, Mr. Chairman.

The CHAIRMAN. Mr. Willis, you, of course, led the minority in the full consideration in the House on the House bill, and you referred to the protection of the minority. I took a little part in it myself.

Mr. WILLIS. Yes; and a good many others.

The CHAIRMAN. I noted a total absence on the part of both the Democratic and the Republican leadership to show any consideration

for the minority in the consideration of that bill. Do you have the same feeling?

Mr. WILLIS. I do, very deeply.

The CHAIRMAN. Of course, you and I and all the members of this committee have been here long enough to know that ordinarily in the orderly process of legislation, it is that when one body passes a bill and sends it to the other body and that body strikes a bill out and puts in another version, it is the universal custom on a controversial bill that it go to conference.

Mr. WILLIS. That is standard procedure. That is accepted procedure. The more comtroversial the measure, the more universal the custom becomes.

The CHAIRMAN. Have you ever known in your experience on the Judiciary Committee, that committee to adopt this procedure on an extremely controversial bill, where there is a substitute bill, refusing to go to conference?

Mr. WILLIS. With that qualification, the controversial bill, I would say this is the first such experience. I suppose it has happened in the past. On bills where there is not too much involvement, we might not have a committee meeting on the decision to accept or to capitulate or to give up. But on a measure of this kind, I have never seen this before, except on civil rights. Perhaps if there had been a precedent for this action, it might have taken place in 1957 and 1960. I don't recall.

The CHAIRMAN. But any way, you followed up the suggestion that I made in the committee, and I don't know whether you were here at the time, that there ought to be sometime, in respect for orderly legislative procedure, to discuss this matter on the floor. Would you suggest the time we should have?

Mr. WILLIS. I would say adequate time. I would say not less than 4 or 5 hours. That would be my honest opinion.

The CHAIRMAN. Thank you, Mr. Willis.

Are there any other questions? Are there any questions of Mr. Willis?

Mr. ELLIOTT. I want to ask a question, Mr. Chairman. Mr. Willis, I refer you to section 201, subsection E., the provision at page 62, that the provision of this title shall not apply to a private club or other establishment not in fact 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.

What would be your interpretation of the limitations which that subsection E. contains in the last two lines?

Mr. WILLIS. I suppose, and this is language that has been revised, this being the first time I have heard it read, I suppose it follows the pattern of another provision in the bill as it left the House to the effect that an establishment within a covered establishment will be covered.

The barbershop was taken as the illustration. A barbershop located within a covered hotel would be affected by this bill, whereas the barbershop on the street, by itself, would not be. I suppose that is the idea they are working with. By the way, to be perfectly honest about it, and I have just come back from my district, you would be surprised the questions that are being asked already that I can't answer. Take the one you are talking about now. I will

relate one or two if you want to on barbershops. They are confused. They are asking penetrating questions that obviously some of us never thought about as to exactly the meaning of this.

The CHAIRMAN. You haven't answered the question about a barbershop. There is no question that a barbershop in a hotel is covered and the man across the street in a barber shop is not covered.

Mr. WILLIS. That is correct.

The CHAIRMAN. And, of course, this bill is supposed to eliminate discrimination.

Thank you, Mr. Willis.

Mr. WILLIS. Thank you.

The CHAIRMAN. Mr. Poff.

## STATEMENT OF HON. RICHARD H. POFF, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. POFF. Mr. Chairman and members of the committee, I don't want my appearance here to be mistaken for any purpose to delay or filibuster this matter.

The CHAIRMAN. You are, by the way, also a member of the Judiciary Committee, a distinguished member.

Mr. POFF. Yes; I am. My purpose here is to testify to the extent that the committee would care to have me testify. I have no wish whatever to prolong my testimony. I do think that certain things need to be said.

First of all, I think there is abroad in the land a little misinterpretation or perhaps it would be more accurate to say a lack of understanding of the parlimentary effect of the rule which this committee is about to impose. I think the people of the country should understand what, apparently, now they do not understand; namely, that the House of Representatives, under this procedure, will have no opportunity whatever, either to deal individually with the Senate amendments, to offer amendments to the bill, itself, or to offer a motion to recommit the bill with amendments. After proceeding for 1 hour, the vote will occur on this rule and the House will be left with the sole privilege of voting the Senate amendments up or down as a package.

That is said by way of preface to my statement that we should, if a conference is ever justified, treat with this matter in conference. Conferences are what I describe as a distillation process, and over the years, the precipitant from that distillation process has resulted in a concensus of honorable, honest, just, reasonable men, reasoning together.

This time, there will be no such precipitate. This bill will be passed as it was amended by the Senate, including some 87 amendments, not one of which was ever submitted to any legislative committee in either body of the Congress.

I just suggest, gentlemen and ladies, that that is not orderly procedure. I think when we depart from orderly procedure in the legislative branch of the Government, we are weakening one of the three coordinate branches of the Federal Government.

Having said all of that, I might add that I know what I have said is in vain and I will proceed to the next point.

The total time, I know, will be limited to 1 hour. We have 435 Members of the House. One hour is 3,600 seconds. That means that if each Member was allotted his equal share, each Member would

have less than 9 seconds to address himself to these 87 amendments. That is not realistic.

I implore you to consider extending the time by a special adaptation of your rule, at least to 4 hours.

Mr. MADDEN. I was on the floor of the House when a bill was presented to go to conference and I noticed a dozen to 15 Members up on the floor objecting and wanting to object to it. They seemed to be opposed to a conference.

Mr. POFF. I didn't realize that a request had been made to go to conference. It was my understanding that the request was made to consider the amendments of the Senate and to concur therein.

Mr. MADDEN. They were objecting to that then on the floor of the House.

Mr. POFF. The question of conference at that time didn't arise, Mr. Madden.

The CHAIRMAN. There wasn't the question of conference.

Mr. MADDEN. They were objecting to considering the amendments on the floor then.

The CHAIRMAN. There was objection to adopting the Senate amendments, just as some of us are objecting to it here.

Mr. POFF. Mr. Chairman, I am prepared, if the committee cares to hear me, to discuss only 10 changes made by the other body which I regard as substantial and consequential. It will require some elaboration.

Suppose, if it pleases the chairman and members of the committee, I begin to deal with those 10 changes, and if it appears that it will be too protracted, I will be glad if the Chair or any member of the committee would so state.

The CHAIRMAN. May I state, Mr. Poff, that some of us would like to know something about this bill. But in executive session this committee has just voted 2 to 1 to do another unprecedented thing in my experience of 32 years on this committee. The committee has voted to cut off the discussion at 5 o'clock. I hope that in proceeding, you will be as brief as you can be.

Mr. POFF. That being true, I believe I will not address myself to the 10 changes but rather, will deal with what appears to be a misunderstanding already current from the hearings which have gone before. I am speaking now about the jury trial amendment as it relates to section 302 as contained in the House bill.

Section 302 was in title III of the House bill and it authorized the Attorney General to act in any suit brought by an individual involving a charge of denial of equal protection of the law.

Mr. YOUNG. Mr. Chairman, I move we stand in recess for 30 minutes in order to answer this rollcall.

The CHAIRMAN. Are you going to count that against the time of our colleague?

Mr. YOUNG. We have to answer the rollcall, Mr. Chairman. That will make it 10 minutes to 3.

The CHAIRMAN. You can use up the time by taking recesses.

Mr. O'NEILL. None of us made the quorum call. It will be automatic.

Mr. YOUNG. I withdraw the motion at this time.

Mr. POFF. Mr. Chairman, section 302 authorizes the Attorney General to intervene when an individual has brought suit alleging

denial of equal protection of the laws. That does not apply only to those suits authorized in this bill. It applies to all matter of suits authorized by other statutes on the books today in which the equal protection clause is involved. It is significant and this is the critical thing, that this entire section was lifted bodily from title III and placed bodily in title IX.

Here is why it is significant: The jury trial amendment is limited to titles II through VII, both inclusive. Inasmuch as section 302 now appears in title IX, the jury trial amendment has no application to those suits embraced within the concept of section 302. So, it is inaccurate to say that the jury trial amendment applies to all sections of this bill. It does not.

And that category of cases, namely, the cases alleging denial of equal protection of the law, is perhaps the largest single inventory of cases in the entire Federal statute books. So, it is not an inconsequential matter, and it should not be said that the jury trial amendment embraces everything in this bill. It does not. Yet, may I add parenthetically, as one who offered the motion to recommit with the jury trial amendment in earlier years, I welcome this amendment as as an improvement. I might also add that some of these changes made by the Senate I regard as salutary. But they are not understood, and I must say that I regard others as objectionable.

What the net effect will be, I can't say, and I don't believe any two men could agree, unless we could go through the conference process. If the Chair would care for me to list briefly without explaining those 10 changes which I regard as consequential——

Mr. MADDEN. Mr. Chairman, before he gets into that, I believe we ought to consider going down and answering this rollcall.

The CHAIRMAN. If you want to use up the time going to the rollcalls, that is up to you.

Mr. YOUNG. Mr. Chairman, I move we recess until 10 minutes to 3, in order that we can answer this automatic quorum, automatic rollcall.

The CHAIRMAN. Mr. Clerk, will you call the roll on that motion?

Mr. CARRUTHERS. Mr. Colmer?

Mr. Madden?

Mr. MADDEN. Aye.

Mr. CARRUTHERS. Mr. Delaney?

Mr. DELANEY. Aye.

Mr. CARRUTHERS. Judge Trimble?

Mr. TRIMBLE. Aye.

Mr. CARRUTHERS. Mr. Bolling?

Mr. BOLLING. Aye.

Mr. CARRUTHERS. Mr. O'Neill?

Mr. O'NEILL. Aye.

Mr. CARRUTHERS. Mr. Elliott?

Mr. Sisk?

Mr. Young?

Mr. YOUNG. Aye.

Mr. CARRUTHERS. Mr. Martin?

Mrs. St. George?

Mr. Smith?

Mr. Anderson?

Mr. ANDERSON. Aye.

Mr. CARRUTHERS. Mr. Brown?

Mr. Chairman?

The CHAIRMAN. Nay.

We will stand in recess until 10 minutes to 3.

(Whereupon, at 2:25 p.m., a recess was taken to attend a rollcall, until 2:50 p.m., at which time the following transpired.)

The CHAIRMAN. The committee will be in order. We will continue with Mr. Poff.

Mr. POFF. Mr. Chairman, I was about to itemize the 10 Senate amendments which I regard as most substantial and most consequential. I would like to complete that list and then invite questions, if that is satisfactory with the Chair.

First of all, in the House bill, the Attorney General was given no right specifically to intervene in lawsuits brought by individual citizens under title II, the public accommodations title, or title VII, the FEPC title.

Under the Senate amendment, the Attorney General is empowered to intervene under both titles.

Second, in the House bill, the Attorney General was neither authorized to institute suits nor to intervene in suits in the name of the United States on behalf of an individual under the FEPC title, but he is so authorized under the Senate amendment.

Third, in the public accommodations title of the House bill, the Attorney General was expected to attempt conciliation through local agencies before bringing a suit against the businessman. And under the FEPC title, the Commission was required to do the same. Under the Senate amendments, the Attorney General can bring suit under both titles immediately. For emphasis, I will repeat: Under the Senate amendment, the Attorney General can bring suit under both titles immediately, without making a reference to the local agency. All he has to do in that regard is to allege that a pattern or practice of discrimination exists.

He doesn't have to prove that a pattern or practice of discrimination exists in order to get into court. He simply makes the allegation and the recital of facts. Having done so, the court can issue a temporary injunction, a temporary injunction which may later be made permanent if the Attorney General later produces evidence.

Fourth, in addition to originating suits or intervening in an individual suit under the public accommodations and FEPC title, the Attorney General may, under the Senate bill, ask the court to appoint private counsel for the complainant and waive any costs assessible against the complainant. In other words, in those cases in title II and title VII where the Attorney General is authorized to intervene, the complainant might have as his paid attorney not only the Attorney General but a private practicing lawyer appointed by the court at the request of the individual complainant.

And in addition thereto, if the individual complainant so requests, the judge in his discretion may waive any costs assessible against the complainant; a rather novel provision.

Fifth, under the FEPC title of the House bill, all covered employers were required to keep records concerning job applications, hiring, firings, promotion, working conditions, pay policies, and so forth, and to make periodic reports to the Commission.

Under the Senate amendments, employers in States which have State FEPC laws are partially exempt from Federal recordkeeping.

Sixth, under the FEPC title of the House bill, you will recall, religion was one of the factors involved. Paraphrasing that title rather loosely, no concern could discriminate against a job applicant on account of his religion. During the course of House debate, an amendment wss adopted which said, again paraphrasing, nothing in this bill shall be construed to deny the employer the right to refuse an athiest. That amendment was adopted, as I recall, by a rather substantial vote. That amendment was deleted by the Senate, and I believe most will agree that this is a matter of some consequence.

Seventh, the House bill placed a limitation of $2½ million the first year and $10 million the second year on the administration of the FEPC title. The Senate deleted that limitation and the authorization is now an open-end authorization.

I challenge anyone, including the experts in the Department of Justice, to hazard a guess as to what the ultimate cost of the administration of this one title will be.

Eighth, under title X, the House bill limited the number of regular employees that could be hired by the new Community Relations Service to six. The Senate deleted this limitation.

Ninth, title X of the House bill permitted this new agency to utilize the services of public agencies at State and local levels.

The Senate bill extends this permission to private organizations as well.

Tenth, the three-judge court provision was confined to title I, the voting title, in the House bill, and the option was granted to the defendant as well as the Attorney General to obtain a three-judge panel. The Senate bill writes this concept into titles II and VII. That is to say, the Senate bill provides a three-judge panel in title II and title VII, but it provides it only at the option of the Attorney General.

The businessman who is charged with discrimination under the public accommodations section or the businessman charged with discrimination in the employment section, has no right to demand a three-judge court. I suggest it is only fair and I would say that justice would dictate that if the Attorney General who is given such a great quantum of power under this legislation has the right, if dissatisfied with the local district judge, to request a three-judge court, that the equivalent right should be given with the man who is charged with a violation of the law.

A defendent has that right under title I of the bill. We adopted my amendment on the floor of the House which gave him that right. But I repeat, he does not have that right under either title II or title VII. I believe most fairminded people will agree that this is a matter of substantial import. Even if you would not agree that what I am saying is correct, you must agree that two reasonable viewpoints exist which would dictate, I suggest, again, the advisability of a conference in the orderly traditional concept of the lawmaking process.

Mr. Chairman, that is as much as I care to say at this time only because the time is limited and I know that many of my colleagues are waiting to testify.

The CHAIRMAN. Mr. Poff, I know you have been continuously a student of this legislation ever since it was offered. I would like to ask you a lot of questions about it but the committee has denied

the Members of Congress the right to be heard beyond 5 o'clock this afternoon. That time will have to be allotted.

Mr. POFF. I understand.

The CHAIRMAN. It is another unprecedented discrimination, in my recollection. I just want to ask you one thing, which I asked Mr. Celler. That is that the extra powers given to the Attorney General in the Senate bill that were not given to him in the House bill. I just want to ask if you have reached the same conclusion that I have, that it makes the Attorney General of the United States, whoever he might be, the virtual czar over the enforcement of this act.

Mr. POFF. I might say to the distinguished chairman that in most respects, insofar as the quantum of power granted to the Attorney General, the nature of the power granted the Attorney General, is concerned, the bill as written in the Senate is infinitely more powerful and more far reaching in its potential implications than the old so-called subcommittee bill which was rejected by the full Committee of the Judiciary before we debated the bill last year.

The CHAIRMAN. And that bill to which you refer was so far reaching that the conclusion reached by the advocates of the bill was it could never pass the House and they, therefore, abandoned it. Am I correct?

Mr. POFF. I believe the gentleman is correct.

The CHAIRMAN. In this three-judge provision you have cited, where the Attorney General can go in and get a three-judge trial but the accused cannot do it, that, I believe, is another case of discrimination where this bill is supposed to be one that abolishes discrimination. Am I right?

Mr. POFF. Judge, people in this country who stand accused of the violation of any law have always been afforded the greatest amount of protection possible. How we could justifiably empower the man who is representing the might and the power and the resources of the Federal Government with such a right and deny it to the man who has been accused, perhaps frivolously accused, of a violation of the law, I cannot comprehend.

The CHAIRMAN. I wish I could pursue this, but we don't have the time. I thank you.

Are there any other questions?

Mr. COLMER. Mr. Poff, you say you cannot understand this. I know you are a smarter man than I am.

Mr. POFF. I appreciate the compliment but I would dispute it.

Mr. COLMER. I can understand it. I heard your chairman state on several occasions when he was testifying before this committee in explanation of it. He said, "We got the votes." I can't think of any better explanation or any quicker one or simpler one than that.

Mr. Poff, does your State have one of these Civil Wrongs Statutes, like Ohio?

Mr. POFF. Mr. Chairman, it depends upon the definition. I think the gentleman might be surprised to learn that the State of Virginia placed one of the first Civil rights bills on its books and that was the antilynch law which was placed there during the term that our distinguished colleague, the Honorable William Tuck, served our Commonwealth as Governor. We do not have a public accommodations statute, nor do we have anything similar to the FEPC statute. But as long as I am speaking to that subject, I would like to say again, what I said earlier to this committee, that most people agree that there

is no law on the books of the State of Virginia which in any manner or in any degree discriminates against any person in his right to cast a ballot on account of his race or religion or creed.

Mr. COLMER. I think the gentleman understood my question and I will not pursue it any further. I think the gentleman has a great State which has made a substantial contribution to the civil rights of all of the citizens in the forming of this great charter, the Constitution of the United States. I didn't have reference to that. I had reference not to one against murder, either, or antilynch. We have that, too, and I guess all States have them against the murder. But what I was really getting at was whether you were going to injoy the exemption for a few days, the grace, that they give these States that have one of these small civil rights bills, or civil wrongs, whatever it is. Do you? You don't have that?

Mr. POFF. No, sir, we do not.

Mr. COLMER. You might give some thought to it. I want to watch and see how much grace these folks are going to get in the so-called North. Maybe we can get in on that practice in the so-called South. There is a little more discrimination.

Mr. POFF. It is a matter that deserves consideration.

Mr. COLMER. Let me ask you another thing on this outrageous procedure we have here. Were you consulted by either the chairman, Mr. Celler, or the ranking minority member, Mr. McCulloch, about this bill, and about taking up the Senate version and adopting it in this fashion?

Mr. POFF. No, sir; I was not.

Mr. COLMER. Do you know of any other member of the committee that was?

Mr. POFF. No, sir; I do not.

Mr. COLMER. Isn't that a rather unusual procedure?

Mr. POFF. It is unusual in the sense that it is the thing which I think orderly legislative procedure would normally dictate. It is not something, of course, as the gentleman knows better than I, required formally by the rules of the House. But I believe it could have contributed to the understanding of the legislation, and would have been an appropriate thing to have done.

Mr. COLMER. Isn't it something where a bill of this magnitude is involved that, as a rule, the members of the committee are consulted and advised when the matter is taken up in the committee and then some action is taken?

Mr. POFF. Ordinarily, I believe that that has been the custom.

Mr. COLMER. That was my understanding. Can you tell us, then, why this bill, affecting the lives, liberties, and properties of all the people of this country, has to be rescued like this, other than the fact that they have the votes for it?

Mr. POFF. Mr. Chairman, I don't know that I care to speculate about that. I think it is pretty patent that the votes are available to report the rule which has been agreed upon by the leadership, and that it will come to the floor under a severe time limitation which does not in any way offer anyone any opportunity to deal definitively with the legislation. Why the particular rush at this moment, I believe the gentleman would know that better than I.

Mr. COLMER. I guess I do.

The CHAIRMAN. If the gentleman will yield, I think I can answer the question. It is being done so that there may be a great Roman

holiday on our Independence Day, the Fourth of July, by a ceremony which will arouse many demonstrations all over the United States, proclaiming the passage of this bill as a patriotic thing. This is the second Emancipation Proclamation we are going to have on the Fourth of July. That is the answer to the question, in my opinion. Excuse my interruption.

Mr. COLMER. I had an idea that that might be involved.

Mr. MADDEN. Mr. Speaker, I am making three speeches on the Fourth of July back home. Are you referring to my speeches?

The CHAIRMAN. No doubt you will touch upon the subject.

Mr. COLMER. And no doubt I hope my friend will explain this bill to his constitutents.

Mr. MADDEN. I am making notes while you are asking questions.

Mr. COLMER. Have you had an opportunity, as a member of the committee, to discuss this matter on the floor?

Mr. POFF. I will say to the distinguished gentleman that I have requested time but I don't know yet who will manage the time on the minority side of the aisle. I believe they will award me some time.

Mr. COLMER. I might advise the gentleman I don't know who is going to handle it on the majority side, either. I understand there is in the wind, the grapevine, in the rush that even the chairman of this committee might be denuded of the powers that the chairman ordinarily enjoys? I don't know. I hope that is not true. But that would be setting a new precedent. I don't think the gentleman is going to have much chance to discuss it when he gets down there. He maybe better do like I did. I stole off down there and talked under another rule so that I would be sure to get a chance. But you are not going to have much chance on this one.

Mr. POFF. I thank the gentleman for his suggestion.

Mr. COLMER. You have my sympathy, and so does the country.

The CHAIRMAN. Are there any other questions?

Thank you.

Mr. POFF. Thank you.

The CHAIRMAN. Mr. Cramer, we will be glad to hear you.

## STATEMENT OF HON. WILLIAM C. CRAMER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. CRAMER. Mr. Chairman, as a member of the subcommittee which considered civil rights for some length of time, there are just two or three observations that I would like to make.

I, too, realize we are limited by time here and we will be limited by time tomorrow. But I would like to suggest that due to the legislative procedure that was followed in the other body, it would be my hope that this committee would provide at least adequate time for debate of the matter on the floor of the House. Three or four hours should be allowed so that we can at least make a legislative record as to what is intended to be done in a number of instances relating to these amendments.

I think more than an hour of time is necessary, and I hope to illustrate that with a couple of illustrations which were not clarified in my mind by reading the record in the other body. I think the reason for that is that most of the amendments adopted were in the form of a substitute rather than specific amendments individually offered. Those amendments were not adequately explained in the

record of proceeding in the other body. The people of this country do not know what, in fact, Congress intends by the adoption of a number of these amendment, particularly where one phase of the bill may seemingly be in conflict with other phases of the bill.

Therefore, it would be my hope, not only because of that, but because of the tremendous import of this legislation, that adequate time would be given on the floor of the House for debate of it.

I would prefer, of course, that the matter go to conference. It is my hope that my discussion, brief though it may be, and without intending to duplicate the points made by my distinguished colleague from Virginia, will convince the committee that going to conference is really the only answer to ironing out some of the problems that I believe still exist relating to the bill as passed by the other body.

For instance, let me say generally that it was, I believe, claimed by the proponents of this legislation that the amendments made in the other body to title II, public accommodations, and title VII, FEPC, were supposed to be compromise moves in order to make the bill more palatable to a larger majority. In reading and carefully considering what was actually done in the other body, it is my opinion that those two titles have been made stronger, particuarly as a result of the two aspects referred to by the gentleman from Virginia; that is, as it relates to the three-judge court provisions which are now applicable to title II and title VII, and were previously only applicable to title I, and also the right of the Attorney General to bring suit without delay.

The three-judge court proposal was very narrowly used, and I didn't think it should be used then, in title I of the bill as it passed the House. I think the objective of it is obvious. They want to get around the necessity of first hearing the matter before a single judge of the district court. They feel that some district judges may be prejudiced.

I just don't think that that concept has any application to title II, public accommodations, and title VII, as it relates to the FEPC. So in those two instances, and I think they are the major instances, the bill has been made stronger.

If, in fact, it was the intention of the other body to compromise, this is what we should discuss in conference. Did they, in fact, compromise? Are not these additions to the power of the Attorney General? Don't they in fact strengthen rather than weaken the two titles that are involved? Don't they give an advantage to one party over another party? I believe that those two titles were actually strengthened rather than weakened in the other body.

Let me give you an example of some of the areas where I believe there is conflict which should certainly be discussed in conference. There is no use talking about it on the floor of the House under the procedure being proposed, because obviously there is nothing that can be done about it. No amendments may be offered and no consideration of any changes in the Senate bill can be properly made.

The only way these conflicts could be in any way worked out would be in conference. Let's take, for instance, page 20 of this summary prepared by my distinguished colleague, Mr. McCulloch, and apply it to the accommodations section of the bill.

In title II the Attorney General is granted the power to intervene if the court grants permission.

In title IX, section 902, the Attorney General is authorized to intervene whenever anyone claims a denial of equal protection of the

laws. This provision was formerly in title III of the House bill. Under section 902, the Attorney General has absolute authority to intervene with or without the court's permission.

There was some discussion previously that section 902 would not apply to title II. It does, in fact, apply. So you have dual remedies. It does, in fact, apply, because title II, public accomodations, is bottomed not only on interstate commerce, but also upon equal protection of the laws.

Therefore, you have dual procedures on the part of the Attorney General. He has the selectivity as to which he might use. I don't think, frankly, that was the intention of the other body, but that is the result of it, by authorizing general intervention in title IX. Of course, Mr. Poff has already explained the jury trial provisions do not apply under title IX. That is another example of the problems that are presented by this approach.

Let us examine another conflict. It relates to title VII on FEPC. We find that in the House bill the Commission had authority to act and the Attorney General could not become involved. Under the Senate bill, however—

The Commission can refer matters to the Attorney General with recommendations for intervention in a civil action brought by an aggrieved party or for the institution of a civil suit brought by the Attorney General—

and so forth—

to advise and consult.

That was not in the House version.

The three-judge court provision and the right to counsel in titles II and VII were new provisions added by the other body. Thus, the court may appoint an attorney and also permit the Attorney General to intervene. The party complainant would have the right to two free counsels. That is something that should be discussed by the conference to determine whether that is the procedure that should be followed or not.

You can go throughout the bill, section after section, seeing where conflicts exist, where need for serious consideration exists. I was hopeful the other body would accept an amendment which I offered on the floor of the House which would require hearings before the FEPC could make its finding and attempt to enforce it with regard to whether unfair practices existed. That amendment was not approved by the other body.

A similar amendment which I offered was approved to title VI, as it relates to withholding of funds, on the floor of the House. A similar amendment should have been approved with regard to FEPC. The employer has no right to a hearing before the Commission makes a finding that he has, in fact, discriminated. The employer ends up in court with the Attorney General bringing the case or intervening in the case if the Attorney General sees fit to do so.

These are all matters that I think should be hammered out in conference where these conflicts and these problems can be properly considered. I just cite these as a few examples, in view of the limitation of time.

This bill is the broadest legislative authority given to the executive branch of the Government, in my opinion, in the recent history of Congress. It is certainly the broadest power granted to the executive

branch and to the Attorney General in the history of the Judiciary Committee since I have been here.

This legislative procedure does not lend itself to the best legislative result. I think it should go to conference and all these matters should be hammered out. We can possibly accomplish that which it was announced publicly as the intention to do; namely, to make the FEPC and public accommodations titles more palatable.

I would be glad to answer any questions.

Mrs. ST. GEORGE. May I ask one question?

Do you consider, Mr. Cramer, that this bill is a stronger or a weaker bill than the House bill?

Mr. CRAMER. I think my remarks reflect on that. I believe the bill as it came back from the other body, with the exception of the partial jury trial amendment, is a stronger bill than the bill that left the House.

Mrs. ST. GEORGE. In other words, you would say that it would be perfectly possible for a person to vote for the civil rights bill as passed by the House and then turn around and vote against the civil rights bill as it comes to us from the Senate?

I don't say it is going to happen, but I mean, you think it would be a logical act of mind?

Mr. CRAMER. I could say it certainly would be a consistent position because of the many changes made in the other body which actually strengthened the bill, which gave additional powers to the Attorney General, which raises additional considerations, and other matters that have been discussed by Mr. Poff and will be discussed on the floor of the House. It is my hope that we will be able, on the floor of the House, to discuss these matters adequately so that every Member, in his own conscience, will be able to make his or her own decision as to whether the differences between the two bills justify a change of position.

In my opinion, the other body did strengthen the bill which certainly would justify a change in position on the bill at this time.

Mrs. ST. GEORGE. I thank the gentleman.

The CHAIRMAN. Mr. Anderson.

Mr. ANDERSON. Is it not true on this point of whether or not this is a weaker or stronger bill as it comes back, that under the House-passed bill, Mr. Cramer, that the Attorney General could not only intervene, but that he could also be an original party to a suit under title II, whereas, under the Senate-passed bill, if he is going to file a suit and be an original party to it rather than merely an intervenor, that there must be a pattern or practice of resistance to full enjoyment of equal rights. Isn't this, in effect, a softening or amelioration of the original bill in the House?

Mr. CRAMER. The pattern or practice need merely be alleged by the Attorney General. He doesn't have to prove it in the case. He alleges a pattern or practice. That is all there is to it. That is the basis for bringing the suit and getting jurisdiction. For instance, under that provision, there is no question in my mind but that the Attorney General could immediately go into St. Augustine, for instance, and demand immediate integration.

Mr. ANDERSON. If the gentleman will yield, if we assume, as I think we must if the Attorney General is going to file his suits and make these allegations in good faith, if he is in fact acting in good faith in making that allegation that a practice or pattern exists, would

you not then concede that this provision in the Senate-passed bill is a milder provision than what was in the original bill as it passed the House?

Mr. CRAMER. I might agree with the gentleman, if it were not for the fact that they wrote the intervening authority into title IX, which is not limited in any way to a finding of practice or pattern. It is absolute and complete intervention.

Mr. ANDERSON. But there he is not an original party. He asserts merely as an intervenor.

Mr. CRAMER. It is a very simple matter to have someone bring a suit. There are plenty of people willing to do it. The Attorney General can intervene. I have never felt that the intervention authority contained in title III of the House bill was a compromise at all.

Mr. ANDERSON. But there is the additional requirement, is there not, that he must make a certification that the case is at least of general public importance? This would eliminate the nuisance type of action, I would think.

Mr. CRAMER. That shows a further conflict. Under title III of the House bill the Attorney General was not required to certify a general public importance. But if he chooses to use title IX as the basis for his intervention, he does have to allege that. Which is it? I don't know what the other body intended. I think that is something that in conference should, of necessity, be worked out.

The Attorney General under title IX may assert a general public importance. Yet under title III he did not have to.

Mr. ANDERSON. I don't read it that way. I read in title IX that he must certify that it is of general public importance if he chooses to intervene.

Mr. CRAMER. That is correct. You are correct. Of course, that assertion, again, is not something he has to prove.

Mr. BROWN. If you were defending a person charged by the Attorney General, wouldn't you put up the defense that this was not of general importance; that is, if you were counsel hired by someone?

Mr. CRAMER. I think he could possibly try to contest it, but I don't think he could successfully contest it. The Attorney General would merely assert that in his discretion and in his opinion.

Mr. BROWN. I am assuming you are a lawyer and I am sure you are. But whenever there is an allegation made that you have exceeded authority, you can always go into court.

Mr. CRAMER. There has to be an abuse of discretion, and I would like to see anybody try to prove abuse of discretion in this type of case.

Mr. BROWN. It has been along time since I have read law and studied law, but I think you could find cases on that.

Mr. CRAMER. It has to be an abuse of administrative discretion, and under the Administrative Procedure Act, the weight of the evidence is favorable to the Federal Government.

Mr. BROWN. You have other methods of relief in court, too, you know, besides the Procedures Act, which I am sure you know.

Mr. CRAMER. My recollection of the law is that the proof of an administrative abuse or discretion is extremely difficult.

Mr. BROWN. That is the only thing you would have to show—just the abuse.

Mr. CRAMER. Of course, that could only arise in a defense and not as an original matter.

Mr. BROWN. Let me ask you one other thing.

Under the Senate bill, States like Ohio, which has been mentioned here two or three times, where we have a State civil rights law, or laws, the Attorney General can't move in until the State has first had an opportunity to handle the matter. Isn't that right?

Mr. CRAMER. No, that is not ture. That was the point I was trying to bring out. Under title VII, on FEPC, the procedures are set out if the State has FEPC laws. Then they go on to say irrespective of the above provisions—and that is the point I wanted to make—irrespective of the above provisions, which require notification to the State authority, whenever the Attorney General has reason to believe that a person or groups of persons are engaged in a pattern or practice of resistance to full enjoyment of the rights secured by this title, the Attorney General may bring a civil action in the U.S. district court and, in addition to that, the Attorney General may request the convening of a 3-judge district court to hear the case if he certifies that it is of general public importance.

Therefore, what they did was to write a fine provision into it, requiring, first, acknowledgement of State and local laws on the same subject matter, and an opportunity for those local authorities to gain compliance. Then they turned right around and wrote it right back out again with the Attorney General having the power, if there is a pattern or practice and he alleges it, to bring a lawsuit without first referring the matter to a State authority.

I am glad you asked that question, because that was a point I was attempting to make, and apparently not very clear. Therefore, the so-called compromise in the other body relating to FEPC was in my opinion not much of a compromise.

Mr. BROWN. Your opinion as counsel is that, without general public importance, it would be difficult to prove.

Mr. CRAMER. I say it is a discretionary matter on the part of the Attorney General, and he has the full thrust of a Cabinet position to press his action.

Mr. BROWN. The court can, of course, pass judgment on that, as to whether or not it is a matter of general importance, can it not?

Mr. CRAMER. It can only pass judgment on whether or not he abused his discretion in certifying to the court that it was, in fact, of public importance.

Mr. BROWN. I don't read it that way.

Mr. CRAMER. Three or four years ago we argued this out in subcommittee and in full committee, as to what was the meaning of pattern or practice, when we had the 1960 Civil Rights Act up for consideration.

I think it was pretty well conceded that when the Attorney General certifies that there is a pattern of practice in existence, then the question is whether the Attorney General abused his discretion in so certifying.

Mr. BOLLING. Mr. Chairman, I move that we recess until 4 o'clock; that we stand in recess until 4 o'clock.

Mr. CRAMER. May I be dismissed, Mr. Chairman? May I be excused?

The CHAIRMAN. I hadn't had the privilege of asking you questions. I wish you would return.

Mr. CRAMER. Very well, Mr. Chairman.

The CHAIRMAN. We will stand in recess until 4 o'clock.

(A short recess was taken.)

The CHAIRMAN. The committee will come to order.

Mr. Cramer, I want to ask you one or two questions.

You know, when the first bill was drafted by the experts in the House on this subject, it was so rough that they concluded they couldn't pass it, so the Senate staff subsequently introduced the bill that came to the House with amendments.

As I recall it, the advocates of that bill claimed it was perfect, that it didn't need any amendments, that nothing should be done to it, that everything was done to it that ought to be done to it. It was proclaimed a moderate bill. It didn't turn out to be so moderate after people got a chance to understand it.

It went over to the Senate and they adopted some amendments and they put a great splurge in the newspapers that this was a moderate bill, more moderate than the House bill. I think that was probably true in respect to the jury trial, because that subject was not in the House bill at all. But I have examined the analysis made by the ranking member of your party on the committee, and it seems to me that this bill has gone so far in the way of giving additional authority to the Attorney General to intervene in cases that it makes him practically a czar over the enforcement of this act, particularly that overall conclusion in the 10th title of the bill.

Am I right about that, in your opinion?

Mr. CRAMER. Part of my remarks were addressed to the additional powers that the Attorney General got as a result of the amendments in the other body.

The CHAIRMAN. Isn't it far more drastic so far as the Attorney General's powers are concerned than the House bill was?

Mr. CRAMER. In my opinion, it is; yes.

The CHAIRMAN. And isn't the same thing true with respect to this matter that was so hotly contested in the House, of authorizing the Attorney General to convene a three-judge court, giving additional powers in other instances, which he didn't have in the House bill?

Mr. CRAMER. Yes, I alluded to that, that it was in title I previously, but it is now in titles II and VII, to ask that there be convened a three-judge court. As I stated, I didn't believe the justification was there. I didn't believe it was for title I. But it certainly isn't there for titles II and VII, the justification supposedly being to save time.

The CHAIRMAN. I am particularly interested in this provision about private clubs, in fact. You know, we had a long discussion in the House about private clubs, when they were exempted and when they were not exempted. We used the expression there of bona fide public private clubs. In the Senate they used the expression private clubs in fact. What is your construction of those words "in fact"?

Mr. CRAMER. I haven't had a chance to actually study the Senate record on that particular amendment, if there is a record.

The CHAIRMAN. Before we get to that, as I understand it from what I read in the papers, this was not really a matter hammered out on the floor of the Senate, but it was hammered out by the majority leader and the minority leader in the Senate, with an assist from one or two other Members of the Senate. They hammered this thing out and said, "This is it," and the Senate adopted it, didn't they?

Is that your understanding of really the majority leader and the minority leader working this thing out?

Mr. CRAMER. I can only say that as a member of the subcommittee, I was not consulted on the matter, any more than I was consulted when the House compromise was proposed, when the makeup of that compromise was being considered. I can only rely on the press reports as to who actually participated.

The CHAIRMAN. In these private clubs—and, of course, there are a great many of them and they really are private clubs with private membership—I am wondering how far this bill is going into that. You know, we had some discussion in the House about sororities and school fraternities. Then we have a provision in the bill about anything that entertains the public is covered by this bill.

Let's take a fraternity in a college, or a sorority in a college. They have parties and so on, activities, and the word gets around and everyone who wants to come does come, and they have a big time. Does that make that a public thing?

Mr. CRAMER. I don't think that was the intention to do that.

The CHAIRMAN. I know that is not the intention, but I am asking if it does, with the words "in fact"?

Mr. CRAMER. I personally think that the language written in in the other body makes the exception broader than it was in the House version. Bona fide is a question of good faith of private clubs. The private club, in fact, doesn't involve good faith, but it involves a factual question of whether it is open to the public.

The CHAIRMAN. There was this other provision in there that any private club who entertained guests to the institution, like a golf club which has an arrangement whereby their guests can go out and play golf at the club, that brings the golf club under the restrictions of this act, does it not?

Mr. CRAMER. It is very possible. I don't think it was the intention, but it is very possible that it does.

The CHAIRMAN. Would there be much doubt?

Mr. CRAMER. It says "in fact open to the public." So if, in fact, the public is permitted to come in, I assume it is covered.

The CHAIRMAN. There is the other provision in this bill that says that any concern or institution that caters to the patrons of a covered institution, like a hotel, it is covered by the bill, too.

Mr. CRAMER. That is right.

The CHAIRMAN. Aren't we getting pretty close to the case where we are going to get all these fraternities, the Masons, the Elks, the Odd Fellows, and the sororities, fraternities, the golf clubs, and so forth, pretty close to the edge of getting included under this provision of this act?

Mr. CRAMER. I would hope not, and I would hope that our discussion on the floor of the House will clearly clarify that.

The CHAIRMAN. Which discussion are you talking about?

Mr. CRAMER. That is why I say more time is needed. If we had discussion, that is the sort of thing that could be clarified.

The CHAIRMAN. I noticed you said you hoped we could get more time. I just want to tell you that you are an extreme optimist if you think you are going to get any more time.

Mr. CRAMER. I have been an optimist from the very inception of this bill, Mr. Chairman.

The CHAIRMAN. And I have been a pessimist.

Do you think they helped this provision any? I didn't find anything on the subject about who is covered. There has been a lot of

discussion about barber shops. At a barber shop that is in a covered institution, whether it be a hotel or a number of places, or in an office building—and most of them are in some of those kinds of places—and they serve the occupants of those buildings, like hotels, those barbers in those institutions are undoubtedly covered, are they not?

Mr. CRAMER. There is no question about it under section 201(b)(4).

The CHAIRMAN. There is no question about it. But the barber shop which is across the street from the hotel is exempt.

Mr. CRAMER. That is correct. And I think this was debated. We certainly discussed it on the floor of the House, as to the inconsistency of it.

The CHAIRMAN. I did, too. But I think I probably discussed it with the idea of discrimination between barbers. This bill is supposed to be one to abolish discrimination. There couldn't be much clearer discrimination than to say that one individual is in it and another one doing exactly the same business is out of it.

Mr. CRAMER. That was one of the difficulties in drafting that entire title. That was the reason why many of us were dissatisfied with the way it ended up because it obviously discriminates against many establishments that otherwise are not defined as being covered, but are covered, in fact, when they are within another covered establishment.

The CHAIRMAN. And that is going to make a world of trouble, isn't it?

Mr. CRAMER. It is certainly going to make a different test for the use of facilities of the same nature simply because one is within a covered establishment and the other is not. One will have to accommodate everyone and the other will not. It obviously discriminates.

The CHAIRMAN. I have in mind an office building in Washington. That office building houses a lot of concerns from all over the country, business concerns. It has a barber shop. It has a restaurant. The restaurant is covered, the residents in interstate commerce are covered. I assume the barber would be covered. The whole outfit would be covered under this bill, wouldn't it?

Mr. CRAMER. That is quite possible.

Mr. COLMER. May I pursue that point a moment?

In that connection, the gentleman may recall that I offered an amendment on the floor that would have exempted barbers and beauticians. I am one of the large percentage of the Members of the House who are not familiar with what the Senate did to this bill. Unfortunately, I didn't hear all of the colloquy between you and the chairman. Did they leave it the way it was?

Mr. CRAMER. As it relates to accommodations, yes, substantially the way it was, so far as the definitions are concerned.

Mr. COLMER. Incidentally, I recall also, one of the things I haven't been able to find out about, that there was offered an anti-Communist amendment on the floor, which was one of the few that was adopted. Frankly, I wasn't too happy about it. I would have rather had the issue than the amendment. How did the other body deal with that?

Mr. CRAMER. They left it in, and they also added a provision with regard to those who have Communist backgrounds are exempted from the FEPC nondiscriminatory provision. In other words, being a Communist can be a reason for not hiring someone and still not be discriminating. So they actually added to it.

Mr. COLMER. So they strengthened it?

Mr. CRAMER. That is right. They took the atheists out but they left the Communists in.

Mr. COLMER. In other words, they said that nobody would be required to employ a Negro if he was also a Communist?

Mr. CRAMER. That is the effect of it.

The CHAIRMAN. But it was all right if he was an atheist? Well, that is consistent, I suppose.

Mr. BROWN. They are probably afraid of the Supreme Court.

Mr. CRAMER. We are hoping to do something about that, but I don't know, Mr. Brown.

Mr. COLMER. Can you go so far as to say he couldn't employ a Republican?

Mr. CRAMER. Where I come from, there is a little discrimination, but they didn't put that into the bill, Mr. Colmer.

Mr. COLMER. That is all.

The CHAIRMAN. Are there any other questions?

Mr. MADDEN. The only comment that I would like to make in answer to the time being devoted to this legislation is that I see a lot of young folks here today who may get a bad impression of legislative processes. I think it should be mentioned that this Rules Committee devoted almost 10 days last February or March, whenever it was, to this same bill, maybe even 2 weeks, and the Senate had it 85 days. I don't know how long the Judiciary Committee had it.

Mr. DELANEY. It wasn't this bill.

Mr. MADDEN. It was civil rights, the same thing. Would you say we should have another week or two on it?

Mr. CRAMER. I will say in all sincerity, Mr. Madden, that my objective has not been to be an obstructionist in this matter, I have tried to take an affirmative approach and a constructive approach throughout, and the amendments I offered in the committee and on the floor were within that keeping. I will say that with some 89 amendments adopted in the other body it should take more than 1 day for this body to consider the matter in this committee and more than 1 hour to consider the bill properly on the floor of the House.

Mr. MADDEN. I just want these people to know that there has been about 4 months devoted to this bill on this side and on the other side.

Mr. BROWN. How many more witnesses do we have to hear, Mr. Chairman?

The CHAIRMAN. This afternoon?

Mr. BROWN. Yes.

The CHAIRMAN. Three.

Mr. COLMER. Mr. Chairman, may I observe in that connection that I happen to know of quite a few members who wanted to be heard, but they learned that the gavel was going to fall at 5 o'clock. Therefore, they didn't think it was necessary to come up.

I wanted to make that record.

The CHAIRMAN. If there are no further questions, thank you, Mr. Cramer.

Mr. CRAMER. Thank you.

The CHAIRMAN. We will next hear from our distinguished colleague from Louisiana, Joe D. Waggonner, Jr.

## STATEMENT OF HON. JOE D. WAGGONNER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Mr. WAGGONNER. Mr. Chairman and members of the committee, I appreciate the opportunity to take a few minutes of your time, although it is burdensome to spare anybody the time.

There is something that amused me and that is that we are going to have the same concern over legislative process being followed here today with regard to this civil rights legislation that some of the members of this same committee expressed some time ago about this same process being followed on the wheat-cotton legislation.

The members of this committee who protested quite loudly then against the procedures of the committee seem to be quite silent and well pleased with it today.

I guess it just depends upon what foot the shoe is on and what your attitude might be. I suppose that involves all of us from one time to another.

I sat and listened to the chairman of the full committee, Mr. Celler, this morning as he made his request of this committee, as he properly should, objection having been heard in the House to unanimous-consent consideration and adoption of the Senate amendments.

He made the remark that it was time now to ring down the curtain on this civil rights issue.

Well, I suppose that he could be classified as an optimist and any other individual who shares the ideal or attitude that this week, we are going to ring down the curtain on the issue of civil rights by sending this back to the House for consideration and finally signing it into the law with the President's signature on July 4 as plans now stand. In my opinion we are just rolling the curtain up because we have only seen the start of what is going to happen once the long arm of the Federal Government and the enforcement provisions of this legislation are brought face to face with the people who are going to bear the burden of this civil rights legislation.

I know that there are some, perhaps members of this committee, who feel that this legislation that is going to affect somebody else is not going to affect them. But I doubt that that is the case at all. I think there are going to be a lot of people rudely awakened in the United States because they are going to find out this legislation is not what the title is intended to imply and what the people over a great part of the country have been led to believe, that this is an effort to make the people in the South and the white people in the South provide schools for Negoes which they have never had before, to allow Negroes to vote, which they have never been allowed to do before because this is going to affect everybody in the United States at one time or the other, whether they realize it not, the workingman and businessman and there are some specific provisions in this legislation that are going to have their affect. They are going to have their affect on the workingman and the businessman. I think that we are optimistic when we say we are ringing the curtain down on this legislation because I think we are just rolling it up to take a full look at it in November.

I believe that my party, the Democratic Party, had secretly hoped that they would have a "me too" candidate in the November election. The line would not be drawn in this particular case, but that does not

appear to be quite likely now because it doesn't appear that the Republican Party is going to nominate a "me too" candidate.

The line is going to be sharply drawn and it is going to be the issue in the November elections whether we want it to be that or not, and I firmly believe that it is going to be a political burden to my party, the Democratic Party, in November.

Now, I want to talk not so much in trying to answer a question, but I want to ask a few questions and see if somebody can clarify some of these things for me with regard to what is really in this bill that the Senate has passed.

Mr. Madden said this morning that he could explain everything in it in 5 minutes. I hope he can answer one or two of these questions I have about this legislation.

I have in my hand here this comparative analysis which Mr. McCulloch has prepared for the benefit of the committee and others, and I am sure that it is quite factual, and I know it was intended to be factual.

Over in title II, page 2, of this comparative analysis we are talking about the persons who are going to be affected here. We say that:

All persons shall have access to the following places of public accommodations without regard to race, color, religion, or national origin.

Now they talk about hotels, motels, eating establishments, places of entertainment, gasoline stations. Then in paragraph (e) we come into the catchall and I want somebody to describe this for me. They say: "Any other establishment * * *." Now skip down to paragraph (2) which holds itself out as serving patrons of one of the above specified places of public accommodation.

Now, hypothetically, what are the circumstances if we have a barbershop, privately owned in a hotel, in a motel, in an office building and the owner of this barbershop says, "I am going to change my method of operation. I am going to set me up a private club for my barbershop and I am going to open this membership up to whoever might want to join, that I might want to accept, and I am not going to charge a fee. I am going to let these people provide me a salary from now on. I am not going to charge $2 per person to cut their hair. I am simply going to cut hair for 8 hours a day for the people who belong to my club for $600 a month and if it turns out to be 600 people that is $1 a month."

I wonder if there is an exemption in that case, if an establishment such as I described is located in a hotel or motel or an office building?

Could you tell me about that, Mr. Madden? I think the people need to know because we are going to find people asking these questions.

Mr. MADDEN. That would take quite awhile.

Mr. WAGGONNER. Then you admit it couldn't be answered in 5 minutes.

Mr MADDEN. Wait a minute. You asked me a question. It would take me quite awhile to go in there, and I have been asked to terminate these hearings.

I see my good friend Mr. Williams and Mr. Dorn are here and I am not going to encroach upon their time because they are entitled to their day in court.

I would just like to get your opinion on some of these things.

Mr. WAGGONNER. I admitted I did not know the answer, but you said you did, and I would be pleased to know it.

Mr. MADDEN. I do know it.

Mr. WAGGONNER. Is it exempt or not?

Mr. MADDEN. When I was a child there were five boys in our family. My dad was a good hair cutter and he would just clip it off. A number of the neighborhood children came in and he said, "No, I am just going to cut the hair of my own children." So maybe he discriminated there.

Mr. WAGGONNER. Answer this, Mr. Madden. Can a barber establish an operation such as this under the provisions of this bill?

Mr. MADDEN. You have read the bill, have you not?

Mr. WAGGONNER. Yes.

Mr. MADDEN. What is your opinion?

Mr. WAGGONNER. My opinion?

Mr. MADDEN. You are testifying, sir, I am not.

Mr. WAGGONNER. I said before I started that I wanted some answers.

Mr. MADDEN. I made a speech on this bill when it was on the floor of the House. You give us your answers. You are permitted to do that.

Mr. WAGGONNER. I do not know how it is interpreted, how it is intended.

Mr. MADDEN. If we are short of time, and I should take up 15 or 20 minutes to explain these things, Mr. Williams and Mr. Dorn will be angry with me.

The CHAIRMAN. All he asked was for you to answer him with a "Yes" or "No." It shouldn't take you 15 minutes to say yes or no.

Mr. MADDEN. Mr. Chairman, you made the statement here that you are for it and you made a statement that you were wrong about this whole thing several times this morning.

Mr. BROWN. I think you are being a little unfair.

Mr. MADDEN. You made a statement that if we dropped the whole thing that would be fine with you.

I was once a city judge in my time and we had a case of intent to kill and six or seven people testified against this defendant and he did not have a witness.

Finally, after the policeman testified I said the same thing that you said and that was "Do you want to drop the whole thing."

Mr. WAGGONNER. Mr. Madden, am I to assume from that——

Mr. BROWN. A little order here, Mr. Chairman. I think it is absolutely unfair to permit the witness to ask questions of Mr. Madden because we all know it takes Mr. Madden a week and 10 minutes to say good morning.

The CHAIRMAN. Well, aside from that I think that the effort is futile. I don't think you can get an answer from Mr. Madden.

Mr. WAGGONNER. Well, Judge, if I am not going to get my answer and the Congress is not going to get any answer from the people who support this bill and who profess to know what it is and what is in it, it is a waste of the committee's time and a waste of the people's time if I try to let the people know what is in the legislation.

The CHAIRMAN. I don't think it is a waste of time because a set of people realize that this bill is very big and uncertain and nobody knows what is in it. He said he does not know.

Mr. WAGGONNER. Mr. Chairman, would you mind trying to answer a question? If you can't, maybe you can elicit the answer from someone.

The CHAIRMAN. No, I cannot.

Mr. WAGGONNER. I have a question that has to do with the public accommodations section and the Senate revisions with regard to private clubs. The words "bona fide" was removed over in the Senate and the two words "in fact" were substituted.

Having followed the Senate's actions over there and being aware of the fact that one of my Senators from my State of Louisiana had something to do with this change in the language in the Senate I know that the words "bona fide" were dropped to try to broaden the scope of this legislation because it was felt that the courts would look at it with a little bit broader point of view, if that is at all possible.

Now the Senate language says:

Private clubs or other establishments not, in fact, open to the public are exempt from coverage, except where their facilities are made available to customers or patrons of one of the places of public accommodations specified.

Now, would this exemption still apply if they were guests of the manager of that establishment, if he is an individual, not in the name of the hotel or motel, but for example, carried a membership to that private club? Could he invite them in as his personal guests? Could he then keep it, in fact, a private club?

The CHAIRMAN. That is a question I have been asking and I haven't gotten the answer to it. I cannot give it to you.

Mr. Madden knows all the answers. He can give them to you.

Mr. MADDEN. I do not like to take up the time.

Mr. WAGGONNER. I have been informed by the other members who are waiting with me that they would relinquish their time.

Mr. MADDEN. When you get through we can answer as a committee as a whole. I have been here all day long.

Mr. WAGGONNER. Well, Mr. Chairman, it is, as I said it would be, a waste of your time and mine to continue. I suppose that we will just have to wait until we have these test cases to try to get answers.

The point I was simply trying to make is that this legislation is going to be signed into law without even the Congress having a clear-cut picture of who this is going to affect and how.

The CHAIRMAN. And on the Fourth of July.

Mr. WAGGONNER. On the 4th day of July, and the only thing that I hope is that the supporters of this legislation are going to have the courage to look these barbers and these beauty operators and these other people in the eye and say that, "I am the man who put this burden on your neck."

Thank you for your time.

Mr. COLMER. Just a minute, Mr. Waggonner. You are a very able and astute man.

Mr. MADDEN. There is some question about that.

Mr. COLMER. You are an astute Member of the Congress. You represent a district in the great State of Louisiana.

Mr. MADDEN. I am going to dispute that. I am from Indiana.

Mr. COLMER. I was not addressing you, sir.

Mr. MADDEN. You were addressing the question to me.

I would like to represent some of those States and have picked up the Congressional Directory and see where, about 4 or 6 years ago

there were Members of Congress coming up here with 6,000 votes total and I get about 200 total. I would like to get down where I could get 6,000 votes. And I have to go out and fight among a lot of people to get what I get.

The CHAIRMAN. You are using up a lot of these last few remaining minutes.

Mr. COLMER. Is my friend finished?

Mr. MADDEN. I am through.

Mr. COLMER. Just as a matter of realism here, the people who advocate this attack on the Constitution and upon the American way of life, not the Southern way of life, as we are not talking about that, we are talking about this Republic of the United States, I wonder, and I want to get your reaction to this.

Do they really believe that they are helping these people, the colored people, the Negro race, down in the South of which Louisiana is a great State?

Is it not a fact, Mr. Waggonner, that what they are doing here is destroying the good relations that have existed between the races?

It is not a fact that no longer can the Negro leaders sit down with the white leaders and discuss these questions that affect them and work out amicably some solution?

Is it a fact that they are just now breaking down these relations to where there is an enmity that did not exist, a race consciousness that did not exist, a hostility that did not exist, and that it all, in the final analysis, is going to work toward the evil effect rather than the good effects that they hoped or said they hoped will be brought about by this legislation?

Would the gentleman care to comment on that?

Mr. WAGGONNER. Mr. Colmer, I think you have asked a question which might be divided into two parts. The first psrt is you asked me, in essence, if pure politics motivated the support of the supporters of this bill and in all truthfulness, I must say to you in some cases I feel that is so, but in some cases there are some people who sincerely support this legislation because they think that they are doing the Negro race a favor. They are helping them I believe in giving the devil his dues and there are some people who sincerely believe this legislation must be passed.

Mr. COLMER. I didn't say they didn't

Mr. WAGGONNER. But I sincerely believe there are some who are supporting this legislation for pure political reasons.

The second part of your question, in essence, asked whether or not I thought this was adding to or detracting from the race relations in the South.

In my personal opinion, it has detracted from and has piled coals where coals need not be piled on the fires of racial prejudice and racial differences. It need not have been done.

Time solves problems nothing else solves and I think that race relations has been set back.

I think that the white man has been pushed further from the Negro man. The races have been pitted against each other and Americans, Negro Americans and the white Americans as well, have been divided as a result of this agitation.

We are going to see it pointed up further because without this legislation, it would not have been an issue in this general election, this presidential election year. It is going to be an issue now smolder-

ing under the surface, beneath the table, whether it is a wide open issue or not.

Race relations have been set back as a result of this agitation.

Does that answer your question?

Mr. COLMER. Yes, I think so.

Does the gentleman have any idea that the passage of this legislation is going to solve the problems, or is it going to further confuse them and add fuel to the flames that have already been ignited?

Mr. WAGGONNER. Well, I don't see how anybody who has read this legislation and anyone who knows anything about human nature can feel that this is going to solve the problem.

This will not solve the problem because legislation does not solve these problems and human nature teaches me that there never has been any such thing as equality within any one race and there never has been and never will be equality between different races, regardless of the different amount of legislation that you might place upon the lawbooks of this land and at the lowest level or at the highest level It simply cannot be done.

Does that answer your question?

Mr. COLMER. Yes. In other words, if I understand the gentleman, and I speak as one who is genuinely and sincerely interested in the orderly progress of the Negro race, that this is going to set back the cause rather than help it.

Mr. WAGGONNER. Mr. Colmer, the only way this problem is going to be solved is for both the sides, no matter which side you might believe is right in this particular field, is to cease trying to force somebody else to do your bidding and it is a shame that we couldn't recognize this a long time ago in this country.

It makes no difference to me who does what. I simply want to preserve the freedom of the choice for the man who is in private life, the working man or a businessman, not to be forced to do these things if he individually does not choose to do so.

Mr. COLMER. Well finally, let me ask this general question.

While this legislation, whatever motivation may be pointed, like a loaded pistol at your section and my section, I wonder if the gentleman does not feel that the real trouble is going to come in other sections of the country, the real race riots.

Mr. WAGGONNER. Yes, Mr. Colmer.

Mr. COLMER. That is as a result of this action.

Mr. WAGGONNER. The real trouble has already come in the other sections of the country. We of the South have said for many years what we consider to be our problem would, in the end, be the problem for the rest of the country and that situation now exists.

The only trouble we in the South have had with racial tensions has been that tension which has been agitated by people from the outside who have come in to disturb people who were satisfied and were not causing problems for themselves. And of course, we call them agitators. But let a man like Geroge Wallace, for example, come just a little bit farther north and he is considered an intruder when he wants to give some people a choice at the ballot box by some and not by all of the people.

Mr. Brewster who was his opponent over in Maryland, to his credit said that it was Mr. Wallace's right to come there and seek election, if he could be elected, that that was part of the American process and that is to Mr. Brewster's credit.

I think he was right, although he was not viewed in that light by all of the people.

Mr. COLMER. That is all I have. Thank you.

The CHAIRMAN. Any other questions of Mr. Waggonner?

Mr. WAGGONNER. Thank you, Mr. Chairman, and members of the committee.

The CHAIRMAN. Mr. Dorn?

## STATEMENT OF HON. W. J. BRYAN DORN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH CAROLINA

Mr. DORN. Mr. Chairman, I have really welcomed this opportunity and appreciate this opportunity of appearing before the committee for a moment or two in protest of the time that is supposed to be allocated to this bill.

Very frankly, I haven't read the amendments nor seen the amendments, have not had the time and I don't feel that I am in a different category from about 90 percent of the Members of the House and I do think we need just a little more time to consider this far-reaching legislation.

Now I know that we have been on it a long time and I know it was urgent last year when they came to us and said that we simply had to pass this before Christmas. We did not do it and I think that the fact that we did not do it and gave the House time to debate it early this year and in the Senate was all worth while and we need just a little more study on this, on these Senate amendments.

I frankly do not know. I still do not know, Mr. Chairman, what discrimination is. That is not defined in the bill. I have endeavored to find out and I don't know and I wish somebody would tell me what discrimination really is and just where we will be under this bill if we discriminate. I want to know where we stand so I can go back and tell my constituents.

Very frankly, I have just returned from a primary campaign in South Carolina in which, of course, this question came up, the vast powers being delegated to the Attorney General, any Attorney General, regardless of what party.

The people of this country are tremendously concerned and alarmed about the far-reaching effects of this; that is they have not been able to learn about it; there is a lot being withheld. But they are greatly concerned and this is not just in South Carolina.

I spoke to the girls State in Virginia and came back to the boys State. I enjoy doing this, but everywhere I go these questions come up—What is discrimination, what do you plan to do under this bill?

Very frankly, I do not know as a Member of Congress or what to do. I have been through this debate on the floor and hope to get time to look at these Senate amendments, but I really don't know what discrimination is involved in this bill.

I will say this, that at a time when we are considering and anciticipating the celebration of the independence of this country next Saturday on the 4th of July and, of course, we will be out making talks again about freedom and individual liberty, but I think the greatest civil rights bill ever written, Mr. Chairman, was the Bill of Rights to the Constitution to the United States of America. And this bill, what I learned about it during the debate on the floor of the House subverts and weakens the greatest civil rights bill every written and

that is the Bill of Rights to the Constitution of the United States guaranteeing trial by jury, guaranteeing peaceful assembly, peaceful assembly, Mr. Chairman, and property rights and that no man's life, liberty, or property can be taken without due process of law. I think this bill just really subverts the great civil rights bill that we have on the books today which is the 1st and 10th amendments to the Constitution of the United States.

Now, Mr. Chairman, this is a tragic thing for me to try to explain to the youth of this Nation, to the youth of this country when they ask me about it, individual freedom, all of these things.

I just wish it were some way that we could have a little more time to discuss on the floor these Senate amendments to this bill.

Let me say this, Mr. Chairman. I have been here before. But I am worried about this legislation.

You know Mr. Wallace was brought up awhile ago. I had the fellow of another race, right here who lives in Maryland and this was before the Maryland primary and the gentleman of the Rules Committee can take it for whatever it is worth, but I asked him, "Who are you going to vote for?" Now, he did not know who I was and did not know where I was from. I did not have on this light suit that I have on today, Mr. Chairman, which might indicate where I was from but rather I had on a dark suit.

Well, he immediately said, "I am going to vote for George Wallace."

I said, "Why"? He said, "Because I believe George Wallace is telling the people of Maryland what he believes in his heart, whereas the other fellow is a hypocrite."

I thought that was a pretty good answer and I might say to the committee that the only real success, and you can look at the record, that has been made in the field of human relations, particularly where various races are concerned has been made at the local and State level.

We passed a civil rights bill in 1957 which was going to solve the problem and here we are today again with violence in the streets, people apprehensive and fearful about what is going to happen the next day.

I think we passed one in 1961, or an amendment to the other one, but you know, they came here for years and years and years and advocated in Washington an antilynch bill which was the greatest civil rights bill of that day for 40 years.

Congress never passed it and the States and the local communities of this country completely eradicated, according to those advocating the legislation at that time, completely eradicated this evil and so the same I think with the poll tax. If it was illegal, and I say it wasn't, the States solved it and I have been hoping I would like to say to my friend on this side of the aisle that someone here would, but I am talking about someone in the House who could get up on this kind of legislation and tell the House and country what William Borrch said in the other body on this type of legislation and he said he would never cast a vote as long he is a Member of that body judging another section or other people in another area of this country and he did not join in that type of legislation and the States solved it, the antilynch problem.

So, Mr. Chairman and gentlemen of this committee, I just hope that we will have a little more time on this, that is the Senate amendments so they can be fully discussed.

You know, I hate to keep bringing this up, but the greatest response I get, and again for whatever it is worth on this type of legislation as in places like Illinois, and I do make speeches up there and when you tell them the truth, they really go crazy, even give you a 5-minute ovation, and that is true in other sections of the country.

So I do think we need to do some serious thinking about this kind of legislation without rushing it through. There is no doubt in my mind and even the schoolchildren know this, that this legislation is not the result of calm, cool deliberation as envisioned by the Founding Fathers of this country, and as provided for in the Constitution, but by violence in the streets of this country, by threats, by intimidation, mass demonstrations, a pattern which is worldwide from the Canal Zone in January of this year, Saigon, Pusan, Korea, Seoul, Korea, the overthrow of governments by student riots. It is a worldwide pattern, gentlemen, and I think this Congress ought to stand up on its hind legs and refute this method of passing legislation through the greatest deliberative body in the history of the world, the Congress of the United States of America, with a House and Senate, with a shotgun at its neck because of demonstrations and threats and violence and more of the same which is a sinister, diabolical technique planned by the masses of the art of the science of power that Machiavelli spoke about in the year of 1500.

This is a serious thing, Mr. Chairman, and the youth of America—and I can report to you because I am straight from them, they are concerned not about these beatniks, as they are concerned about them too, but people like that. They are concerned about this type of legislation which will place in the hands of the Attorney General almost a power of life and death over the people of this country.

I say again, Mr. Chairman, as I said before that people in this country have a right to have their votes counted. Everybody should have the right to vote, but I do say this, that we need some protection from people voting against their free will. I believe in people voting of their own free will and accord. There is a big difference in voting and being voted for, and this bill gives the Attorney General the power to indirectly vote people and I can show you some figures in the recent North Carolina gubernatorial race just completed Saturday which would shock you. That is mockery and fraud, and that is the kind of voting they have in Russia and that they had with Hitler.

I felt like, Mr. Chairman, that I had to come here and say a few words, and I do not apologize for it.

The CHAIRMAN. Mr. Dorn, you are discussing the question of whether this was going to solve the problem and end all the agitation with legislation. I have been wondering when we will have the next dose of this kind. We had one dose in 1957 when they had the civil rights bill that was going to kill all evils, alleged evils and just as an aside, a little election coming along, remember?

Mr. DORN. Yes, sir.

The CHAIRMAN. I wondered at the time how much politics was in there. Of course, the Democratic leadership and the Republican leadership, they all got together and conspired against us and thought they were going to get some political advantage.

Well, they passed that and 1960 came along and there was another election coming along strange enough and we had another civil rights bill and passed another one, a little more stringent than the other one and both the Democratic Party and the National Republican Party, they all got together and conspired and passed that one. That was the one that was going to solve all the problems.

Now we have another one and there is another election coming along, and there is great rivalry between the two national parties I notice as to which one was going to get the credit for certain voting blocs for passing this piece of legislation.

I am wondering when the next election comes along if we are liable to have another one. This one is supposed to be the final thing. It is going to solve all the problems just like the other two.

Do you think we are going to have another one in the next election or do you think that maybe to use a vulgar expression, both parties are going to get their bellies full of it when they get through with this one?

Mr. DORN. Judge, I am glad you asked that question.

Mr. MADDEN. Mr. Chairman, I don't like to be technical, but I do think that we should go into executive session.

Mr. BROWN. You don't want him to answer this question?

Mr. MADDEN. But I want to comply with our motion which was passed that at 5 o'clock we were going into executive session or no later than 5 that we would go into executive session.

The CHAIRMAN. Has the time rolled around?

Mr. MADDEN. The time has rolled around, and as much as I would like to hear my friend Jennings Bryan Dorn narrate, I think we ought to comply with the resolution.

The CHAIRMAN. You don't want him to answer the question?

Mr. DORN. May I say to my good friend from Indiana that I will answer this question very briefly.

Of course, Mr. Chairman, this will only whet the appetites of these power groups and you will have more violence in the streets than ever before and you will have more attempts at this kind of legislation.

I might refer the committee, and I think I mentioned this here before, to Benjamin Kidd's book written some 40 or 50 years ago on the science of power and he mentioned that——

Mr. MADDEN. The chairman is not listening and my friend Mr. Williams here is not listening.

Mr. DORN. It is going into the record, Mr. Madden. But I will say this in conclusion that, of course, this won't be the end of it. You know it and I know it. They can't quit. These pressure groups are highly organized, dues paying groups. They just cannot quit.

Kidd pointed that out in his book that they will keep on and on and on and they could not fold up until he said they destroyed democracy or establish a dictatorship or create a counterrevolution.

This is the science of power.

Read Machiavelli what he said and they can't stop it if they wanted to.

Mr. Chairman, they could not stop if they wanted to.

Mr. MADDEN. I would like to have, Mr. Chairman, my good friend William Jennings Bryan come up and make his speech to me this fall.

Mr. BROWN. You may need him.

The CHAIRMAN. We have one more distinguished witness here, the gentleman from Mississippi, Mr. Williams.

Mr. TRIMBLE. I call attention to the previous resolution of the committee and make a motion to go into executive session.

The CHAIRMAN. The motion is in order.

The committee has voted that it go into executive session at 5 o'clock.

(Whereupon, at 5 p.m., the committee proceeded into executive session.)

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